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# federal register

Friday
September 18, 1998

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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 AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 93

**[Docket No. 98–059–2]**

### Specifically Approved States Authorized To Receive Mares and Stallions Imported From Regions Where CEM Exists

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On July 27, 1998, the Animal and Plant Health Inspection Service published a direct final rule. (See 63 FR 40007–40008, Docket No. 98–059–1.) The direct final rule notified the public of our intention to amend the animal importation regulations by adding Georgia to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as: September 25, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Vogt, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8423; or e-mail: dvogt@aphis.usda.gov.

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

Done in Washington, DC, this 14th day of September 1998.

**Joan M. Arnoldi,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98–25056 Filed 9–17–98; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–ANE–29–AD; Amendment 39–10286; AD 98–02–04]**

**RIN 2120–AA64**

### Airworthiness Directives; CFM International CFM56–5B/2P Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 98–02–04 applicable to CFM International (CFMI) CFM56–5B/2P series turbofan engines that was published in the **Federal Register** on January 21, 1998 (63 FR 3031). The low pressure turbine (LPT) case part number (P/N) in the compliance section is incorrect. This document corrects that P/N. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A final rule airworthiness directive applicable to CFM International (CFMI) CFM56–5B/2P series turbofan engines, was published in the **Federal Register** on January 21, 1998 (63 FR 3031). The following correction is needed:

**§ 39.13 [Corrected]**

On page 3031, in the third column, in the Compliance Section, in the Applicability paragraph, in the fifth line, ''338–117–004–0'' is corrected to read ''338–117–404–0''.

On page 3031, in the third column, in the Compliance Section, in paragraph (a), in the second line, ''338–117–004–0'' is corrected to read ''338–117–404–0''.

On page 3031, in the third column, in the Compliance Section, in paragraph (d), in the third line, ''338–117–004–0'' is corrected to read ''338–117–404–0''.

Issued in Burlington, Massachusetts, on September 11, 1998.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 98–25005 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–CE–62–AD; Amendment 39–10773; AD 98–05–14 R1]**

**RIN 2120–AA64**

### Airworthiness Directives; Cessna Aircraft Company Models T210N, P210N, and P210R Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This amendment clarifies information contained in Airworthiness Directive (AD) 98–05–14, which currently requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions on certain Cessna Aircraft Company (Cessna) Models T210N, P210N, and P210R airplanes. That publication incorrectly references the possibility of certain ice accumulation on the ''lower'' surface of the wing, instead of the ''upper'' surface of the wing while operating with the flaps extended. This incorrect statement may result in pilot misinterpretation of the icing effects with the flaps extended, and lead to an incorrect action. This document replaces the word ''lower'' with ''upper'' in this sentence. The actions specified in this AD are intended to continue to minimize the

potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

**EFFECTIVE DATE:** September 22, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932, facsimile: (816) 426–2169.

**SUPPLEMENTARY INFORMATION:**

## Discussion

On February 24, 1998, the FAA issued AD 98–05–14, Amendment 39–10375 (63 FR 10519, March 4, 1998), which applies to Cessna Models T210N, P210N, and P210R airplanes. AD 98–05–14 was the result of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew.

AD 98–05–14 requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also requires revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

## Need for the Correction

The AD incorrectly states in paragraph (a)(2) of AD 98–05–14 that:

> Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

The word ''lower'' in this sentence should be ''upper.''

This incorrect statement may result in pilot misinterpretation of the icing effects with the flaps extended and lead to an incorrect action. The pilot of the affected airplanes can only see the lower wing surface. However, ice accretion on the upper surface of the wing, which the pilot cannot observe, is usually accompanied by ice accretion on the lower surface. As stated earlier, the pilot can observe ice accretion on the lower surface.

Extension of flaps that results in a reduced angle-of-attack can change the relationship of the extent of ice on the upper and lower surfaces of the wing. For example, ice will tend to accrete more on the upper surface than on the lower surface at a reduced angle-of-attack. However, when flaps are extended in certain icing conditions, the reduction of ice further aft on the lower surface of the wing may lead the pilot to conclude incorrectly that there is a reduction of ice further aft on the upper surface. This is not correct; as stated earlier, the tendency is for more ice accretion on the upper surface. Usually, ice on the upper surface of the wing is more adverse to the aerodynamic characteristics of the airplane than is ice on the lower surface of the wing.

Consequently, the FAA saw a need to clarify AD 98–05–14 to assure that this visual cue can be followed and that the appropriate cause and effect relationship is described.

## Correction of Publication

This document clarifies the intent of the previously discussed visual cue in paragraph (a)(2) of AD 98–05–14. This document also adds the amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

Since this action only clarifies the description of a visual cue in AD 98–05–14, it has no adverse economic impact and imposes no additional burden on any person than would have been necessary by the existing AD. Therefore, the FAA has determined that prior notice and opportunity for public comment are unnecessary.

## 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 removing Airworthiness Directive (AD) 98–05–14, Amendment 39–10375 (63 FR 10519, March 4, 1998), and by adding a new AD to read as follows:

**98–05–14 R1 Cessna Aircraft Company:** Amendment 39–10773; Docket No. 97–CE–62–AD; Revises AD 98–05–14, Amendment 39–10375.

*Applicability:* Models T210N (serial numbers 21063641 through 21064897), P210N (serial numbers P21000386 through P21000834), and P210R (all serial numbers) airplanes; certificated in any category.

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

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

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after April 30, 1998 (the effective date AD 98–05–14), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

**Note 2:** Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

**''WARNING**

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in

freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

**"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:**

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

**Procedures for Exiting the Severe Icing Environment:**

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by 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).

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

(d) 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. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment revises AD 98–05–14, Amendment 39–10375.

(g) This amendment becomes effective on September 22, 1998.

Issued in Kansas City, Missouri, on September 11, 1998.

**Michael K. Dahl,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98–25003 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–98–055]**

**RIN 2115–AE47**

## Drawbridge Operating Regulation; Portage Bayou, Tchoutacabouffa and Wolf Rivers, MS

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing the operating regulation for the Adams Bridge across the Wolf River, mile 1.3, in Pass Christian, Harrison County, Mississippi. The bridge was replaced with a fixed bridge and the drawbridge was removed in 1995 and the regulation governing its operation of the drawbridge is no longer applicable. The Coast Guard is also renumbering and dividing certain sections within 33 CFR part 117 to improve readability. The renumbering is administrative and no substantive changes are being made.

**DATES:** This regulation becomes effective on September 18, 1998.

**ADDRESSES:** Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Frank, Bridge Administration Branch, telephone number (504) 589–2965.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

The Adams Bridge across the Wolf River was replaced with a fixed bridge and the drawbridge was removed in 1995. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation that pertained to this draw. This rule removes the regulation for this bridge in § 117.685.

Additionally, the Coast Guard is administratively renumbering certain sections with 33 CFR, part 117. The changes are administrative in nature and no substantive changes were made to these sections. These changes include redesignating § 117.683 to § 117.682 and redesignating § 117.684 to § 117.683. The remaining portions of § 117.685 are

then divided so that the drawbridge operation regulations for Portage Bayou and the Tchoutacabouffa River are separated in §§ 117.684 and 117.685 respectively. These administrative changes will place the drawbridge operating regulations for each Mississippi waterway in separate and easily identifiable sections.

The Coast Guard has determined that good cause exists under the Administrative Procedures Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because the Adams Bridge is no longer in existence, eliminating the need for the regulation, and the renumbering has no substantive effect on the existing operating schedules.

The Coast Guard, for the reasons just stated, has also determined that good cause exists for this rule to become effective upon publication in the **Federal Register**.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### Small Entities

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

Since the Adams Bridge across the Wolf River, mile 1.3 at Pass Christian, Mississippi was replaced with a fixed bridge and has been removed, the rule governing the bridge is no longer appropriate. The renumbering within 33 CFR part 117 is administrative in nature and has no substantive effect on existing operating schedules. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

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

### Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that this action is categorically excluded from further environmental documentation under current Coast Guard CE #32(e), in accordance with Section 2.B.2 and Figure 2–1 of the National Environmental Protection Act Implementing Procedures, COMDTINST M16475.1C.A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons set out in the preamble, the Coast Guard is amending part 117 Title 33 Code of Federal Regulations 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; and 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

**§§ 117.683 and 117.684 [Redesignated as §§ 117.682 and 117.683]**

2. Section 117.683 (Pascagoula River) is redesignated as § 117.682; § 117.684 (Pearl River) is redesignated as § 117.683; and a new § 117.684 is added to read as follows:

**§ 117.684 Portage Bayou.**

The draw of the Portage Bridge over Portage Bayou, mile 2.0, shall open on signal if at least two hours notice is given.

3. Section 117.685 is revised to read as follows:

**§ 117.685 Tchoutacabouffa River.**

The draw of the Cedar Lake Road Bridge over the Tchoutacabouffa River, mile 8.0, shall open on signal if at least twenty-four hours notice is given.

Dated: September 4, 1998.

**A.L. Gerfin, Jr.,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

[FR Doc. 98–25037 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–15–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–98–144]**

**RIN 2115–AA97**

## Safety Zone: World Yacht Cruises Fireworks, New York Harbor, Upper Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the World Yacht Cruises Fireworks program located in Federal Anchorage 20C, New York Harbor, Upper Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of Federal Anchorage 20C.

**DATES:** This rule is effective from 9:30 p.m. until 10:45 p.m. on Saturday, September 19, 1998.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4195.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federl Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be

contrary to public interest sine immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

**Background and Purpose**

On August 31, 1998, Fireworks by Grucci submitted an applicant to hold a fireworks program on the waters of Upper New York Bay in Federal Anchorage 20C. The fireworks program is being sponsored by Hoboken Floors. This regulation established a safety zone in all waters of Upper New York Bay within a 360 yard radius of the fireworks barge approximate position 40–41–22N 074–02–22W (NAD 1983), approximately 360 yards northeast of Liberty Island, New York. The safety zone is in effect from 9:30 p.m. until 10:45 p.m. on Saturday, September 19, 1998. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Federal Anchorage 20C and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage 20C. Federal Anchorages 20A and 20B, to the north, and Federal Anchorages 20D and 20E, the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 125 yards into the 925-yard wide channel. Public notifications will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

**Regulatory Evaluation**

This final 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 or 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 final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, that vessels may safely anchor to the north and south of the zone, that vessels may still transit through Anchorage Channel during the event, and extensive advance notifications which will be made.

**Small Entities**

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

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This final 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 final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final 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.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 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 1.05–1(g) 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–144 to read as follows:

**§ 165.T01–144 Safety Zone: World Yacht Cruises Fireworks, New York Harbor, Upper Bay.**

(a) *Location.* The following area is a safety zone: all waters of New York Harbor, Upper Bay within a 360 yard radius of the fireworks barge in approximate position 40–41–22N 074–02–22W (NAD 1983), approximately 360 yards northeast of Liberty Island, New York.

(b) *Effective period.* This section is effective from 9:30 p.m. until 10:45 p.m. on Saturday, September 19, 1998. There is no rain date for this event.

(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: September 10, 1998.

**R.E. Bennis,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 98–25051 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–15–M

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## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 253

**[Docket No. 96–6 CARP NCBRA]**

## Noncommercial Educational Broadcasting Compulsory License

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule and order.

**SUMMARY:** The Librarian of Congress, upon the recommendation of the Register of Copyrights, is announcing the rates and terms of the noncommercial educational broadcasting compulsory license for the use of music in the repertoires of the American Society of Composers, Authors and Publishers and Broadcast Music, Inc. by the Public Broadcasting Service, National Public Radio and other public broadcasting entities as defined in 37 CFR 253.2, for the period 1998–2002. The Librarian is adopting

the determination of the Copyright Arbitration Royalty Panel (CARP).

**EFFECTIVE DATE:** January 1, 1998.

**ADDRESSES:** The full text of the CARP's report to the Librarian of Congress is available for inspection and copying during normal business hours in the Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20559–6000. It is also available on the Copyright Office's website: (http://lcweb.loc.gov/copyright/carp).

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 118 of the Copyright Act, title 17 of the United States Code, creates a compulsory license for the public performance of published nondramatic musical works and published pictorial, graphic and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118(c). As stipulated by the parties, the terms and rates adopted in today's order are effective for the period beginning January 1, 1998. They will be effective through December 31, 2002.

The noncommercial educational broadcasting compulsory license provides that copyright owners and public broadcasting entities may voluntarily negotiate licensing agreements at any time, and that such agreements will be given effect in lieu of any determination by the Librarian of Congress provided that copies of such agreements are filed with the Register of Copyrights within 30 days of their execution. Those parties not subject to a negotiated license must follow the terms and rates adopted through arbitration proceedings conducted under chapter 8 of the Copyright Act.

The Library published a notice in the **Federal Register** requesting comments from interested parties as to the need of a CARP proceeding to adjust the section 118 terms and rates. 61 FR 54458 (October 18, 1996). After a protracted negotiation period, several parties submitted proposals for royalty fees and terms with respect to certain uses by public broadcasting entities of published musical works and published pictorial, graphic and sculptural works. The Library published these proposals in the **Federal Register**, in accordance with 37 CFR 251.63, and adopted them as final regulations effective January 1, 1998. See 63 FR 2142 (January 14, 1998).

Certain parties notified the Library that agreement could not be reached for the use of musical works and that a CARP would be required. The Library initiated a CARP proceeding on January 30, 1998, and the CARP delivered its report to the Librarian on July 22, 1998. Today's final rule and order adopts that report.

## II. Parties to This Proceeding

As noted above, certain parties could not reach agreement as to the proper adjustment of the royalty rates and terms for the use of musical works. The musical works at issue are those belonging to composers and publishers affiliated with the American Society of Composers, Authors and Publishers (ASCAP) and to composers and publishers affiliated with Broadcast Music, Inc. (BMI). The public broadcasting entities wishing to make use of these musical works are the Public Broadcasting Service (PBS), National Public Radio (NPR), and other public broadcasting entities as defined in 37 CFR 253.2.

ASCAP and BMI are both performing rights societies which, among other things, license the nonexclusive right to perform publicly the copyrighted musical compositions of their respective members. ASCAP and BMI filed separate written direct cases in this proceeding, and each sought a separate royalty fee for the use of musical works within their respective catalogues.

PBS is a non-profit membership corporation which, among other things, represents the interests of its member noncommercial educational broadcasting stations in rate setting and royalty distribution proceedings in the United States, Canada, and in Europe. NPR is a non-profit membership organization dedicated to the development of a diverse noncommercial educational radio programming service. PBS and NPR submitted a joint written direct case in this proceeding and are referred to in this final rule and order as ''Public Broadcasters.'' The Corporation for Public Broadcasting (CPB), which provides funding for both PBS and NPR, is also represented in this proceeding, though it is not a user of music.

## III. Prior History of Section 118 Rate Adjustments

Congress intended that the parties affected by the section 118 compulsory license negotiate reasonable license rates and terms. If the parties could not agree, the Copyright Royalty Tribunal (CRT) was to establish rates and terms in 1978 and at five-year periods thereafter if necessary. In section 118, Congress gave the CRT no statutory criteria beyond ''reasonable'' but did say that the CRT could consider ''the rates for comparable circumstances under voluntary license agreements negotiated as provided in paragraph (2).'' 17 U.S.C. 118(b)(3).

When Congress replaced the CRT with the current CARP system in 1993, it did not make any substantive modifications to section 118 or to the ''reasonable terms and rates'' standard prescribed by section 801. See Copyright Royalty Tribunal Reform Act of 1993, Public Law 103–198, 107 Stat. 2304.

For the initial license term of 1978–1982, the Public Broadcasters successfully negotiated a voluntary license with BMI that provided for a payment of $250,000 for the first year with certain possible adjustments for each of the succeeding four years. No agreement was reached for the use of ASCAP music by Public Broadcasters, and the CRT held a proceeding to establish rates and terms.

To determine what constituted a ''reasonable'' rate for ASCAP, the CRT examined the section 118 legislative history and found directives that the rate should reflect the fair value of the copyrighted material, that copyright owners were not expected to subsidize public broadcasting, and that Congress felt that the growth of public broadcasting was in the public interest. See 43 FR 25068 (June 8, 1978) (citing S. Rep. No. 94–473, at 101 (1975); H.R. Rep. No. 94–1476, at 118 (1976)). From its review of the legislative history, the CRT concluded that it had broad discretion based on the interests Congress had defined. 43 FR 25068 (June 8, 1978).

The CRT then looked at a number of different formulas submitted by ASCAP and Public Broadcasters for calculating royalties and concluded that there was no one ideal solution within the framework of a statutory compulsory license. 43 FR 25069 (June 8, 1978). Based on what it had before it, the CRT then concluded that an annual payment of $1.25 million was a reasonable royalty fee. It also provided for an inflationary adjustment during the 1978–1982 period and explained that

the annual fee was not determined by application of a particular formula, but was ''approximately what would have been produced by the application of several formulas explored by this agency during its deliberations.'' Id.

In adopting the annual fee, the CRT stated that its determination was made on the basis of the record before it, and stressed that ''[w]hen this matter again comes before the CRT, the CRT will have the benefit of several years experience with this schedule. The CRT does not intend that the adoption of this schedule should preclude active consideration of alternative approaches in a future proceeding.'' Id. The CRT, however, never conducted another section 118 proceeding before its abolition in 1993, because voluntary licenses were negotiated for all subsequent periods. Today's decision is the first section 118 rate adjustment that has required a formal proceeding.

## IV. Report of the Panel

After six months of hearings and written submissions of ASCAP, BMI, and Public Broadcasters, the CARP delivered its report to the Librarian. The Panel determined that Public Broadcasters should pay an annual fee of $3,320,000 to ASCAP, and $2,123,000 to BMI, for the public performance of works containing ASCAP and BMI music, respectively. The Panel also stated that these annual fees should be paid in accordance with the terms attached as an appendix to its report.[1] Costs of the proceeding (i.e. the arbitrators' fees) were assessed at one-third each to ASCAP, BMI, and Public Broadcasters.

In attempting to determine what constituted a ''reasonable'' fee for ASCAP and BMI, the Panel consulted the CRT decision described above and examined the same legislative history reviewed by the CRT. The Panel observed that while section 118 did not define the term ''reasonable,'' the legislative history indicated that ''reasonable'' meant ''fair value,'' and that ''fair value'' was the functional equivalent of ''fair market value.'' Report at 9. The Panel noted that the parties also generally agreed that fair market value was the proper standard for determining rates, and that fair market value meant ''the price at which goods and services would change hands between a willing buyer and a willing seller neither being under a compulsion to buy or sell and both having reasonable knowledge of all material facts.'' Id. In the Panel's view, although the CRT called it ''fair value'' rather than ''fair market value,'' the rate determined for ASCAP in the 1978 proceeding was a fair market value determination. Thus, with respect to ASCAP, the Panel was adjusting the fair market value of ASCAP music in 1978 to its present fair market value and, for the first time, establishing the current fair market value of BMI music. Id. at 10–11.

To fix the fair market value of ASCAP and BMI music, respectively, the Panel searched for some type of method or formula that would establish a benchmark to assist in establishing fair market value. ASCAP and BMI, while employing somewhat differing adjustment parameters, advocated using music licensing fees recently paid by commercial television and radio broadcasters as a benchmark for valuing the license fees that Public Broadcasters should pay under section 118. Public Broadcasters urged the Panel to set license fees based upon prior voluntary licensing agreements between Public Broadcasters and ASCAP and BMI.[2] The Panel ultimately rejected each of the parties' approaches and adopted instead its own benchmark.

### *A. The ASCAP Approach*

According to the Panel, ASCAP's proposed use of commercial television and radio license fees was premised on several assumptions: (1) that commercial license fees represented fair market value of ASCAP music, whereas past agreements between ASCAP and Public Broadcasters did not; (2) that in recent years, Public Broadcasters have more closely resembled commercial broadcasters due to the rise in commercialization of public television and radio, fiscal success, sophistication, and size; (3) that after adjusting for music usage, the Public Broadcasters should pay the same proportion of their revenues as license fees as do commercial broadcasters; and (4) that ASCAP's proposed methodology takes into account any perceived differences between Public Broadcasters and commercial broadcasters by excluding from Public Broadcasters' revenues any revenues derived from government sources. Only ''private revenues,'' such as corporate underwriting and viewer/listener contributions, were considered under ASCAP's methodology because they, like commercial broadcasters' revenues, are audience sensitive. Id. at 13.

ASCAP's witnesses testified that its methodology yielded an annual fee of $4,612,000 for television plus $3,370,000 for radio—a total of $7,982,000. Id. at 14. ASCAP also performed a confirmatory analysis of this fee by projecting forward the ASCAP fee adopted by the CRT. ASCAP first calculated the ratio of 1995 Public Broadcasters' private revenues[3] to the Public Broadcasters' 1978 private revenues and multiplied this figure by the 1978 fair market value fee set by the CRT. That result was then multiplied by the ratio of 1995 ASCAP music use by Public Broadcasters to the 1978 ASCAP music use by Public Broadcasters. This methodology generated total license fees for 1995 for television and radio of $8,225,000, a figure that ASCAP asserted confirmed its primary methodology. Id. at 14–15.

### *B. The BMI Approach*

According to the Panel, the BMI approach was quite similar to ASCAP's. However, in addition to examining Public Broadcasters' revenues and music use, BMI also examined Public Broadcasters' programming expenditures and audience size. BMI compared total revenues, programming expenditures, and audience size and determined that public television was 4% to 7% the size of commercial television, and that Public Broadcasters should therefore pay a music licensing fee between 4% and 7% of the fee that BMI anticipates commercial television will pay in 1997. BMI similarly concluded that public radio was 3% to 4% the size of commercial radio in recent years. Id. at 15. However, BMI acknowledged that a one-third downward adjustment for music use by public radio stations as compared to commercial radio stations was necessary, yielding a total fee between 1% to 2% of the fees BMI anticipates will be paid by commercial radio in 1997. This methodology yielded a license fee for BMI for 1997 for public television between $4 and $7 million and between $1 to $2 million for public radio. BMI recommended adopting the midpoint between these ranges, yielding $5.5 million for public television and $1.395 million for public radio—a total of $6,895,000. Id. at 15–16.

BMI also submitted that, regardless of its proposed fee, the Panel should not set a fee for BMI less than 42.5% of the

[1] The parties to this proceeding stipulated to the terms of payment. Consequently, only the rates are in issue in this proceeding.

[2] As the Panel observed, these were the primary approaches advocated by the parties. They also advocated alternative approaches and variants of the primary approach. The Panel noted, however, citing examples, that the parties equivocated with respect to these alternatives and sometimes disavowed them entirely. Id. at 11–12.

[3] Public Broadcasters' 1995 revenues were the most recently available annual revenues to ASCAP at the time it filed its written direct case.

combined ASCAP and BMI fees. This argument was based on BMI's assertion that 42.5% of the total share of music on public television belonged to BMI. BMI had no data on its relative share of its music on public radio, but submitted that using BMI's music share on public television was a good proxy for music on public radio in the absence of any evidence on the relative shares of ASCAP and BMI music on public radio. Id. at 16–17.

*C. Public Broadcasters*

Public Broadcasters argued that the best method for determining fair market value of ASCAP and BMI music was to use the 1992 negotiated licenses between Public Broadcasters and ASCAP and BMI as a benchmark, and then to adjust for any changed circumstances. Public Broadcasters asserted that this was the only method explicitly encouraged by the framers of section 118. Id. at 17.

While conceding that there is no precise definition of ''changed circumstances'' since the 1992 voluntary agreements with ASCAP and BMI, Public Broadcasters asserted that changes in their programming expenditures and music use offered the best indicators of ''changed circumstances.'' Public Broadcasters performed an economic regression analysis with respect to programming expenditures and found a growth rate of 7.15% from 1992 through 1996. By mathematically increasing the combined ASCAP and BMI license fees payable under the 1992 agreements and determining that music use did not change during that time period, Public Broadcasters advocated a combined ASCAP/BMI license fee for both public television and radio of $4,040,000 per year. Id. at 18. Public Broadcasters then apportioned this fee between ASCAP and BMI based upon music usage and determined that BMI's share of music on public television was 38–40% of the total music usage. As did BMI, Public Broadcasters assumed that it was reasonable to use public television music usage as a proxy for public radio music usage. Id. at 19.

*D. The Panel's Analysis*

After examining the parties' approaches, the Panel concluded that ''[b]oth *general* approaches * * * suffer significant infirmities.'' Id. at 19. The Panel agreed with Public Broadcasters that previously negotiated licenses with ASCAP and BMI were logical starting points to determine fair market value, but concluded that the agreements from 1982 through 1997 understate the fair market value of ASCAP and BMI music. The Panel also determined that, while licenses negotiated with similarly situated parties should be considered, ASCAP's and BMI's licenses with commercial broadcasters overstate the fair market value of music on public television and radio. Id. at 19–24. Instead, the Panel adopted its own methodology based upon the CRT's 1978 determination, yielding an annual fee of $3,320,000 for ASCAP, and $2,123,000 for BMI.

Because the Panel considered the voluntary license agreements that Public Broadcasters negotiated with ASCAP and BMI for the 1992–1997 license period to be a logical starting point to determining fair market value, the Panel first considered Public Broadcasters' approach. The Panel was particularly impressed with the fact that the ASCAP license agreements contained ''no-precedent clauses'' which, in essence, are statements that the rates and terms prescribed in the agreement have no precedential value in any future negotiation or proceeding before a CARP. These no-precedent clauses were included in the voluntary agreements at the insistence of ASCAP. The Panel concluded that ''[t]his clause clearly evinces an attempt by ASCAP to protect itself from future tribunals which might be tempted to use the prior agreement as a benchmark for establishing fair market value. And such an attempt to protect itself is corroborative of ASCAP's genuine belief that the agreed rates were below fair market value.'' Id. at 22. The Panel made a similar finding with respect to ''nondisclosure'' clauses included in BMI's license agreements which forbade disclosure of the terms of the agreements to the public, including a CARP. Id. at 22–23. The Panel also concluded that the ''huge disparity'' between recent ASCAP/BMI commercial license rates and the rates for Public Broadcasters under private agreements underscored that the prior agreements were not indicative of fair market value. Id. at 23. Therefore, the Panel rejected Public Broadcasters' approach.

The Panel then focused on ASCAP and BMI's approach using commercial broadcaster license rates. The Panel rejected this approach because, while Public Broadcasters have become more ''commercial'' in recent years, ''significant differences remain which render the commercial benchmark suspect.'' Id. at 24. Commercial broadcasters raise revenues through advertising and audience share, whereas Public Broadcasters have no such mechanism:

> In the commercial context, audience share and advertising revenues are directly proportional and also tend to rise as programming costs rise—increased costs are passed through to the advertiser. No comparable mechanism exists for Public Broadcasters. Increased programming costs are not automatically accommodated through market forces. Contributions from government, business, and viewers remain voluntary. For these reasons, commercial rates almost certainly overstate fair market value to Public Broadcasters and, even restricting the revenue analysis to ''private revenues,'' as did ASCAP, does not fully reconcile the disparate economic models.

Id. at 24 (citations omitted).

Having rejected both sides' approaches, the Panel fashioned its own benchmark for determining fair market value of ASCAP and BMI music. The Panel's methodology was based upon the fundamental assumption that the fee set by the CRT in 1978 was the fair market value of ASCAP music under the section 118 license as of that time. According to the Panel, that assumption was ''an eminently reasonable, and essentially uncontroverted, assumption. Indeed, this Panel is arguably bound by the 1978 CRT determination of fair market value of the ASCAP license.'' Id. at 25. The Panel took the 1978 rate and ''trended [it] forward'' to 1996 by adjusting for the change in Public Broadcasters' total revenues and the change in ASCAP's music share. This methodology yielded the fair market value of an ASCAP license to Public Broadcasters. The Panel then determined the fair market value of a BMI license to Public Broadcasters by applying its current music use share to the license fee generated for ASCAP for 1996. The Panel noted that its methodology was ''similar to alternate analyses employed by both ASCAP and Public Broadcasters to demonstrate the reasonableness of their approaches.'' Id.

To ''trend forward'' the CRT's 1978 ASCAP license fee to the present, the CARP divided that fee ($1,250,000) by Public Broadcasters' total 1978 revenues ($552,325,000) and multiplied the result by Public Broadcasters' total 1996 revenues ($1,955,726), resulting in a ''1996 trended ASCAP license fee'' of $4,426,000, before adjusting the fee to take account of a decline in ASCAP's share of music usage. Id. at 26.

The Panel determined that the change in Public Broadcasters' revenues from 1978 to 1996,[4] along with changes in music share, were the best indicator of relevant changed circumstances which required an adjustment to the chosen benchmark. That is, Public Broadcasters would likely pay license fees that constitute the same proportion of their

[4] The most recent year for which data was available to the Panel. See footnote 7 infra.

total revenues as did the license fees that they paid in 1978, the last occasion in which they paid fair market rates. Id. at 27. The Panel did acknowledge there was ''no commonly accepted indicator that would allow a finder-of-fact to precisely adjust a fair market value benchmark to reflect relevant changed circumstances,'' noting that other factors, such as revenues, audience share, programming expenditures, and the Consumer Price Index have been used. Id. at 27–28.

> Of these, the Panel concludes that revenues is [sic] the best indicator of relevant changed circumstances because it incorporates the forementioned factors and others. Changes in audience share and programming expenditures are reflected in revenues. Changes in revenues over time also serve as a proxy for an inflation adjustment. While the CPI gauges inflation at the consumer level, revenues gauge inflation at the industry-specific level. Accordingly, in our analysis, an inflation adjustment from 1978 to 1996 is obviated.

Id. at 28 (citation omitted).

The Panel also determined that it was more appropriate to use Public Broadcasters' total revenues, rather than examine only ''private'' revenues, as advocated by ASCAP. There was no need to confine the analysis to private revenues, because the Panel did not accept ASCAP's use of commercial broadcasters' rates as the appropriate benchmark and because the Panel was concerned with Public Broadcasters' revenue trends (i.e., increases) over the relevant period, not with how the revenues were raised. Id. at 29.

Finally, with respect to revenues, the Panel explained why it used Public Broadcasters' 1996 revenues and 1978 revenues in its formula. Using the 1996 revenue data was important because it was the most recent data available to the parties and yielded the most accurate fee for the 1998–2002 period. Id. at 30. The Panel also rejected Public Broadcasters' assertion that the Panel should use Public Broadcasters' 1976 revenues, which were the most recent revenues available to the CRT when it set its fair market value fee in 1978. The Panel stated that the record did not necessarily support Public Broadcasters' assertion and noted that use of 1976 revenues would have actually yielded higher license fees. Id. at 31.

The Panel then adjusted the figure produced by its revenue growth trending formula to account for changes in the relative share of ASCAP music used by Public Broadcasters in 1996 as compared to 1978. The Panel determined that ''the ASCAP share of total ASCAP/BMI music used by Public Broadcasters has declined from about 80%–83% in 1978 to about 60%–61% in 1996, representing about a 25% decline in its music share.'' Id. at 32. Accordingly, the Panel made a 25% downward adjustment to the ''1996 trended ASCAP license fee'' of $4,426,000, resulting in an ASCAP license fee of $3,320,000. Id. at 26. In order to determine this decline, the Panel was required to infer the proportion of music shares between ASCAP and BMI in 1978 because evidence of such music shares does not exist.[5] The Panel made this inference based upon two significant pieces of record evidence.

First, since 1982, both ASCAP's and BMI's negotiated fees with Public Broadcasters reflect relative shares of about 80%/20% of the music use of Public Broadcasters. While acknowledging that the voluntarily negotiated licenses were not indicative of fair market value, the Panel was ''persuaded that the consistent division of fees reflects the parties' perception of respective music use shares, as confirmed by data available to each party.'' Id. at 33. Absent more reliable information, the Panel presumed that the 80%/20% split that had prevailed since 1982 also existed in 1978. The Panel felt buttressed in this assumption because ''in its trending formula, ASCAP did not hesitate to use its music use data from *1990* as a proxy for 1978.'' Id.

Second, the Panel determined that the 80%/20% split in music share was corroborated by the fact that in 1978 the CRT adopted a $1,250,000 annual fee while being aware that BMI had negotiated a $250,000 annual fee. The Panel concluded, ''presuming the CRT did not arbitrarily determine fees without regard to relative music share, we infer music use shares for ASCAP and BMI of 83% and 17%, respectively, for 1978.'' Id. at 33–34. The Panel then concluded that ASCAP's 1996 music share was 60%–61%, based upon an analysis presented by Public Broadcasters that it found ''more comprehensive and more reliable'' than BMI's analysis. ASCAP did not present a music share analysis. Id. at 32 n.42.

The Panel then took the $3,320,000 ASCAP fee and used it to determine BMI's fee. The Panel concluded that BMI's music share increased from about 17%–20% in 1978 to about 38%–40% in 1996. Selecting 39% as the appropriate figure, the Panel concluded that BMI's share of the combined ASCAP/BMI fees must also be 39%. The Panel calculated BMI's license fee of $2,123,000 by ''[m]ultiplying the ASCAP license fee by .63934,'' which ''yields the mathematical equivalent of 39% of the *combined* license fees of both ASCAP and BMI (39% × [3,320,000 + 2,123,000] = $2,123,000).'' Id. at 27 n. 40.

The Panel offered several reasons why it was appropriate to derive BMI's fair market value share solely on the basis of music share. The Panel rejected ASCAP's assertion that the music contained in ASCAP's repertory is intrinsically more valuable than the music in BMI's inventory, finding no credible evidence for such a distinction. Id. at 35.

The Panel also rejected ASCAP and BMI's argument that the type of methodology adopted by the Panel is impermissible as a matter of law because section 118 requires that separate fees be set for ASCAP and BMI that are based upon separate evaluations of their respective licenses. The Panel found no proscription in the statute, the legislative history, or the 1978 CRT decision for a methodology which yields a combined fee, after which the combined fee is divided between ASCAP and BMI. While the Panel must set separate rates for ASCAP and BMI, the obligation to do so was ''wholly distinct from the methodology we employ to determine those fees.'' Id. at 36.

The Panel undertook a separate approach to confirm its results for BMI by using the rate prescribed by the 1978 BMI negotiated license as a fair market value benchmark for 1978. The 1978 agreement is the only BMI or ASCAP agreement that did not contain a ''no-precedent clause'' or ''nondisclosure clause.'' However, the Panel did not accept this figure as representative of fair market value because the circumstances surrounding the 1978 negotiation were not sufficiently explored. Instead, the Panel used the figure solely for corroborative purposes. Id. at 36–37.

The Panel used the same methodology for BMI as it did for ASCAP, dividing the 1978 BMI license fee by the Public Broadcasters' total 1978 revenues and multiplying the result by the Public Broadcasters' total 1996 revenues. After adjusting for the increase in BMI's music share between 1978 and 1996, the formula yielded a figure of $2,082,000, within 2% of the fee adopted by the Panel under its primary approach. The Panel noted that it could also ''generate the ASCAP fee from the BMI fee just as we previously generated the BMI fee from the ASCAP fee—with similarly confirming results.'' Id.

[5] Evidence does exist, however, for the proportion of music shares for 1996.

In conclusion, the Panel stated that its methodology yielded what it believed to be the best result:

> In adopting this methodology, we are fully cognizant of the several assumptions and inferences required. While we defend these assumptions and inferences as eminently reasonable, we must recognize the potential for imprecision. Such is the hazard of rate-setting based upon theoretical market replication. The methodologies advanced by the parties involve, we believe, less reasonable assumptions and inferences. We do not here advance a perfect methodology (none exists), merely the most reasonable and least assailable based upon the record before us.

Id. at 38 (citation omitted).

**V. The Librarian's Scope of Review**

The Librarian of Congress has, in previous proceedings, discussed his scope of review of CARP reports. See, e.g., 63 FR 25394 (May 8, 1998); 62 FR 55742 (October 28, 1997); 62 FR 6558 (February 12, 1997); 61 FR 55653 (October 26, 1996). The scope of review adopted by the Librarian in these proceedings has been narrow: the Librarian will not reject the determination of a CARP unless its decision falls outside the ''zone of reasonableness'' that had been used by the courts to review decisions of the CRT. Recently, the U.S. Court of Appeals for the District of Columbia Circuit issued its first decision reviewing a decision of the Librarian under the CARP process, and articulated its standard of judicial review for the Librarian's CARP decisions. *National Ass'n of Broadcasters* v. *Librarian of Congress*, 146 F.3d 907 (D.C. Cir. 1998) (*NAB*). The court's determination is the pronouncement on the judicial standard of review in CARP proceedings, and warrants a consideration by the Register and the Librarian as to what effect, if any, the decision has on their review of a CARP decision.

*NAB* involved distribution of cable royalties for the 1990–1992 period. In that proceeding, the Librarian adopted the determination of the CARP, with some modifications, and explained why the CARP did not act in an arbitrary manner, or contrary to the provisions of the Copyright Act, that would have required a rejection of its report. The court reviewed the Librarian's decision in accordance with 17 U.S.C. 802(g), which provides that the court may only modify or vacate the Librarian's decision if it finds that he ''acted in an arbitrary manner.'' The court undertook a discussion of how its review of the Librarian's decision under the section 802(g) arbitrary standard was different from its review of CRT determinations under the arbitrary standard set forth in chapter 7 of title 5 of the United States Code (i.e., the Administrative Procedure Act).

After a lengthy discussion of its prior review of CRT determinations, and the amendments made to title 17 by the Copyright Royalty Tribunal Reform Act of 1993 which eliminated the CRT and replaced it with the CARP system, the court determined that Congress did intend to change the scope of judicial review of the Librarian's CARP decisions:

> We conclude that our review of the Librarian's distribution decision under subsection 802(g) is significantly more circumscribed than the review we made of the Tribunal decisions under section 810. As a result, in applying the ''arbitrary manner'' standard set forth in subsection 802(g), we will set aside a royalty award only if we determine that the evidence before the Librarian compels a substantially different award. We will uphold a royalty award if the Librarian has offered a facially plausible explanation for it in terms of the record evidence. While the standard is an exceptionally deferential one, we think it is most consistent with the intent of the Congress as reflected in the language, structure and history of the 1993 Act.

146 F.3d at 918.

Quite naturally, the principal focus of the *NAB* decision is on the court's review of the Librarian's decision, not the Librarian's review of the CARP determination. The court did state, however, that the word ''arbitrary'' that appears in section 802(f) of the Copyright Act (which gives the court its review authority), and the word ''arbitrary'' that appears in section 802(g) (which gives the Librarian his review authority) are ''not coextensive.'' Id. at 923. The court further noted that the difference ''is not a surprising administrative arrangement given the bifurcated review of royalty awards (first by the Librarian and then by this Court) and the deference to be accorded the Register's and the Librarian's expertise in royalty distribution.'' Id. But the court did not say how exacting the review of the CARP report by the Librarian and the Register should be.

Although the *NAB* court does not elucidate the standard of review to be applied by the Librarian and the Register, it does imply a difference between that review and the court's. If the Librarian's CARP decisions are entitled to an unusually wide level of deference, then his level of scrutiny of a CARP's decision must be higher than that which the court will apply to his decision.

The Register and the Librarian do not interpret the court's statements to mean that they must engage in a highly exacting review. The court did acknowledge that the CARP, not the Register or the Librarian, is the fact-finder in CARP proceedings and ''is in the best position to weigh evidence and gauge credibility.'' Id. at 923, n.13. Moreover, the court stated that the Librarian would act arbitrarily if ''without explanation or adjustment, he adopted an award proposed by the Panel that was not supported by any evidence or that was based on evidence which could not reasonably be interpreted to support the award.'' Id. at 923. It must be remembered that section 802(f) provides that the Librarian shall adopt a CARP's determination unless he finds that it acted arbitrarily or contrary to the Copyright Act.

The Register and the Librarian conclude that their scope of review as announced in prior decisions remains an appropriate standard. That is, the Register and the Librarian will review the decision of a CARP under the same ''arbitrary'' standard used by the courts to review decisions of the CRT. If the CARP determination falls within the ''zone of reasonableness,'' the Librarian will not disturb it. See *National Cable Television Ass'n* v. *Copyright Royalty Tribunal*, 724 F.2d 176, 182 (D.C. Cir. 1983) (*NCTA* v. *CRT*). It necessarily follows that even when the Register and the Librarian would have reached conclusions different from the conclusions reached by the CARP, nevertheless they will not disturb the CARP's determination unless they conclude that it was arbitrary or contrary to law. This standard is higher than the court's review announced in *NAB*, yet is consistent with the provisions of section 802(f).

**VI. Review of the CARP Report**

Section 251.55(a) of the Library's rules provides that ''[a]ny party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination.'' 37 CFR 251.55(a). Replies to petitions to modify are due 14 days after the filing of the petitions. 37 CFR 251.55(b).

The following parties filed petitions to modify: ASCAP, BMI, Public Broadcasters, and SESAC, Inc. (''SESAC''). Replies were filed by ASCAP, BMI, Public Broadcasters, and SESAC.

ASCAP, BMI, and Public Broadcasters all attack the Panel's adopted methodology as arbitrary and contrary to law, and each urges the Librarian to substitute his determination based upon that party's respective rate proposals.

SESAC filed a petition to modify for the limited purpose of challenging a certain statement made by the Panel in a footnote of its report regarding music use by Public Broadcasters.[6]

## VII. Review and Recommendation of the Register of Copyrights

As discussed above, the parties to this proceeding submitted petitions to the Librarian to modify the Panel's determination based on their assertions that the Panel acted arbitrarily or contrary to the applicable provisions of the Copyright Act. These petitions have assisted the Register in identifying what evidence and issues in this proceeding require scrutiny. The law gives the Register the responsibility to make recommendations to the Librarian regarding the Panel's determination, 17 U.S.C. 802(f); and in doing so, she must conduct a thorough review.

Prior to reviewing the Panel's report and the parties' objections, the Register makes two important observations. First, the Register's review is confined to what the Panel did, not what it could have done. As described above, ASCAP, BMI, and the Public Broadcasters each proposed their own methodology—their own mathematical formula—for calculating the appropriate annual royalty fees for the 1998–2002 period. The Panel, however, adopted its own methodology. It is this methodology that the Register will review to determine whether it is arbitrary or contrary to law as provided by section 802(f) of the Copyright Act. The Register will not consider what the Panel could have done or what a party asserts it should have done, even if, had she heard this proceeding in the first instance, she would have chosen another methodology. Only if the Register determines that the Panel's methodology is, in whole or in part, arbitrary or contrary to the Copyright Act will she recommend another methodology. If one or more aspects of the Panel's methodology is flawed, yet the methodology as a whole withstands scrutiny, then the Register will recommend changes so that the Panel's approach conforms with section 802(f). If, and only if, the Panel's methodology is fundamentally flawed will the Register recommend that the Librarian reject the Panel's approach in its entirety and adopt a different methodology for fixing the section 118 royalty fees. See 63 FR 25398–99 (May 8, 1998).

Second, the Register embraces the proposition that rate adjustment proceedings are not precise applications of mathematical formulas which yield the ''right'' answer. The Panel acknowledged this by observing that its methodology is not perfect, but is ''merely the most reasonable and least assailable based upon the record.'' Report at 38. The courts have also acknowledged that rate adjustments in the compulsory license setting involve estimates and approximations. *See NCTA* v. *CRT*, 724 F.2d at 182 (''The Tribunal's work * * * necessarily involves estimates and approximations. There has never been any pretense that the CRT's rulings rest on precise mathematical calculations; it suffices that they lie within the 'zone of reasonableness.' ''). Therefore, in reviewing the various aspects of the Panel's selected methodology in this proceeding, and as a whole, the Register will not recommend rejecting the Panel's conclusions unless they draw no support from the record and are based upon irrational estimates or approximations.

### *A. Objections of ASCAP and BMI*

ASCAP and BMI raise numerous objections to the Panel's methodologies and recommend that the Librarian adopt their respective approaches as the means of assessing fees in this proceeding. Because several of ASCAP's and BMI's objections overlap, they are addressed here in a single section.

1. The 1978 CRT fee was not a fair market value fee. The Panel accepted the CRT's $1.25 million fee as representing the fair market value of ASCAP music in 1978. BMI disputes this and offers several reasons why it considers the 1978 fee not representative of fair market value. First, BMI notes that the approach advocated by ASCAP to the CRT in 1978 took the rates paid by commercial broadcasters and discounted them by a range of 20% to 50%. This, in BMI's opinion, demonstrates that ASCAP was offering Public Broadcasters a subsidy. BMI Petition to Modify at 22. Second, BMI notes that representatives of ASCAP stated in an article appearing after the 1978 decision that they wanted to give Public Broadcasters a discount for the first 1978–1982 licensing period. Id.

Third, BMI notes that the CRT stated that it did ''not intend that the adoption of [the $1.25 million fee] should preclude active consideration of alternative approaches in a future proceeding.'' Id. at 23 (quoting 43 FR 25069). BMI suggests that this statement is evidence that the CRT considered its fee to be ''experimental,'' and, therefore, not fair market value. Id. at 23–24.

BMI submits that the Panel should have engaged in its own independent analysis of whether the 1978 fee represented fair market value before accepting the CRT figure. Failure to do so is, in BMI's view, arbitrary action. BMI asserts that it would have submitted information to the Panel on the inappropriateness of using the 1978 fee as a benchmark, if it had known that the Panel would reject BMI's methodology in favor of using the 1978 fee. BMI, therefore, charges that it was denied the opportunity to rebut use of the 1978 fee, particularly since it was not a party to the 1978 proceeding.

Recommendation of the Register

The Panel did not act arbitrarily in accepting the 1978 CRT fee as the fair market value of ASCAP music for that period. The CRT plainly acknowledged in 1978 that it was required to adopt a royalty fee that represented the ''fair value'' of ASCAP music, and stated that the $1.25 million fee was a ''reasonable'' fee that accomplished that task. 43 FR 25068 (June 8, 1978). The anecdotal evidence offered by BMI as to ASCAP's intentions in 1978 is far from conclusive proof that the 1978 fee was not fair market value, and was in fact a subsidy for Public Broadcasters. Furthermore, the Register is not persuaded that the CRT's statement that its fee did not ''preclude active consideration of alternative approaches in a future proceeding'' is evidence that the CRT was adopting a fee less than fair market value. Rather, the CRT seemed to be stating that there may, in the future, be better ways to calculate fair market value, but the fee adopted by the CRT was nevertheless the most representative of fair market value for that proceeding.

Concluding that the CRT's fee was not the fair market value of ASCAP music in 1978, or insisting that the Panel should have conducted its own study as to what was the fair market value of ASCAP music in 1978, would be dangerous precedent. Such an approach would encourage collateral attack on all previous decisions of the CRT and the CARPs. No future CARP could rely on

[6] SESAC objects to footnote 10 on page 6 of the Panel's report wherein the Panel states that ''[t]he repertory of the third performing rights organization, SESAC, not a party to this proceeding, comprises only about one-half of one percent of PBS's music use.'' The task of the Register and the Librarian in CARP proceedings is to review CARP decisions, not to make corrections or modifications to statements made by the Panel at the behest of nonparties. However, the Register and the Librarian note that the Panel's statement regarding the music share of SESAC, a nonparty, is patently obiter dicta, and has no precedential value in this proceeding or future section 118 proceedings. The better practice in future proceedings would be for the CARP to avoid making statements that might be interpreted as affecting the rights or status of a nonparty. The Register notes that the parties to this proceeding expressly did not object to SESAC's petition to modify.

the determination of this Panel or any other in attempting to reach its fair market value assessment under section 118. This is not to say that a prior decision of the CRT or CARP cannot be questioned by future parties and, if clearly demonstrated to be in error, rejected by a CARP. Nor should a future CARP ever be required to base its evaluation of ''fair market value'' on a previous determination of fair market value by the CRT or a previous CARP. But the Register does not recommend declaring, based on unconvincing evidence, that this Panel acted arbitrarily in accepting the CRT's 1978 fee.

The Register is also not persuaded that BMI has been denied an opportunity to challenge the validity of the 1978 CRT fee. It is true that BMI did not know, until the Panel released its decision, that the Panel would use the 1978 fee as a basis for adopting its current fee. However, that will virtually always be the case in a rate adjustment proceeding or distribution proceeding when a CARP utilizes its own methodology as opposed to one offered by the parties. The Register will not reject the methodology of a Panel simply because the parties were not presented with the opportunity, during the hearing phase, to criticize and attack the Panel's chosen methodology. To do otherwise would effectively preclude a Panel from adopting a methodology other than one proposed by the parties.

Furthermore, the 1978 fee was very much a part of the record in this proceeding. The existence of the fee and the CRT decision adopting it were recognized and acknowledged by all parties to this proceeding, including BMI. ASCAP used the 1978 fee in its alternative methodology to verify the accuracy of its primary methodology. That BMI did not mount a serious evidentiary challenge to the accuracy of the fee is not due to lack of opportunity.

2. The Panel incorrectly used Public Broadcasters' 1978 revenues, rather than their 1976 revenues. Both ASCAP and BMI make this accusation. In order to ''trend forward'' from the $1.25 million 1978 ASCAP award, the Panel began with Public Broadcasters' 1978 annual revenues (the Panel's equation is fair market value in 1978 divided by 1978 Public Broadcaster revenues, or $1.25 million/$552.325 million). Report at 26. ASCAP and BMI assert that use of Public Broadcasters' 1978 revenues is flawed because the CRT did not have these revenue figures when it calculated the $1.25 million fee. Rather, the most recent figure available to the CRT was Public Broadcasters' 1976 revenues, which were $412.2 million. ASCAP notes that because the Panel used 1978 revenues instead of 1976 revenues, the effective rate of the 1978 rate is reduced, thereby devaluing the CRT's 1978 determination.

The effective rate of the 1978 CRT decision is, according to ASCAP, expressed as a percentage relative to Public Broadcasters' revenues. ASCAP Petition to Modify at 6. The $1.25 million fee divided by $412.2 million (the 1976 revenues) yields an effective rate of .303% of revenues. According to ASCAP, this means that the CRT in 1978 intended to give ASCAP a fee that represented .303% of Public Broadcasters' most recently known revenues (i.e., the 1976 revenues). By using the 1978 revenues, the Panel reduced the effective rate to .22% ($1.25 million divided by $552.325 million), which is not what the CRT intended to award. Both ASCAP and BMI assert that the Panel should have used the 1976 revenues and ''trended forward'' from there in order to maintain the effective rate of the CRT decision.

BMI asserts that there is another reason for using the 1976 data. As was the case for the CRT, the Panel used data to set a royalty fee beginning in 1998 that was only as recent as 1996.[7] The Panel's methodology takes account of only an 18-year period, 1978–1996. BMI submits that the Panel should have taken account of a 20-year period, 1976–1996, in order to obtain a more accurate trend and to make up for the lack of data for 1997 and 1998. BMI Petition to Modify at 28.

Recommendation of the Register

The Register determines that the Panel did not err in using Public Broadcasters' 1978 revenues, as opposed to 1976 revenues, as the basis of its trending methodology. If it could be conclusively demonstrated that the CRT used Public Broadcasters' revenues as the means of fashioning the $1.25 million 1976 fee, ASCAP and BMI's argument would be more persuasive. That is not, however, the case. Although the CRT ''examined a number of formulas,'' it concluded ''there is no one formula that provides the ideal solution, especially when the determination must be made within the framework of a statutory compulsory license.'' 43 FR 25069 (June 8, 1978). Although the CRT had Public Broadcasters' 1976 revenues before it, it is unclear what, if any, use it made of the data. The CRT said nothing about the $1.25 million fee representing a .303% effective rate of Public Broadcasters' revenues, nor is there any indication in the 1978 decision that the CRT was attempting to establish a fixed effective rate. ASCAP's argument presumes that the CRT did use a mathematical formula in adopting a fee, even though the decision suggests the contrary.

What is clear is that the CRT determined that the $1.25 million fee was the fair market value of ASCAP music in 1978, even if it did use data from 1976. Id. The Panel reached the same conclusion by stating that ''the blanket license fee set by the CRT in 1978, for use of the ASCAP repertory by Public Broadcasters, reflects the fair market value of that license *as of 1978*.'' Report at 25 (emphasis added). If $1.25 million represented fair market value in 1978, then it was reasonable for the Panel to begin its analysis using Public Broadcasters' revenues from that same year, whether or not the CRT had access to such data. The Panel stated that it felt ''comfortable'' doing this because Dr. Adam Jaffe, Public Broadcasters' economic expert, had taken a similar approach in a different context. Report at 31 (Dr. Jaffe's formula used the 1992–1997 voluntary agreements with ASCAP and adjusted for changed circumstances from 1992, even though the parties presumably negotiated the 1992 agreement using only 1991 data). The Register sees nothing in the record that indicates it was arbitrary to take this approach.

BMI's argument that the Panel should have considered changes in revenues over a 20-year period, rather than 18 years, to account for the lack of information for 1998 Public Broadcasters' revenues, also has no merit. It will probably always be the case in a section 118 proceeding that data regarding revenues will not be completely current. Use of the Public Broadcasters' 1998 revenues, or 1997 revenues for that matter, would yield a fair market value fee that might be even more accurate than the Panel's. However, that data was simply unavailable. The Panel could have considered a 20-year period as a rough means of adjusting for lack of 1998 data. The fact that it did not do so was not arbitrary.[8]

3. The Panel did not provide for fee adjustments during the 1998–2002 period. ASCAP argues that it was

[7] At the time of filing of written direct cases in this proceeding, ASCAP and BMI had data of Public Broadcasters' revenues only up to 1995. However, Public Broadcasters introduced their 1996 revenues as part of their case. See Public Broadcasters Direct Exhibit 4.

[8] Furthermore, the Register questions the perceived accuracy of starting with 1976 data as a means of compensating for lack of 1998 data. The only thing this approach guarantees is a larger fee since it is known that Public Broadcasters' revenues were less in 1976 than they were in 1978.

arbitrary for the Panel not to provide for interim adjustments to the ASCAP fee for each year of the 1998–2002 license period. ASCAP notes that the CRT provided for annual adjustments for inflation through use of the Consumer Price Index (''CPI'') in its 1978 decision, and that the Panel should have, at a minimum, provided for similar adjustments. As an alternative to using the CPI, ASCAP recommends that the effective rate of the CRT's 1978 decision (.303% of Public Broadcasters' 1976 revenues) be applied to Public Broadcasters' revenues for each year of the 1998–2002 period to determine an annual fee.

Recommendation of the Register

The Panel considered whether to provide cost-of-living adjustments and expressly decided not to do so, concluding that ''[g]iven the inherent vagaries and imprecision of estimating fair market value in an imaginary marketplace, we are comfortable concluding that the rate yielded for 1996 reasonably approximates a fair market rate for the entire statutory period.'' Report at 31.

The Register cannot say that the Panel's conclusion was arbitrary. The Panel recognized that the methodology it used to set the fees was based on ''several assumptions and inferences'' which, although ''eminently reasonable'' created a ''potential for imprecision. Such is the hazard of rate-setting based upon theoretical market replication.'' Report at 38 (citing *NAB*, 146 F.3d at 932). The Panel admitted that it was not ''advanc[ing] a perfect methodology (none exists), merely the most reasonable and least assailable based upon the record before us.'' Id.

The Panel also observed that the 1996 Public Broadcasters' revenue figures that it used in determining the fee may have been somewhat overstated due to changes in accounting procedures. Id. at 30. Based on this finding and the CARP's determination that use of revenues account for inflationary changes (id. at 28), the Register cannot say that the Panel was arbitrary or unreasonable in deciding not to provide for annual adjustments. In fact, the Panel's assessment that the 1996 revenue figures may have been an overstatement only supports its conclusion that no annual adjustment was necessary.

Certainly, the Panel could have required annual adjustments of ASCAP's fee based on annual changes in Public Broadcasters' revenues, as ASCAP now requests. But it was not required to do so, given the absence of record evidence compelling such a result.

4. The Panel arbitrarily excluded Public Broadcasters' ancillary revenues from their calculation. ASCAP asserts that the Panel excluded without explanation $122 million in ''ancillary'' revenues earned by the Public Broadcasters in 1996. ''Ancillary'' revenues, according to ASCAP, are comprised largely of the sale of public broadcasting merchandise such as videos, audiotapes, toys and books. ASCAP submits that ancillary revenues must be included in the Panel's calculation because the Panel acknowledged that gross revenues of Public Broadcasters were the best indication of their ability to pay. According to ASCAP, Public Broadcasters' 1996 revenues should be $2,077,776,000, instead of the $1,955,726,000 figure used by the Panel. ASCAP Petition to Modify at 9.

Recommendation of the Register

In discussing what comprised the Panel's determination of Public Broadcasters' 1996 revenues, the Panel stated that they were excluding ''all 'off balance sheet income' such as revenues derived from merchandising, licensing, and studio leasing.'' Report at 30 (citing ASCAP Direct Exhibit 301 and ASCAP's Proposed Findings of Fact and Conclusions of Law (PFFCL)). While a specific explanation for exclusion of such income would be desirable, the Register does not find the Panel acted arbitrarily. First, the Register does not agree with ASCAP's conclusion that the Panel was setting Public Broadcasters' 1996 revenues as gross revenues from all sources. The Panel stated that it was using Public Broadcasters' total revenues, and cited CPB's fiscal year 1996 report for that figure. Report at 26. As ASCAP acknowledges, CPB does not include ancillary income in its calculation of annual revenues. ASCAP PFFCL at 39, ¶ 94. The total revenues figure, therefore, expressly did not include ancillary income.

Second, the Register concludes that it was reasonable for the Panel to exclude ancillary income. Merchandising of toys, tapes and books, and leasing studio facilities to others, are not part of the business of broadcasting music on public broadcasting stations. CPB apparently acknowledges this point as well, excluding ancillary income from its report of Public Broadcasters' revenues because ancillary income does not form a basis for awarding grants to Public Broadcasters. Id. ASCAP has failed to demonstrate that Public Broadcasters' activities such as selling books and toys are so closely tied to broadcasting activities that their revenues must be included in broadcast revenues. See Transcript (Tr.) at 1722 (Boyle)(stating that off balance sheet items ''may or may not be relevant'' in calculating Public Broadcasters' revenues).

5. The Panel arbitrarily concluded that overall music use remained static since 1978. Both ASCAP and BMI argue that it was arbitrary for the Panel to conclude that overall music use remained relatively constant from 1978 to 1996, given the fact that there was no reliable music use data available until 1992. ASCAP asserts that ''[i]f there is no evidence to support an adjustment, the adjustment cannot be made, no matter how relevant it might be.'' ASCAP Petition to Modify at 14. Both ASCAP and BMI submit that the record, in fact, belies static music use, noting that there are many more public broadcasting stations, and consequently more programs broadcast, since 1976 and that the total volume of music use must therefore have increased substantially. BMI goes on to state that the record supports that, since 1992, use of BMI music has increased an average of 10% on public broadcasting stations, and that the Panel should have factored this into its analysis and awarded BMI a greater fee.

Recommendation of the Register

As described above, the Panel's methodology ''trends forward'' the CRT's 1978 fee and adjusts for changes in the relative shares of ASCAP and BMI music used by Public Broadcasters since 1978. The Panel did, however, consider whether any change to the methodology was required to account for changes in overall music usage since 1978. Evaluating the scant evidence on the subject, the Panel concluded:

> We find the music analyses presented by Public Broadcasters to be the most comprehensive and reliable. No credible data is available with respect to any trend in *overall* music usage by Public Broadcasters since 1978. However, we accept Public Broadcasters' conclusion that overall music usage has remained constant in *recent* years. Given the dearth of empirical, or even anecdotal, evidence to the contrary, it is reasonable to presume that overall music usage by Public Broadcasters has remained substantially constant since 1978. *See* ASCAP PFFCL 152 (''[T]here is no evidence in the record that total music use on the [Public Television and Public Radio] Stations has changed significantly since 1978.'')

Report at 31–32 (citations omitted).

BMI and ASCAP attack the Panel's conclusion regarding music use, arguing, in essence, that the Panel is forbidden from fact-finding in the absence of thoroughly comprehensive

record evidence. The Register cannot accept ASCAP and BMI's argument in this instance. There is no question that record evidence of music use prior to 1992 would place the Panel's conclusion on firmer ground. Complete and comprehensive evidence will always increase the accuracy of CARP decisions, but it is often such evidence does not exist, or is not presented in a CARP proceeding. See, e.g., 62 FR 55757 (October 28, 1997) (rejecting satellite carriers' argument that Panel decision must be rejected because satellite carriers had no access to evidence to rebut copyright owners' contentions). The Register believes that it is acceptable, given the inherent lack of precision of these proceedings, for a Panel to make reasonable inferences based on an examination of the best evidence available. The Panel's inference regarding music use satisfies this requirement.

In drawing its inference, the Panel examined the best evidence it had available to it: the music use analyses of the parties from 1992–1996. The Panel adopted Public Broadcasters' analysis as the ''most comprehensive and reliable.'' Report at 31. The Panel concluded that Public Broadcasters' analysis demonstrated that overall music use in recent years has remained relatively constant. The Register has no grounds to question this finding. See, 61 FR 55663 (October 28, 1996) (''the Librarian will not second guess a CARP's balance and consideration of the evidence, unless its decision runs completely counter to the evidence presented to it.'') Given that music use was static for a period of five years, the Panel reasonably inferred that this trend was predictive of music use from 1978 to 1991. The inference was backed by ASCAP's statement in its proposed findings that ''there is no evidence in the record that total music use on the Stations has changed significantly since 1978. Nor is there any evidence in the record that the Stations' broadcasts of ASCAP music over the same period have changed significantly either in quality or quantity.'' ASCAP PFFCL at 152, ¶32. The five-year period, coupled with ASCAP's statement, provide sufficient support for the Panel's presumption regarding music use.

Moreover, the Register does not find that ASCAP's and BMI's assertions regarding the increase in the number of public broadcasting stations and programs broadcast require rejection of the Panel's inference. Both ASCAP and BMI presume that there is a direct correlation between number of stations and broadcast hours and the amount of music used. This certainly is a reasonable conclusion, but it is not a necessary one. It could, for example, be the case that public broadcasting stations prior to 1992 used far greater amounts of music than do public broadcasting stations today. Public Broadcasters' evidence tends to support that conclusion. See Public Broadcasters PFFCL at 50–51, ¶¶112–113. In sum, the Register will not, in the absence of concrete evidence to the contrary, allow an inference drawn by a party to trump an inference drawn by a Panel.[9]

6. The Panel's dependence on music share is irrelevant and unsupported by section 118. ASCAP submits that section 118 uncontrovertedly provides that copyright owners of music are entitled to compensation for use of their music by Public Broadcasters. The Panel's reliance on music share as opposed to music use, ASCAP insists, is irrelevant because music share does not necessarily have any correlation to music use. Further, ASCAP submits that reliance on music share is contrary to section 118 because music share presumes that ASCAP and BMI music is interchangeable, whereas section 118 requires establishing separate royalty fees for both catalogues of music.

Recommendation of the Register

The Register determines that the Panel's use of music shares to adjust for the amount of ASCAP and BMI music used on public broadcasting stations since 1978 is not contrary to section 118. The Panel addressed ASCAP's contention that its methodology was contrary to section 118 when it stated:

> [B]oth ASCAP and BMI argue that the type of methodology we advance here is impermissible, *as a matter of law*, because Section 118 requires that separate fees be set for ASCAP and BMI that are based upon *separate* evaluations of their respective licenses. The legislative history behind Section 118, they argue, proscribes any methodology that yields a combined fee, after which the combined fee is divided between ASCAP and BMI. The Panel finds no support whatever for this position in the legislative history of Section 118, the express language of the statute itself, or in the 1978 CRT decision cited by ASCAP. It is undisputed that the statute requires the Panel to set separate rates for ASCAP and BMI but that is an obligation wholly distinct from the methodology we employ to determine those fees.

Report at 35–36 (footnotes omitted) (citations omitted). The Register agrees.

The Register also concludes that the Panel's use of music shares is not arbitrary. The Panel used music shares to gauge changed circumstances since 1978, determining that the amount of ASCAP music, relative to BMI music, had declined from 1978. This is wholly consistent with the Panel's adopted methodology, and is one of the mechanisms necessary to that analysis to account for changed circumstances.

7. There is insufficient record evidence to support the Panel's inferential findings regarding music share. ASCAP and BMI argue that, assuming music share is relevant to the Panel's methodology, the absence of evidence for music shares prior to 1992 prevented the Panel from inferring the shares of ASCAP and BMI music on public broadcasting in 1978.

Recommendation of the Register

For the reasons stated in A5, supra, the Register will not question a reasonable inference of the Panel provided that it draws support from the existing record. The Panel determined that the ratio of ASCAP to BMI music in 1978 was in the range of 80/20 to 83/17. Report at 32. The Panel based this determination on the fact that, since 1981, both ASCAP and BMI negotiated fees that consistently reflected that share of music. The Panel stated that ''we are persuaded that the consistent division of fees reflects the parties' perception of respective music use shares, as confirmed by data available to each party.'' Id. at 33.

The Panel also presumed music shares from 1978 to 1981 were at the same ratio, in the absence of evidence to the contrary. The Panel reasoned that this presumption was corroborated by the fact that the CRT, in awarding ASCAP a $1.25 million fee in 1978, was aware that BMI had negotiated a $250,000 fee. The Panel also relied on the fact that ASCAP itself used 1990 music use data as a proxy for 1978 data. *See* ASCAP PFFCL at 116, ¶266, n.6 (''Because reliable music use data were not available for 1978, ASCAP relied on music use data starting from 1990, the first ASCAP distribution survey year for which detailed information was readily retrievable. Thus, the trended fee assumes that music use on Stations did not change substantially from 1978 to 1990 (and there is no evidence in the record to contradict that assumption.'')). The Register determines that these pieces of record evidence support the reasonableness of the Panel's presumptions regarding music share in 1978.

ASCAP also argues that the Panel's split of approximately 80/20 is inaccurate because the Panel mistakenly assumed that ASCAP relied upon its music share as a basis for negotiating its

[9] Given that the Register accepts the Panel's determination that music use has not increased, the Register rejects BMI's request for an adjustment to account for a ten percent increase in its music use.

fee in 1982, 1987 and 1992, when in fact it did not. The record appears far from clear on this point, particularly since Public Broadcasters submit that music share was important to them in negotiating the licenses. *See* Tr. at 2619–21 (Jameson). It is clear that BMI used its relative music share in negotiating its licenses with Public Broadcasters. *See,* Tr. at 3389 (Berenson). In any event, the Register agrees with the Panel that it was the parties' perceptions as to their music shares during their negotiations that is relevant:

> It is important to note that whether the music use shares we have adopted are actually accurate is not critical to our analysis so long as the parties perceived them to be accurate at the time they negotiated the agreements. As we have repeatedly expressed herein, our task is to attempt to replicate the results of theoretical negotiations. If the parties were to use the 1978 license fee as a benchmark, we have no doubt that the resulting fees from such negotiations would reflect the parties' perceived change in ASCAP's music share since 1978, just as they would reflect the parties' perceived change in Public Broadcasters' total revenues.

Report at 34.

8. It was arbitrary for the Panel to infer music share on public radio when no evidence of music use on public radio was presented. ASCAP faults the Panel's use of music share on public television as a proxy for music share on public radio. ASCAP argues that the Panel's citation to the negotiated licenses' historical use of television music use data as a proxy for radio is inappropriate because the Panel determined that those agreements are not representative of fair market value. Further, ASCAP submits that there was no probative evidence adduced that ASCAP ever acquiesced to the use of television data as a proxy for radio data. ASCAP Petition to Modify at 19.

Recommendation of the Register

The Register determines that the Panel's use of television data as a proxy for radio data is not arbitrary. The Panel's statement that Public Broadcasters and ASCAP and BMI used television music data as a proxy for radio data (since no party keeps track of music usage on public radio) was based on the testimony of Paula Jameson, Public Broadcasters' then general counsel, who participated in the fee negotiations. Tr. at 2621–23 (Jameson). Although ASCAP asserts that there is testimony to the contrary, the Register will not disturb the Panel's evaluation of testimony in the absence of compelling grounds to do so. See, *NAB,* 146 F.3d at 923, n.13 (''The Panel, as the initial factfinder, is in the best position to weigh evidence and gauge credibility'').

9. The Panel made an arbitrary assumption that Public Broadcasters should pay the same rate of revenue now as they did in 1978 despite their increased commercialization. BMI charges the Panel with failure to include an adjustment in its methodology to account for Public Broadcasters' increased commercialization. BMI notes that the Panel did recognize the increased commercialization, and acknowledged that such commercialization might justify the need to narrow the divergence between fees paid by Public Broadcasters and commercial broadcasters, but then did not do anything about it. BMI submits that using Public Broadcasters' private revenues since 1978, as opposed to total revenues, ''is a reasonable way to take into account the increased commercialization of public broadcasting in setting a rate based on the 1978 CRT fee.'' BMI Petition to Modify at 37.

Recommendation of the Register

While the Panel did observe that Public Broadcasters have become more commercialized in recent years, and that such a convergence between public and commercial broadcasting ''may'' justify a narrowing of the gap between the fees paid by Public Broadcasters and commercial broadcasters, that observation does not compel an adjustment to the Panel's methodology. The Panel also concluded that significant differences between Public Broadcasters and commercial broadcasters remain. See Report at 24 (''Though corporate underwriting may superficially resemble advertising * * *, the relevant economics are quite different''). Indeed, these differences specifically led the Panel to reject commercial fees as the benchmark for setting Public Broadcasters' fees. Id.

Moreover, the Panel expressly rejected the use of private revenues in its methodology as the means of accounting for increased Public Broadcasters' commercialization:

> [W]hen performing a *trending* analysis based upon the 1978 *Public Broadcasters'* rates, there is no need to restrict the analysis to private revenues because the methodology does not employ any data from the commercial context. In this instance, we need make no attempt to account for differences in the manner the two industries raise revenues. We need not massage the methodology to obtain an 'apples to apples' comparison. Accordingly, total revenues, reflecting the true increase in Public Broadcasters' ability to pay license fees, is the more appropriate parameter.

Report at 29–30.

There is ample testimony to support the Panel's determination that the economics of public broadcasting and commercial broadcasting are quite different. Written rebuttal testimony of Dr. Adam Jaffe at 14–17; Public Broadcasters Direct Exhibit 4. The Panel was, therefore, not compelled by the evidence to account for increased commercialization of Public Broadcasters in adopting their methodology, and it was not arbitrary to reject the use of private revenues as a means for adjusting for commercialization.

10. The Librarian should announce that ASCAP and BMI may seek rate parity with commercial broadcasters in future section 118 proceedings. BMI submits that, assuming that the Librarian does not choose to adopt a methodology that bases Public Broadcasters' fee on what commercial broadcasters pay for music, the Librarian should declare that ''BMI is free to argue in a future CARP proceeding that Section 118 license fees should be set on the basis of a comparison to commercial broadcasting, under the facts and circumstances as they may develop in the future.'' BMI Petition to Modify at 58.

Recommendation of the Register

The task of the Register, and the Librarian, in CARP proceedings is to review the decision of a CARP panel, not to make pronouncements or declarations as to the character or nature of future proceedings. The Register recommends that the Librarian not accept BMI's invitation. The Register notes, however, that parties to a future section 118 proceeding, or any CARP proceeding for that matter, are free to submit any and all evidence they deem relevant to the rate adjustment or royalty distribution, as the case may be.

11. The Panel erred in its allocation of costs among the parties. ASCAP submits that the Panel erred because it did not follow prior CARPs' allocation of costs [10] in rate adjustment proceedings, and did not articulate a reason for its deviation. ASCAP asserts that the Panel should not have treated PBS and NPR as a single party for cost purposes, and instead should have equally split costs between ASCAP and BMI on the one hand, and PBS and NPR on the other. According to ASCAP, ''[f]airness dictates an equal division of costs, which is consistent with prior

[10] ''Allocation of costs'' in a CARP proceeding are the monthly charges of the arbitrators. The costs of the Copyright Office and the Librarian are part of their operating budgets, and are not a part of a CARP's allocation of costs.

precedent and which imposes equal burdens of the proceeding on copyright owners and users.'' ASCAP Petition to Modify at 30.

Recommendation of the Register

Section 802(c) of the Copyright Act provides that ''[i]n ratemaking proceedings, the parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct.'' 17 U.S.C. 802(c). ASCAP's request raises the question whether a cost allocation decision of a CARP is reviewable by the Librarian under section 802(f).

Section 802(f) of the Copyright Act is the source of the Librarian's review authority of CARP decisions. It provides in pertinent part that ''[w]ithin 60 days after receiving the report of a copyright arbitration royalty panel under subsection (e), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel.'' 17 U.S.C. 802(f). While the ''determination'' of the Panel is not defined in subsection (f), subsection (e) describes a CARP delivering ''a report'' of ''its determination concerning the royalty fee or distribution of royalty fees, as the case may be.'' 17 U.S.C. 802(e). It thus appears that the Library's review authority extends only to a Panel's decision on the merits of a ratemaking or distribution proceeding—i.e., the actual setting of rates or allocation of royalties. Is this review authority broad enough to encompass a Panel's allocation of costs under subsection 802(c)?

The Register concludes that it is not. A plain reading of the statute limits the Librarian's review to the substance of the proceeding—the setting of rates or distribution of royalties—contained in the Panel's report, and does not include allocation of the arbitrators' costs among the parties to the proceeding. The fact that the Panel's decision on costs was also contained in its report on the merits of the proceeding does not change the result. Allocation of costs has no bearing on the Panel's resolution on the merits of the proceeding. Furthermore, the Panel in this case could have just as easily issued a separate order allocating costs, and was not required to include such a decision in its report to the Librarian. The Librarian's jurisdiction should not depend on where the CARP announces its allocation of costs.

Even if the Librarian had authority to review the Panel's allocation of costs, the Register would not recommend that the Librarian reject the Panel's allocation of one-third paid by ASCAP, one-third paid by BMI, and one-third paid by Public Broadcasters. The statute plainly gives the arbitrators broad discretion in allocating costs. 18 U.S.C. 802(c) (costs shall be allocated ''in such manner and proportion as the arbitration panels shall direct''). The Register is also not persuaded that the language of subsection (c) that requires a CARP to act on the basis of ''prior copyright arbitration royalty panel determinations'' applies to allocation of costs. This provision is directed to ''determinations'' of CARPs—i.e. their decisions as to rates and royalty distributions.

The Panel concluded, for purposes of cost allocation, that ''ASCAP, BMI, and Public Broadcasters constitute three separate parties.'' Report at 39. It reached its conclusion based ''on the totality of circumstances including the 1978 CRT decision, the history of negotiations between the parties, and the manner in which the parties proceeded herein.'' Id. The Register believes that the CARP—and not the Register or the Librarian—is in the best position to evaluate these factors and apportion the costs. The Register, therefore, recommends that the Librarian not review or reject the Panel's allocation of costs.

*B. Objections of Public Broadcasters*

Public Broadcasters fault the Panel for rejecting use of prior negotiated agreements as the benchmark for setting ASCAP's and BMI's fees. In support of this position, Public Broadcasters offer the following three arguments.

1. The Panel violated section 118 by setting fair market value rates in the context of hypothetical free marketplace negotiations, as opposed to within the confines of section 118. Public Broadcasters do not challenge the Panel's evaluation of the meaning of fair market value—the price that a willing buyer and willing seller would negotiate—but they do contest the setting in which the Panel determined fair market value. The Panel stated:

> In the present context, a determination of fair market value requires the Panel to find the rate that Public Broadcasters *would* pay to ASCAP and to BMI for the purchase of their blanket licenses, for the current statutory period, in a hypothetical free market, *in the absence of the Section 118 compulsory license.*

Report at 9–10 (second emphasis added). Public Broadcasters charge that it was legal error for the Panel to determine fair market value outside the context of section 118, and that the Panel was required to take into account the purposes of section 118 in setting rates. Public Broadcasters Petition to Modify at 9–10 (citing the Librarian's recent section 114 rate proceeding for the proposition that reasonable rates are not the same as marketplace rates and that a statutory rate need not mirror a freely negotiated rate). This ''fundamental error,'' according to Public Broadcasters, incorrectly led the Panel to reject prior negotiated agreements under section 118 as the benchmark for setting rates in this proceeding.

Recommendation of the Register

The Register determines that the Panel did not act contrary to section 118 by seeking to determine what rates the parties would negotiate in free, open marketplace negotiations, as opposed to within the context of section 118. Public Broadcasters attempt to create the notion that there are two kinds of fair market values: one negotiated in the context of the open marketplace, and another within the ''particularized context of section 118.'' Public Broadcasters Petition to Modify at 9. The Copyright Act makes no such distinctions. The only provision for adjusting section 118 rates is contained in section 801(b)(1), which provides that a CARP shall set ''reasonable'' rates for section 118. Unlike other compulsory licenses, section 118 does not contain any criteria or prescriptions to be considered in adjusting rates, other than a direction that a Panel may consider negotiated agreements. See, e.g., 17 U.S.C. 119(c)(3)(B) (fair market value rates established with consideration of certain types of evidence); 17 U.S.C. 801(b)(1) (sections 114, 115 and 116 compulsory license rates adjusted to achieve specified objectives). Moreover, it is difficult to understand how a license negotiated under the constraints of a compulsory license, where the licensor has no choice but to license, could truly reflect ''fair market value.'' The Panel was, therefore, not required to consider fair market value confined to the context of section 118.[15]

Public Broadcasters' citation to the section 114 rate adjustment proceeding is also inapposite. Section 801(b)(1) of the Copyright Act prescribes that section 114 rates are to be adjusted to achieve four specific objectives. Because

[15] If this were the requirement, the only evidence in a section 118 rate adjustment proceeding presumably would be the agreements previously negotiated by the parties for the section 118 license. This is, obviously, precisely what the Public Broadcasters wanted the Panel to consider. However, if fair market value within the section 118 license were the standard, Congress presumably would not have provided that a CARP ''may'' consider negotiated agreements, but rather would have mandated such a consideration. See 17 U.S.C. 118(b)(3).

section 114 rates must be observant of those objectives, they need not be market rates. See 63 FR 25409 (May 8, 1998). Such is not the case with section 118.

2. The Panel's erroneous analysis of the no-precedent and nondisclosure clauses of the voluntary agreements led the Panel improperly to reject the agreements as the benchmark. Public Broadcasters argue that the Panel improperly used the no-precedent clause in the ASCAP agreement, and the nondisclosure clause in the BMI agreement, as grounds for rejecting the previously negotiated agreements between ASCAP/BMI and the Public Broadcasters as the benchmark for adjusting rates in this proceeding. Because Public Broadcasters assert that fair market value rates must be determined in the context of section 118 (see supra), Public Broadcasters assert that the ASCAP no-precedent clause and the BMI nondisclosure clause have no relevance to the rates the parties would have negotiated; and it was, therefore, illogical for the Panel to conclude that the existence of these clauses was evidence that the voluntary agreements understated fair market value.

Recommendation of the Register

The Register determines that the Panel's analysis of the no-precedent and nondisclosure clauses of the ASCAP and BMI agreements was not arbitrary or contrary to the provisions of the Copyright Act. First, as discussed above, the Register rejects the position that the Panel was required to set fair market value rates confined to the context of section 118 negotiations. The Panel was, therefore, not bound to accept the prior negotiated agreements as the only evidence of fair market value.

Second, Public Broadcasters misperceive the significance of the no-precedent and nondisclosure clauses as they affected the Panel's decision to reject the negotiated agreements as the benchmark for fair market value. The Panel did not use these clauses as the only evidence that the negotiated agreements were not representative of fair market value. Rather, the Panel stated:

> The Panel does not here find that the mere existence of a no-precedent clause renders prior agreements unacceptable as benchmarks *per se*. Rather, after considering the totality of the circumstances, we find the no-precedent clause effectively corroborates ASCAP's assertion that it voluntarily subsidized Public Broadcasters in the past and now declines to continue such subsidization.

Report at 22 (footnote omitted). The record contains other evidence to support ASCAP's contention that the negotiated agreements were a subsidization to Public Broadcasters. See ASCAP's PFFCL at 126–130, ¶¶ 287–297. Because the Panel's rejection of prior agreements with ASCAP is supported by the evidence, the Register cannot disturb it.

The same can be said for BMI's nondisclosure clause. The Panel found that the presence of the clause in the negotiated agreements was to prevent use of below-market rates as a benchmark for setting future rates, and that ''[n]o other plausible explanation has been offered by Public Broadcasters'' as to the existence of the clause. The record also contains evidence, aside from the nondisclosure clause, that supports the conclusion that BMI considered the negotiated license to contain below market rates. See BMI PFFCL at 67–73, ¶¶ 183–194. The Panel's determination is, therefore, neither arbitrary nor contrary to the statute.

3. The Panel improperly relied upon the disparity between the rates paid by public broadcasters and commercial broadcasters for ASCAP and BMI music as evidence that the voluntary agreements represented a subsidy to Public Broadcasters. As further evidence that ASCAP and BMI had been voluntarily subsidizing Public Broadcasters in the negotiated agreements, the Panel cited the magnitude of the fee disparity that existed between public and commercial broadcasters. Public Broadcasters assert that the fact that commercial broadcasters pay considerably higher fees than public broadcasters is not evidence of a subsidization. Rather, it is demonstrative evidence that different users of the same goods and services can value such goods and services differently. Public Broadcasters also argue that the Panel ''gave undue weight'' to the testimony of one of BMI's witnesses in refuting Public Broadcasters' contention regarding the lack of probity of the fee disparity. Public Broadcasters Petition to Modify at 19.

Recommendation of the Register

The Panel expressly addressed Public Broadcasters' contention of the lack of probity of the fee disparity:

> Public Broadcasters have not, or can not, cite any factual bases which might account for the huge disparity between recent ASCAP/BMI commercial rates and the rates for Public Broadcasters under prior agreements (even after adjusting commercial rates based upon various parameters). Public Broadcasters merely offer the general, but unhelpful, observation that ''[t]he differences in rates is accounted for by the fact that commercial and non-commercial broadcasters operate in separate and distinct markets.'' If, for example, evidence had been adduced demonstrating that Public Broadcasters pay less than commercial broadcasters for other music-related programming expenses (such as radio disk jockeys, musicians, producers, writers, directors, or other equipment operators), the Panel might feel more comfortable accepting the heavily discounted music license fees as fair market rates. Virtually no such evidence was adduced. To the contrary, it appears that Public Broadcasters pay rates competitive with commercial broadcasters for other music-related programming costs such as composers' ''up front fees.'' Tr. 1636 [testimony of BMI witness Michael Bacon]. As discussed, *infra*, the Panel is cognizant that commercial and non-commercial broadcasters do, in fact, operate under different economic models and one should not be surprised that these models yield somewhat different results, including differences in fair market rates. It is the *magnitude* of the disparity that causes the Panel to further question whether the rates negotiated under prior agreements truly constituted fair market rates. We have concluded they do not.

Report at 23 (citation omitted).

The Register concludes that the Panel's explanation of its consideration of the fee disparity is well-articulated and reasonable, and is not arbitrary or contrary to the Copyright Act. And, as the Register has made clear on several occasions, absent compelling evidence to the contrary, the Register will not disapprove the weight accorded by a CARP to the testimony of a witness. See, e.g. 62 FR 55757 (October 28, 1997).

*C. Conclusion*

Having fully analyzed the record in this proceeding and considered the contentions of the parties, the Register recommends that the Librarian of Congress adopt the rates and terms for the use of ASCAP and BMI music by Public Broadcasters as set forth in the CARP's report.

**Order of the Librarian**

Having duly considered the recommendation of the Register of Copyrights regarding the report of the Copyright Arbitration Royalty Panel in the matter of adjustment of the royalty rates and terms for the noncommercial educational broadcasting compulsory license, 17 U.S.C. 118, the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's decision. For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing this order, and amending the rules of

the Library and the Copyright Office, announcing new royalty rates and terms for the section 118 compulsory license.

**List of Subjects in 37 CFR Part 253**

Copyright, Music, Radio, Television.

**Final Regulation**

In consideration of the foregoing, the Library of Congress amends part 253 of 37 CFR as follows:

## PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.3 is added to read as follows:

### § 253.3 Performance of musical compositions in the repertory of ASCAP and BMI by PBS and NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

(a) Scope. This section shall apply to the performance during a period beginning January 1, 1998, and ending on December 31, 2002, by the Public Broadcasting Service (PBS), National Public Radio (NPR) and other public broadcasting entities (as defined in § 253.2) engaged in the activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions in the repertory of the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI), except for public broadcasting entities covered by §§ 253.5 and 253.6.

(b) Royalty rates. The following annual royalty rates shall apply to the performance of published nondramatic musical compositions within the scope of this section: $3,320,000 to ASCAP, and $2,123,000 to BMI.

(c) Payment of royalties. The royalty payments specified in paragraph (b) of this section shall be made in two equal payments on July 31 and December 31 of each calendar year, except for 1998, in which year the royalty payments shall also be made in two equal installments, the first of which shall be made within thirty (30) days from the date the Librarian of Congress renders his decision in *In the Matter of Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License*, Docket No. 96–6 CARP NCBRA, and the second of which shall be made on December 31, 1998, subject to 17 U.S.C. 802(g).

(d) Identification of stations. PBS, NPR and/or the Corporation for Public Broadcasting (CPB) shall annually for the years 1999–2002, by not later than January 31 of each such calendar year, and in 1998, within thirty (30) days of the date the Librarian of Congress renders the decision in *In the Matter of Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License*, Docket No. 96–6 CARP NCBRA, furnish to ASCAP and BMI a complete list of all public broadcasting entities within the scope of this section, as of January 1 of that calendar year. Such lists shall include:

(1) A list of all public broadcasting entities operating as television broadcast stations that are associated with PBS (''PBS Stations''), and the PBS licensee with which each PBS Station is associated (''PBS Licensees''), identifying which PBS Licensees are Single Feed Licensees and which are Multiple Feed Licensees, and which PBS Stations or groups of stations are Independently Programmed Stations, as those terms are defined in paragraph (e)(2) of this section;

(2) A list of all public broadcasting entities operating as television broadcast stations that are not associated with PBS (''Non-PBS Stations'');

(3) A list of all public broadcasting entities operating as radio broadcast stations that are associated with NPR (''NPR Stations''), which list shall designate which NPR Stations have six (6) or more full-time employees and which NPR Stations repeat one hundred (100) percent of the programming of another NPR Station; and

(4) A list of all public broadcasting entities operating as radio broadcast stations that are not associated with NPR (''Non-NPR Stations''), which list shall designate which Non-NPR Stations have six (6) or more full-time employees.

(5) For purposes of this section, Non-PBS Stations and Non-NPR Stations shall include, but not be limited to, public broadcasting entities operating as television and radio broadcast stations which receive or are eligible to receive general operational support from CPB pursuant to the Public Broadcasting Act of 1967, as amended.

(e) Records of use. (1) PBS and NPR shall maintain and, within thirty-one (31) days after the end of each calendar quarter, furnish to ASCAP and BMI copies of their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs during the preceding quarter (including to the extent such information is reasonably obtainable by PBS and NPR the title, author, publisher, type of use, and manner of performance thereof). PBS and NPR will make a good faith effort to obtain the information to be listed on such cue sheets. In addition, to the extent the information is reasonably obtainable, PBS shall furnish to ASCAP and BMI the PBS programming feed schedules including, but not limited to, the PBS National Programming Service schedule. PBS and NPR shall make a good faith expeditious effort to provide the data discussed in this paragraph in electronic format where possible.

(2) PBS Licensees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by a particular PBS Station owned by such PBS Licensee showing the title, author, and publisher of each composition, to the extent such information is reasonably obtainable; provided, however, that PBS Licensees shall not be responsible for providing cue sheets for programs for which cue sheets have already been provided by PBS to ASCAP and BMI. PBS Licensees will make a good faith effort to obtain the information to be listed on such music use reports. In the case where a PBS Licensee operates only one (1) or more PBS Stations each of which broadcasts simultaneously or on a delayed basis all or at least eighty-five (85) percent of the same programming (a ''Single Feed Licensee''), that Single Feed Licensee will not be obligated to furnish music use reports to either ASCAP or to BMI for more than one of its PBS Stations in each calendar year. In the case where a PBS Licensee operates two (2) or more PBS Stations which do not broadcast all or at least eighty-five (85) percent of the same programming on a simultaneous or delayed basis (a ''Multiple Feed Licensee''), that Multiple Feed Licensee may be required to furnish a music use report for each PBS Station or group of stations which broadcasts less than eighty-five (85) percent of the same programming as that aired by any other PBS Station or group of stations operated by that Multiple Feed Licensee (such station or group of stations being referred to as an ''Independently Programmed Station'') in each calendar year. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from PBS Licensees covering a total number of PBS Stations equal to no more than fifty (50) percent of the total of the number of PBS Single Feed Licensees plus the number of Independently Programmed Stations operated by Multiple Feed Licensees;

provided, however, that ASCAP and BMI shall be entitled to receive music use reports covering not less than ninety (90) PBS Stations in any given calendar year. Subject to the limitations set forth above, PBS Stations shall be obligated to furnish to ASCAP and BMI such music use reports for each station for a period of no more than seven days in each calendar year.

(3) Non-PBS Stations shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such Non-PBS Stations showing the title, author and publisher of each composition, to the extent such information is reasonably obtainable. Non-PBS Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of Non-PBS Stations. Subject to the limitations set forth above, Non-PBS Stations shall be obligated to furnish to ASCAP and BMI such music use reports for each station for a period of no more than seven days in each calendar year.

(4) NPR Stations which have six (6) or more full-time employees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such NPR Station showing the title, author or and publisher of each composition, to the extent such information is reasonably obtainable; provided, however, that NPR Stations shall not be responsible for providing cue sheets for programs for which cue sheets have already been provided by NPR to ASCAP and BMI. NPR Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of NPR Stations which have six (6) or more full-time employees. Notwithstanding the foregoing, if the number of NPR Stations with six (6) or more employees (from which ASCAP and BMI shall initially designate and request reports) falls below twenty-five (25) percent of the total number of all NPR Stations, then ASCAP and BMI may each request reports from additional NPR Stations, regardless of the number of employees, so that ASCAP and BMI shall each be entitled to receive music use reports from not less than twenty-five (25) percent of all NPR Stations. NPR Stations shall be obligated to furnish music use reports for each station for a period of up to one week in each calendar year to ASCAP and BMI.

(5) Non-NPR Stations which have six (6) or more full-time employees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such Non-NPR Station showing the title, author and publisher of each composition, to the extent such information is reasonably obtainable. Non-NPR Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of the Non-NPR Stations which have six (6) or more full-time employees. Notwithstanding the foregoing, if the number of Non-NPR Stations with six (6) or more employees (from which ASCAP and BMI shall initially designate and request reports) falls below twenty-five (25) percent of the total number of all Non-NPR Stations, then ASCAP and BMI may each request reports from additional Non-NPR Stations, regardless of the number of employees, so that ASCAP and BMI shall each be entitled to receive music use reports from not less than twenty-five (25) percent of all Non-NPR Stations. Non-NPR Stations shall be obligated to furnish music use reports for each station for a period of up to one week in each calendar year to ASCAP and BMI.

So Ordered.

**James H. Billington,**

*The Librarian of Congress.*

Dated: September 17, 1998.

So Recommended.

**Marybeth Peters,**

*Register of Copyrights.*

[FR Doc. 98–24986 Filed 9–17–98; 8:45 am]

BILLING CODE 1410–33–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–300717; FRL–6027–1]**

**RIN 2070–AB78**

### Imidacloprid; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in or on sugar beets (tops, roots, molasses), barley (grain, straw, hay), wheat (grain, forage, straw, hay), as requested by Gustafson, Incorporated (PP 5F4584 and PP 4F4337); and cereal grains crop group (grain, forage, straw, hay, stover), sweet corn, safflower (seed, meal), legume vegetables crop group (seed, foliage), soybean meal, as requested by Bayer Corporation (PP 6F4765). Gustafson, Incorporated, and Bayer Corporation requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective September 18, 1998. Objections and requests for hearings must be received by EPA on or before November 17, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, OPP–300717, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), PO Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300717, must also be submitted 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 a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300717. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Peg Perreault, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5417, e-mail: Perreault.Peg@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Registers** of June 25, 1997 (62 FR 34261) (FRL–5719–6) and February 26, 1997 (62 FR 8731) (FRL–5589–2), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 5F4584, PP 4F4337, Gustafson; and PP 6F4765, Bayer) for tolerances by Gustafson, Incorporated, PO Box 660065, Dallas, Texas 75255-0065; and Bayer Corporation, 8400 Hawthorn Road, PO Box 4913, Kansas City, MO 64120-0013. These notices included summaries of the petitions prepared by Gustafson, Incorporated, and Bayer Corporation, the registrants. There were no comments received in response to the notices of filing. The petitions requested that 40 CFR 180.472(a) and (d) be amended by establishing tolerances for combined residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as (1-[(6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine), in or on sugar beets (tops) at 0.5, roots at 0.05, molasses at 0.3 parts per million (ppm), barley (grain) at 0.05, straw at 0.5, hay at 0.5 ppm, wheat (grain) at 0.05, forage at 7.0, straw at 0.5, hay at 0.5 ppm 40 CFR 180.472(a); and cereal grains crop group - grain at 0.05, forage at 2.0, straw at 3.0, hay at 6.0, stover at 0.3 ppm, sweet corn (kernel plus cob with husk removed) at 0.05, safflower - seed at 0.05, meal at 0.5, legume vegetable crop group - seed at 0.3, foliage at 2.5, soybean meal at 0.5 ppm (inadvertent or indirect residues, 40 CFR 180.472(d)).

## I. Risk Assessment and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in or on sugar beets (tops) at 0.5, roots at 0.05, molasses at 0.3 parts per million (ppm), barley (grain) at 0.05, straw at 0.5, hay at 0.5 ppm, wheat grain at 0.05, forage at 7.0, straw at 0.5, hay at 0.5 ppm (40 CFR 180.472(a); and cereal grains crop group - grain at 0.05, forage at 2.0, straw at 3.0, hay at 6.0, stover at 0.3 ppm, sweet corn (kernel plus cob with husk removed) at 0.05, safflower - seed at 0.05, meal at 0.5, legume vegetable crop group - seed at 0.3, foliage at 2.5, soybean meal at 0.5 ppm (40 CFR.180.472(d)). EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid are discussed below.

1. *Acute toxicity*. The following table contains a summary of the acute toxicity data for technical imidacloprid.

| Guideline Number | Study Type | MRIDs Nos. | Results | Toxicity Category |
|---|---|---|---|---|
| 81-1 | Acute Oral | 42055331 | $LD_{50}$ = 424 mg/kg (M)<br>> 450 mg/kg (F) | II |
| 81-2 | Acute Dermal | 42055332 | $LD_{50}$ >5,000 mg/kg | IV |
| 81-3 | Acute Inhalation | 42256317 | $LC_{50}$ > 5.33 mg/L | IV |
| 81-4 | Primary Eye Irritation | 42055334 | Non-irritant | IV |
| 81-5 | Primary Skin Irritation | 42055335 | Non-irritant | IV |
| 81-6 | Dermal Sensitization | 42055336 | Non-sensitizer | NA |
| 81-8 | Acute Neurotoxicity | 41317301<br>43285801 | NOAEL = Not established<br>LOEL = 42 mg/kg bwt/day | NA |

The following table contains a summary of the acute toxicity of the end-use product (40.7% formulation) for imidacloprid (Gaucho 480F, EPA Reg. No. 7501-155).

| Guideline Number | Study Type | MRIDs Nos. | Results | Toxicity Category |
|---|---|---|---|---|
| 81-1 | Acute Oral/Rat | 42857703 | $LD_{50}$ = 4687 mg/kg (M)<br>4067 mg/kg (F) | III |
| 81-2 | Acute Dermal/Rat | 42857703 | $LD_{50}$ >5,050 mg/kg | IV |
| 81-3 | Acute Inhalation/Rat | 42256326 | $LC_{50}$ = 2.11 mg/L (M&F) | IV |
| 81-4 | Primary Eye Irritation/Rabbit | 42857705 | Irritation score:<br>0.7 (1 hr.); 0.1 (24 hr.)<br>0.0 (48 hr.); 0.0 (72 hr.) | IV |
| 81-5 | Primary Dermal Irritation/ Rabbit | 42256328 | PIS: 0.0 (non-irritating) | IV |
| 81-6 | Dermal Sensitization/ Guinea Pig | 42857707 | Not a sensitizer | NA |

2. *Subchronic toxicity*. In a dermal toxicity study, groups of 5 male and 5 female New Zealand White rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 milligrams/kilograms (mg/kg) body weight/day (bwt/day) (Limit Dose), 6 hours/day, 5 days/week for 3 weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the no observable adverse effect level (NOAEL) was >1,000 mg/kg bwt/day; a lowest observable effect level (LOEL) was not established (MRID No. 42256329).

In an oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg bwt/day in males and 0, 10.5, 69.3 or 213 mg/kg bwt/day in females, respectively) for 90 days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first 4 weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOAEL was 150 ppm (9.3 and 10.5 mg/kg bwt/day in males and females, respectively) and the LOEL was 1,000 ppm (63.3 and 69.3 mg/kg bwt/day in males and females, respectively) (MRID No. 43286401).

In a rat inhalation study (28–day study in which rats were exposed 6 hours/day, 5 days/week for 4 weeks), the NOAEL for imidacloprid was 5.5 $mg/m^3$ (MRID No. 422730-01).

3. *Chronic toxicity*. In a chronic toxicity study, groups of beagle dogs (4/sex/dose) were fed diets containing imidacloprid (94.9%) at 0, 200 or 1,250/2,500 ppm (0, 6.1, 15 or 41/72 mg/kg bwt/day, respectively) for 52 weeks. The 1,250 ppm dose was increased to 2,500 ppm from week 17 onwards. The threshold NOAEL was 1,250 ppm (41 mg/kg bwt/day). The LOEL was 2,500 ppm (72 mg/kg bwt/day) based on increased cytochrome-P-450 levels in both sexes and was considered to be a threshold dose. Due to the lack of toxicity at 1,250 ppm, a LOEL was not established in this study; following the dose increase to the 2,500 ppm level, toxicity was observed, thus making 1,250 ppm the threshold NOAEL and 2,500 ppm the threshold LOEL (MRID No. 42273002).

4. *Carcinogenicity*. In a combined chronic toxicity/carcinogenicity study, groups of Bor WISW rats (50/sex/dose) received imidacloprid (95.3%) at 0, 100, 300 or 900 ppm (0, 5.7, 16.9 or 51.3 mg/kg bwt/day in males and 0, 7.6, 24.9, or 73 mg/kg bwt/day in females, respectively) for 104 weeks. In another study, rats of the same strain (50/sex) received imidacloprid at 0 or 1,800 ppm (0, 102.6, and 143.7 mg/kg bwt/day in males and females, respectively) for 104 weeks. For chronic toxicity, the NOAEL was 100 ppm (5.7 mg/kg bwt/day) and the LOEL was 300 ppm (16.9 mg/kg bwt/day) based on decreased body weight gains in females and increased thyroid lesions in males. There was no evidence of carcinogenicity in either sex (MRID No. 42256331 and 42256332).

In carcinogenicity study groups of B6C3F1 mice (50/sex/dose) were fed diets containing imidacloprid (95%) at 0, 100, 330 or 1,000 ppm (0, 20, 66, or 208 mg/kg bwt/day in males and 0, 30, 104 or 274 mg/kg bwt/day in females, respectively) for 2 years. In a supplementary study conducted to evaluate the adequacy of the high dose tested in the main study, the same strain of mice (50/sex) received 0 or 2,000 ppm (414 and 424 mg/kg bwt/day in males and females, respectively) for the same time period. For chronic toxicity, the NOAEL was 1,000 ppm (208 mg/kg bwt/day). The LOEL was 2,000 ppm (414 mg/kg bwt/day) based on decreased body weight gain, food consumption, and water consumption. There was no evidence of carcinogenicity in either sex (MRID No. 42256335 and 42256336).

5. *Developmental toxicity*. In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus =7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOEL was 10 mg/kg bwt/day (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOEL was 100 mg/kg bwt/day based on increased wavy ribs (MRID No. 42256338).

In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24, or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities (MRID No. 42256339).

6. *Reproductive toxicity*. In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females) (MRID No. 42256340, Doc. No. 010537). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the EPA/OPP/HED Hazard Identification Assessment Review Committee (HIARC) recommended that the Data Evaluation Record should be revised to indicate the parental/systemic/reproductive NOAEL and LOEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

7. *Mutagenicity*. As shown below, mutagenicity studies have demonstrated that imidacloprid is non-mutagenic both *in vivo* and *in vitro*.

| Assay | MRIDs Nos. | Results |
|---|---|---|
| Ames-Salmonella | 42256363 | Negative up to 5,500 µg/plate |
| Recombination assay - yeast | 42256353 | Negative for crossing-over in yeast up to 10,000 g |
| Chromosomal aberration - *in vivo* | 42256344 | Negative for chromosome breakage up to 2,000 µg/mL |
| Chromosomal aberration - *in vitro* | 42256345 | Positive at 500 µg/mL -S9 and 1,300 µg/mL +S9, both toxic doses |
| Sister Chromatid assay - *in vivo* | 42256346 | Negative up to 2,000 µg/mL |
| Cytogenetics -CHO cells - *in vitro* | 42256342 | Negative for inducing forward mutation in CHO (mammalian) cells treated up to 1,222 µg/mL |
| Micronucleus - mouse | 42256366 | Negative up to (toxic) 50 mg/kg (ip) |
| DNA repair test | 42256353 | Negative for crossing-over in yeast up to 10,000 g |
| HGPRT assay - CHO | 42256365 | Negative up to 2,000 µg/mL |

8. *Dermal absorption*. No dermal absorption studies are available. However, this is not a concern since occupational and residential risk assessments are not required for dermal exposure due to the lack of dermal or systemic toxicity (following single or repeated dermal application of imidacloprid to laboratory animals).

9. *Neurotoxicity*. In an acute neurotoxicity study, groups of Sprague-Dawley rats (18/sex/dose) were given a single oral administration of imidacloprid (97.6%) in 0.5% methyl cellulose with 0.4% Tween 80 in deionized water at 0, 42, 151, or 307 mg/kg. Parameters evaluated included: clinical pathology (6/sex/dose); Functional Observation Battery (FOB) measurements (12/sex/dose); and neuropathology (6/sex/dose). FOB measurements were made approximately 90 minutes post dosing, and on days 7 and 14. Motor activity measurements were made at approximately 2.5 hours post dosing.

At 307 mg/kg bwt/day, 4/18 males and 10/18 females died and both sexes of rats at this dose exhibited decreased numbers of rears, grip strength (forelimb and hindlimb) and response to stimuli (auditory, touch, or tail pinch) as well as increased gait abnormalities, righting reflex impairments and body temperatures. These symptoms regressed by day 5. At 151 mg/kg bwt/day, cage side FOB assessments revealed tremors in one male and one female and red nasal staining in one male. On the day of dosing, a dose-related decrease in total session motor activity was observed in males at 151 mg/kg bwt/day (25% decrease) and 307 mg/kg bwt/day (73%) and in females at all dose levels with the decreases (25, 48, and 81%, respectively at 42, 151, and 307 mg/kg bwt/day) reaching statistical significance ($p < 0.05$) at 151 and 307 mg/kg bwt/day dose levels. Decreases in motor activity were seen at all time intervals. Total session locomotor activity was also decreased to about the same percentage difference but statistical significance was not reported. On days 7 and 14, decreases (not statistically significant) were still observed in motor and locomotor activity in surviving high-dose males. The LOEL was 42 mg/kg based on the decrease in motor and locomotor activities observed in females; a NOAEL was not established (MRID No. 41317031 and 43285801).

10. *Other-toxicological considerations*. EPA is requiring a developmental neurotoxicity study (Guideline No. 83-6) for imidacloprid. The following information was considered in the weight-of-evidence evaluation:

i. Imidacloprid is a neurotoxic chemical. Evidence of functional neurotoxicity was seen in the acute neurotoxicity study where a single oral dose caused a dose-related decrease in motor activity in all dosed females, including a 25% decrease at the lowest dose tested (42 mg/kg bwt/day).

ii. Imidacloprid is a nicotine analog and is expected to act as a nicotinic agonist.

iii. With this class of chemical, there is no readily available biomarker (e.g., cholinesterase inhibition) for assessment of subtle neurotoxic effects.

iv. In the 1993 2-year chronic study in rats, significant alterations of brain weight were noted in males and females at 900 ppm (51.3 and 73 mg/kg bwt/day in males and females, respectively).

v. There has been no assessment of the delayed neurotoxicity study in the hen.

vi. A review of the literature suggests that nicotine causes developmental toxicity, including functional deficits, in animals and/or humans exposed *in utero*.

11. *Metabolism*. The metabolism of NTN 33893 (imidacloprid) in rats was reported in seven studies (85-1), and found to be Core Minimum. They are:

i. Methylene-[$^{14}$C] Imidacloprid: Metabolism Part of the General

Metabolism Study in the Rat (MRID No. 42256354).

ii. [$^{14}$C]-NTN 33893: Biokinetic Part of the General Metabolism Study in the Rat (MRID No. 42256356).

iii. [Imidazolidine-4,5-$^{14}$C] Imidacloprid: Investigation of the Biokinetic Behavior and Metabolism in the Rat (MRID No. 42256357).

iv. Imidacloprid - WAK 3839: Comparison of the Biokinetic Behavior and Metabolism in the Rat Following Single Oral Dosage and Investigation of the Metabolism after Chronic Feeding of Imidacloprid to Rats and Mice (MRID No. 42256373).

v. A Liquid Chromatographic Method for the Determination of NTN 33893 in Aqueous Dose Mixtures (MRID No. 42256359).

vi. A Liquid Chromatographic Method for the Determination of NTN 33893 in Inhalation Chamber Atmospheres (MRID No. 42256358).

vii. [$^{14}$C]-NTN 33893: Investigations on the Distribution of Total Radioactivity in the Rat by Whole-Body Autoradiography (MRID No. 42256355).

These data show that imidacloprid was rapidly absorbed and eliminated in the excreta (90% of the dose within 24 hours), demonstrating no biologically significant differences between sexes, dose levels, or route of administration. Elimination was mainly renal (70-80% of the dose) and fecal (17-25%). The major part of the fecal activity originated in the bile. Total body accumulation after 48 hours consisted of 0.5% of the radioactivity with the liver, kidney, lung, skin and plasma being the major sites of accumulation. Therefore, bioaccumulation of imidacloprid is low in rats. Maximum plasma concentration was reached between 1.1 and 2.5 hours. Two major routes of biotransformation were proposed for imidacloprid. The first route included an oxidative cleavage of the parent compound rendering 6-chloronicotinic acid and its glycine conjugate. Dechlorination of this metabolite formed the 6-hydroxynicotinic acid and its mercapturic acid derivative. The second route included the hydroxylation followed by elimination of water of the parent compound rendering NTN 35884. A comparison between [methylene-$^{14}$C]-imidacloprid and [imidazolidine-4,5-$^{14}$C]-imidacloprid showed that while the rate of excretion was similar, the renal portion was higher with the imidazolidine-labeled compound. In addition, accumulation in tissues was generally higher with the imidazolidine-labeled compound.

A comparison between imidacloprid and one of its metabolites, WAK 3839, showed that the total elimination was the same for both compounds. The proposed metabolic pathways for these two compounds were different. WAK 3839 was formed following pretreatment (repeated dosing) of imidacloprid.

*B. Toxicological Endpoints*

1. *Acute toxicity*. The endpoint selected for acute dietary risk assessment is based on neurotoxicity characterized by decreases in motor or locomotor activity in female rats at 42 mg/kg bwt/day (LOEL) in an acute neurotoxicity study (MRID No. 41370301 and 43285801). A NOAEL was not established in this study.

Although developmental toxicity studies showed no increases in sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, and no increased sensitivity in pups as compared to adults and offspring in the two generation reproductive toxicity study in rats, and the toxicology data base is complete with respect to core requirements, the Agency determined that an acceptable acute dietary exposure (food plus water) of 33.3% or less of the acute reference dose (RfD) for all population subgroups is required based on the following weight-of-the-evidence considerations:

i. There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.

ii. There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study.

iii. The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development.

Conventionally, when a LOEL from the critical study is used for risk assessment, an additional UF will be applied. For acute risk assessment with imidacloprid, however, the Agency determined that the 3x factor used for FQPA (as discussed under section II.E. of this unit), is adequate to cover the use of the LOEL as well because of the low confidence in the endpoint based on the minimal nature of the effect (decreased motor activity only in females), the fact that this effect was seen in adult rats, and because the same effect was not seen in the subchronic toxicity study following repeated doses.

2. *Short - and intermediate-term toxicity*. No dermal or systemic toxicity was seen in a 21–day dermal toxicity study in rabbits following repeated dermal applications of imidacloprid at 1,000 mg/kg bwt/day (limit-dose) for 3 weeks. In addition, an inhalation endpoint has not been established for imidacloprid. In a 28–day rat inhalation study in which rats were exposed 6 hours/day, 5 days/week, the NOAEL was 5.5 mg/m$^3$. Imidacloprid also has a relatively low vapor pressure (6.9 x $10^{-9}$ torr). Since available data show no potential for dermal or inhalation toxicity from short- and intermediate-term exposure to imidacloprid, a risk assessment is not required.

3. *Chronic toxicity*. EPA has established the RfD for imidacloprid at 0.057 mg/kg/day. This RfD is based on the results of a combined chronic toxicity/ carcinogenicity study, in which groups of Bor WISW rats (50/sex/dose) received imidacloprid (95.3%) at 0, 100, 300, or 900 ppm (0, 5.7, 16.9 or 51.3 mg/kg bwt/day in males and 0, 7.6, 24.9, or 73 mg/kg bwt/day in females, respectively) for 104 weeks. For chronic toxicity, the NOAEL was 100 ppm (5.7 mg/kg bwt/day in males and 7.6 mg/kg bwt/day in females) and the LOEL was 300 ppm (16.9 mg/kg bwt/day in males and 24.9 mg/kg bwt/day in females) based on decreased body weight gains in females and increased thyroid lesions in males. Organ weight changes were observed in both sexes of rats at a dose of 900 ppm. There was no evidence of carcinogenicity in either sex. Dose/endpoint for establishing the RfD: NOAEL = 5.7 mg/kg bwt/day based on decreased body weight gains in females and increased number of thyroid lesions in males at 16.9 mg/kg bwt/day (LOEL). This is the endpoint selected for chronic dietary risk assessment.

Uncertainty Factor (UF): 10x for inter-species variation plus 10x for intra-species variation

Chronic RfD: The RfD is calculated as follows: Chronic RfD = NOAEL UF = 5.7 mg/kg bwt/day 100 = 0.057 mg/kg bwt/day

The Agency determined that the additional uncertainty factor (UF) for FQPA (reduced to 3x as discussed under Units II.B.1. and II.E. of this preamble) applies to all population subgroups and also applies to both acute and chronic risk. Application of the additional 3x safety factor for enhanced susceptibility of infants and children to the Chronic RfD results in an acceptable chronic dietary exposure (food plus water) of 33.3% or less of the Chronic RfD for all population subgroups.

4. *Carcinogenicity*. Imidacloprid has been classified as a Group E chemical,

no evidence of carcinogenicity in humans. A cancer risk assesment is not required.

*C. Exposures and Risks*

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.472) for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in or on a variety of raw agricultural commodities and meat at 0.3 ppm, milk 0.1 ppm, poultry 0.05 ppm, and egg 0.02 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. As previously stated, the endpoint selected for assessment of acute dietary risk is 42 mg/kg bwt/day (LOEL). The UFs are 10x for inter-, 10x for intra-species variations and 3x for FQPA. Application of the 3X safety factor for enhanced susceptibility of infants and children to the acute RfD results in an acceptable acute dietary exposure (food plus water) of 33.3% or less of the acute RfD for all population subgroups. An acute dietary risk assessment is required for all population subgroups.

This acute dietary (food) risk assessment used the Theoretical Maximum Residue Contribution (TMRC) which assumes tolerance level residues and 100% crop-treated. The DRES System was used for this acute dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA 1977-78 Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity. Resulting exposure values and percent of the acute RfD utilized are shown below.

| Acute Dietary (Food Only) Exposure and Risk for Imidacloprid | | |
|---|---|---|
| Population Subgroup | Exposure @ 99th Percentile (mg/kg bwt/day) | Percent Acute RfD |
| U.S. Population (48 states) | 0.050 | 12% |
| Infants (< 1 yr) | 0.10 | 24% |
| Children (1-6 yrs) | 0.10 | 24% |
| Females (13+ yrs) | 0.040 | 9.5% |
| Males (13+ yrs) | 0.050 | 12% |

Values for the 99th percentile are considered to be conservative as EPA policy dictates exposure estimates from as low as the 95th percentile may be utilized for risk estimates from acute DRES runs not using Monte Carlo Analysis. Thus, these results should be viewed as a very conservative risk estimate; refinement using anticipated residue values and percent crop-treated information in conjunction with Monte Carlo analysis would result in a lower estimate of acute dietary exposure.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis from food sources was conducted using the reference dose (Chronic RfD) of 0.057 mg/kg bwt/day. The FQPA Safety Factor for enhanced sensitivity of infants and children was reduced to 3x. The FQPA factor was applied in the risk assessment for all population subgroups. Application of the 3x safety factor for enhanced susceptibility of infants and children to the Chronic RfD results in an acceptable chronic dietary exposure (food plus water) of 33.3% or less of the Chronic RfD for all population subgroups.

A tolerance is established for residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on canola seed at 0.05 ppm. Canola seed per se is not a human food item. Canola seed is processed into canola oil which is consumed by humans. Because canola is not listed as a commodity in DRES, EPA has estimated the dietary exposure from imidacloprid treated canola seed in the following manner:

Consumption (g/kg/day) x Residue (mg/kg) = Exposure (mg/kg bwt/day)

The consumption value for canola was taken as the U.S. production volume (877 million lbs or 3.98 x $10^{11}$ g) divided by the U.S. population in the 1977-1978 USDA Food Consumption Survey (240 million) to get grams of canola consumed per year. Further division was done to estimate consumption per day for an average person (body weight 58.9 kg) to get consumption per person per day. Tolerance level residues and 100% crop treated were assumed. The estimated exposure resulting from the established imidacloprid tolerance on canola (0.05 ppm) is 3.86 x $10^{-6}$ mg/kg bwt/day. This exposure represents <1.0% of the RfD. EPA concludes the dietary exposure from the imidacloprid tolerance on canola is not significant.

This approach to estimating the exposure due to consumption of imidacloprid treated canola results in a conservative exposure assessment. EPA notes that the consumption of corn oil by the general US population in the 1977-1978 USDA Food Consumption Survey was only 0.022 g/kg bwt/day. The consumption estimate for canola is approximately 3.5 times this value.

In conducting this chronic dietary (food) risk assessment, EPA used: (1) tolerance level residues for the proposed tolerances of these petitions and all other commodities with published, pending, permanent or time-limited, imidacloprid tolerances; and (2) percent crop-treated information on some of these crops. Thus, this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional percent crop treated information would result in a lower estimate of chronic dietary exposure. The DRES System was used for this chronic dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA 1977-1978 Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity.

The RACs (Raw Agricultural Commodities) and tolerances, used in the dietary risk assessment, were derived from 40 CFR 180.472 and EPA's Tolerance Index System.

The following table summarizes the estimated dietary exposures for the U.S. population, those population subgroups that include infants and children, and

all population subgroups with risk estimates above that of the U.S. Population.

| Chronic Dietary Exposure (Food Only) and Risk for Imidacloprid | | |
|---|---|---|
| Subgroup | Exposure (mg/kg bwt/day) | Percent Chronic RfD |
| U.S. Population (48 States) | 0.0039 | 6.8% |
| Nursing Infants (< 1 year old) | 0.0032 | 5.6% |
| Non-nursing Infants (<1 year old) | 0.011 | 19% |
| Children (1 to 6 years old) | 0.0081 | 14% |
| Children (7 to 12 years old) | 0.0057 | 10% |
| U.S. Population - Fall Season | 0.0040 | 7.0% |
| U.S. Population Winter Season | 0.0040 | 7.0% |
| Northeast Region | 0.0040 | 7.0% |
| Western Region | 0.0041 | 7.2% |
| Hispanics | 0.0043 | 7.5% |
| Non-Hispanic Others | 0.0042 | 7.4% |

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (2) that the exposure estimate does not underestimate exposure for any significant subpopulation group; and (3) if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

The Agency used percent crop treated (PCT) information as follows. A routine chronic dietary exposure analysis for imidacloprid was based on likely maximum percent of crop treated as follows: 6% grapefruits, 3% oranges, 13% other citrus, 19% apples, 2% pears, 11% grapes, 30% eggplants/peppers, 32% head lettuce, 21% cole crops, 15% melons, 10% tomatoes, 6% cotton.

The Agency believes that the three conditions listed above have been met. With respect to finding (1), EPA finds that the PCT information described above for imidacloprid is reliable and has a valid basis, The Agency has utilized the latest statistical data from RFF (Resources For The Future), DOANE, and USDA, the best available sources for such information. Concerning findings (2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing imidacloprid in a particular area.

2. *From drinking water*. There are no Maximum Contaminant Levels (MCL) or Health Advisory (HA) levels established for residues of imidacloprid in drinking water. This information was furnished by the EPA Safe Drinking Water Hotline (1-800-426-4791) on June 16, 1998.

Information in EPA's Pesticide Environmental Fate One Line Summary data base (last update May 6, 1997) suggests that imidacloprid is persistent and mobile.

EPA's ''Pesticides in Ground Water Database'' (EPA 734-12-92-001, 9/92) has no entry for imidacloprid.

i. *Acute exposure and risk*—a. *Acute exposure*. Estimated maximum concentrations of imidacloprid in surface and ground water are 50.9 and 0.605 ppb, respectively.

EPA used PRZM1 (Pesticide Root Zone Model - simulates the transport of a pesticide off the agricultural field) and EXAMS (Exposure Analysis Modeling System - simulates fate and transport of a pesticide in surface water) models to estimate concentrations of imidacloprid residues in surface water. It should be noted that PRZM1/EXAMS models were designed for use in ecological risk assessment. They are not ideal tools for use in drinking water risk assessment. PRZM1/EXAMS could overestimate actual drinking water concentrations. Thus, these models should be considered a screening tool.

EPA used the SCI-GROW (Screening Concentration In Ground Water) model to estimate the concentration of imidacloprid residues in ground water. SCI-GROW is a prototype model for estimating ''worst case'' ground water concentrations of pesticides. SCI-GROW is biased in that studies where the pesticide is not detected in ground water are not included in the data set. Thus, it is not expected that SCI-GROW estimates would be exceeded.

b. *Acute risk*. EPA has calculated drinking water levels of concern (DWLOC's) for acute exposure to imidacloprid in surface and ground

water for various population subgroups. The DWLOC's for acute exposure to imidacloprid are summarized below.

| Drinking Water Levels of Concern for Acute Exposure to Imidacloprid | | | | | |
|---|---|---|---|---|---|
| Population Subgroup | Dietary Exposure[1] (mg/kg bwt/day) | Max. Exposure from Water (mg/kg bwt/day) | Bodyweight (kg) | Daily Water Consumption (Liters) | DWLOC (µg/L) |
| U.S. Population (48 States) | 0.050 | 0.090 | 70 | 2 | 3,200 |
| Females (13+ years) | 0.040 | 0.10 | 60 | 2 | 3,000 |
| Children (1 - 6 years) | 0.010 | 0.13 | 10 | 1 | 1,300 |

[1]99th percentile

To calculate the DWLOC relative to an acute toxicity endpoint, the acute dietary food exposure (from DRES) was subtracted from one-third the Acute RfD to obtain the acceptable acute exposure to imidacloprid in drinking water. The value of one-third the Acute RfD was utilized to account for the FQPA Safety Factor of 3x. DWLOCs were then calculated using default body weights and drinking water consumption figures.

ii. *Short-term exposure and risk*—a. *Short-term exposure*. Estimated maximum concentrations of imidacloprid in surface and ground water are 50.9 and 0.605 µg/mL, respectively. EPA utilized PRZM1 and EXAMS to generate these estimates. Descriptions of these models are above.

b. *Short-term risk*. EPA has calculated a drinking water level of concern (DWLOC) for short-term exposure to imidacloprid in surface and ground water for the population subgroup children, 1 to 6 years old. This DWLOC is for short-term exposure to imidacloprid from home garden and turf uses. A DWLOC for short-term exposure from imidacloprid pet uses was not determined as the exposure level from the home garden and turf uses is higher than that of the pet uses. Thus, the DWLOC for the imidacloprid pet uses will be higher than that of the home garden and turf uses. The DWLOC for short-term exposure to imidacloprid is summarized below.

| Drinking Water Levels of Concern for Short-Term Exposure to Imidacloprid | | | | | |
|---|---|---|---|---|---|
| Population Subgroup | Total Exposure[1] (mg/kg bwt/day) | Max. Exposure from Water (mg/kg bwt/day) | Bodyweight (kg) | Daily Water Consumption (Liters) | DWLOC (µg/L) |
| Children (1 - 6 years) | 0.080 | 0.060 | 10 | 1 | 600 |

[1]Total Exposure = sum of exposures from chronic food plus home turf and garden uses.

The DWLOC for short-term exposure to imidacloprid was calculated relative to the acute RfD which was utilized for estimating risk for short-term oral exposure to imidacloprid. To calculate the DWLOC for short-term exposure relative to an acute toxicity endpoint, the sum of chronic dietary food exposure (from DRES) plus the oral exposure from imidacloprid home garden and turf uses was subtracted from one-third the Acute RfD to obtain the acceptable short-term exposure to imidacloprid in drinking water. The value of one-third the Acute RfD was utilized to account for the FQPA Safety Factor of 3x. DWLOCs were then calculated using default body weights and drinking water consumption figures.

iii. *Chronic exposure and risk*—a. *Chronic exposure*. The estimated average concentration of imidacloprid in surface water (for chronic exposure) is 19.1 µg/mL. An estimated average concentration of imidacloprid in ground water was not provided. EPA used PRZM1 and EXAMS models to estimate chronic environmental concentrations of imidacloprid residues in surface water.

b. *Chronic risk*. EPA has calculated DWLOCs for chronic (non-cancer) exposure to imidacloprid in surface and ground water for various population subgroups. The DWLOC's for chronic exposure to imidacloprid are summarized below.

| Drinking Water Levels of Concern for Chronic Exposure to Imidacloprid | | | | | |
|---|---|---|---|---|---|
| Population Subgroup | Dietary Exposure (mg/kg bwt/day) | Max. Exposure from Water (mg/kg bwt/day) | Bodyweight (kg) | Daily Water Consumption (Liters) | DWLOC (µg/L) |
| U.S. Population (48 States) | 0.0039 | 0.015 | 70 | 2 | 530 |
| Females (13+ yrs., pregnant) | 0.0036 | 0.015 | 60 | 2 | 460 |

| Drinking Water Levels of Concern for Chronic Exposure to Imidacloprid | | | | | |
|---|---|---|---|---|---|
| Population Subgroup | Dietary Exposure (mg/kg bwt/day) | Max. Exposure from Water (mg/kg bwt/day) | Bodyweight (kg) | Daily Water Consumption (Liters) | DWLOC (μg/L) |
| Non-nursing Infants | 0.011 | 0.0080 | 10 | 1 | 80 |

To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DRES) was subtracted from one-third the chronic RfD to obtain the acceptable chronic (non-cancer) exposure to imidacloprid in drinking water. The value of one-third of the RfD was utilized to account for the FQPA Safety Factor of 3x. DWLOCs were then calculated using default body weights and drinking water consumption figures.

A DWLOC for chronic (cancer) exposure was not calculated as imidacloprid has been classified as a Group E chemical (no evidence of carcinogenicity).

3. *From non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns, et al.), tobacco, golf courses, walkways, recreational areas, household or domestic dwellings (indoor/outdoor), and cats/dogs. Available data do not demonstrate that imidacloprid has either dermal or inhalation toxicity potential, therefore, non-dietary dermal and inhalation exposure assessments are not required. Since available data show no toxicity from short-term exposure via the dermal or inhalation route, the Agency feels there is no contribution to toxicity from these routes of exposure, and no increase in aggregate risk is anticipated from this exposure. However, there is the potential for residential exposure via incidental non-dietary ingestion from treated lawns and gardens and incidental non-dietary ingestion by toddlers of pesticide residues on pets from hand-to-mouth transfer. Therefore, an increase in aggregate risk is anticipated from residential exposure via incidental non-dietary ingestion and residential exposure and risk assessments are required for the use of imidacloprid in/on lawns and gardens and on pets.

The product Premise, a termiticide, is also registered for residential use. It may be applied only by Pest Control Operators (PCOs) and only to inaccessible areas of homes or other buildings; therefore, oral exposure to children is not expected. There is potential for inhalation exposure; however, an inhalation endpoint has not been established and imidacloprid has a low vapor pressure (6.9 x $10^{-9}$ torr). Since oral exposure to children is not expected and the Agency feels there is no contribution to toxicity from the inhalation route of exposure, no increase in aggregate risk is anticipated and a residential exposure assessment based upon the imidacloprid termiticide use is not required.

i. *Exposure and risk from incidental non-dietary ingestion from treated lawns and gardens.* A summary of post-application exposure estimates and risk assessments are summarized in the table below. The post-application exposure scenarios for toddlers examined include:

- Incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer.
- Ingestion of pesticide-treated turfgrass.
- Incidental ingestion of soil from treated gardens.

The calculations and assumptions utilized to determine these exposures are as per the Draft Standard Operating Procedures for Residential Exposure Assessments (December 18, 1997).

| Post Application Exposure Estimates and Risk Assessments | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Scenario | Receptor | AR[a] (lb ai/A) | DFRt[b] (μg/cm$^2$) | GRt[c] (μg/cm$^2$) | SRt[d] (μg/g) | ADD[e] (mg/kg bwt/day) | NOAEL (mg/kg/day) | MOE[f] |
| Hand-to-mouth for treated lawns | Toddler | 0.4 | 0.9 | — | — | 0.07 | 42 | 640 |
| Turf-grass | Toddler | 0.4 | — | 0.9 | — | 0.0015 | 42 | 28,000 |
| Incidental Soil Ingestion | Toddler | 0.4 | — | — | 3 | 0.000020 | 42 | 2,100,000 |

[a]AR,Application Rate
[b]DFRt, Dislodgeable foliar residue (μg/cm$^2$)
[c]GRt, Grass residue (μg/cm$^2$)
[d]SRt, Soil residue (μg/g)
[e]ADD, Average daily dose (mg/kg bwt/day) .
[f]MOE = NOAEL/ ADD (No NOAEL established, LOEL of 42 mg/kg bwt/day used)

ii. *Exposure and risk to toddlers from incidental non-dietary ingestion of pesticide residues on pets from hand-to-mouth transfer.* Advantage 110 Flea Adulticide (EPA Reg. No. 011556-121) is a 5.0 mL vial that is applied to two locations on the dog (2.5 mL per 1 in 2). The method for assessing hand-to-mouth transfer in the Draft Standard Operating Procedures for Residential Exposure Assessments (December 18, 1997) is intended for a complete body dip of the treated animal. Therefore, a modified approach was applied to estimate oral exposures. Assumptions and calculations used are as follows:

Assumptions:

- On the day of application it may be assumed that 20% (0.20) of the application rate is retained on the pets as dislodgeable residue. This value is

based on the professional judgement and experience of the EPA staff from the review of company-submitted data and is believed to be an upper-percentile assumption.

- It is assumed that 1% (0.01) of the available residues are transferred to the individuals who have contact with the treated animals. This is considered to be a conservative assumption in light of the very low percentage of the pet's total skin surface being treated. It should be noted that 10% (0.10) is recommended for complete pet dips in the Draft Standard Operating Procedures for Residential Exposure Assessments (December 18, 1997). This is the only deviation from the standard operating procedures.
- It was assumed that 100% of the residue on the hands of toddlers is ingested. This is considered to be a conservative assumption.
- Post application activities assessed on the same day that the pesticide is applied since it is assumed that toddlers could handle/touch pets immediately after application. This is considered a short-term oral exposure.
- Toddlers (age 3 years), used to represent the 1 to 6 year old age group, are assumed to weigh 15 kg.
- 5.0 mL of product was used per application (EPA Reg. No. 011556-121). Product contains 9.1% ai. Density of formulation is not given on label. Density of water was assumed for converting volume in mL to lb active ingredient (ai).
- This product represents high-end exposure among similar products containing imidacloprid given that it involves the highest volume of the active ingredient.

Calculations:

The average daily dose (ADD = 0.058 mg/kg bwt/day) was calculated by multiplying the following: application rate (AR = 436 mg ai/day) x fraction of ai available on pet (F = 0.2) x fraction of residue transferred to the skin (T = 0.01), and dividing by bwt (15 kg).

A margin of exposure (MOE) of 720 was calculated by dividing the NOAEL (42 mg/kg bwt/day) by the ADD (0.058 mg/kg). (NOAEL was not established, therefore acute dietary LOEL of 42 mg/kg bwt/day was used).

The estimated MOE is 720 which is greater than the minimum required MOE of 300. Therefore, exposure via incidental non-dietary ingestion of imidacloprid residues on pets from hand-to-mouth transfer would not exceed EPA's level of concern. However, it should be noted that the 20% used for the fraction of active ingredient available on pet (F) and the 1% used for the fraction of residue transferred to the skin (T) are estimates made by EPA given a lack of available data. The actual values may differ. It is recommended that the registrant submit a study to quantify dislodgeable residues on toddler's hands from pets treated with these types of products.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

*D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk*—i. *Food*. The acute dietary (food) risk assessment used the TMRC. Resulting exposure values and percent of the acute RfD utilized are shown below.

| Acute Dietary (Food Only) Exposure and Risk for Imidacloprid | | |
|---|---|---|
| Population Subgroup | Exposure @ 99th Percentile (mg/kg bwt/day) | Percent Acute RfD |
| U.S. Population (48 states) | 0.050 | 12% |
| Infants (< 1 yr) | 0.10 | 24% |
| Children (1-6 yrs) | 0.10 | 24% |
| Females (13+ yrs) | 0.040 | 9.5% |
| Males (13+ yrs) | 0.050 | 12% |

For imidacloprid, it was determined that an acceptable acute dietary exposure (food plus water) of 33.3% or less of the acute RfD for all population subgroups is needed to protect the safety of all population subgroups. The estimated exposures for all population subgroups at the 99th percentile utilize less than 33.3% of the acute RfD.

ii. *Water*. The estimated maximum concentrations of imidacloprid in surface and ground water (50.9 and 0.605 µg/mL, respectively) are less than EPA's levels of concern for imidacloprid in drinking water (1,300, 3,000 and 3,200 µg/mL) as a contribution to acute exposure. Therefore, taking into account the present uses and uses proposed in this action, EPA concludes with reasonable certainty that residues of imidacloprid in drinking water (when considered along with other sources of acute exposure for which EPA has reliable data) would not result in unacceptable levels of acute aggregate human health risk estimates at this time.

EPA bases this determination on a comparison of estimated maximum concentrations of imidacloprid in surface water to back-calculated ''levels of concern'' for imidacloprid in drinking water. These levels of concern in drinking water were determined after EPA has considered all other non-occupational/non-residential human exposures for which it has reliable data, including all current uses, and uses considered in this action. The estimates of imidacloprid in surface water are

derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of imidacloprid in drinking water as a part of the acute aggregate risk assessment process.

Despite the potential for imidacloprid exposure from drinking water, EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from acute aggregate exposure to imidacloprid residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water exposure (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since dermal and inhalation exposure endpoints (short-term) were not identified due to the demonstrated absence of toxicity, no increase in aggregate risk is anticipated from dermal and inhalation exposure. Therefore, dermal and inhalation short-term risk assessments are not required for imidacloprid.

In addition to its food uses, imidacloprid is registered for use on turf, home gardens and pets. EPA has identified potential short-term oral exposures to toddlers for these uses. These exposures include the following scenarios:

- Incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer.
- Ingestion of pesticide-treated turfgrass.
- Incidental ingestion of soil from treated gardens.
- Incidental ingestion of pesticide residues on pets from hand-to-mouth transfer.

According to current EPA policy, these exposures are considered to be short-term oral exposures. EPA does not expect incidental ingestion of pesticide residues on pets from hand-to-mouth transfer to occur during the same period as the exposures from the turf and home garden uses. Thus, we will consider these exposures in separate estimates of risk. The tables below summarize the short-term aggregate exposures for imidacloprid from turf and garden uses and from the pet use.

A short-term oral endpoint was not identified for imidacloprid. According to current EPA policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (acute RfD = 0.42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk. Short-term aggregate exposure is defined by EPA to be average food and water exposure (chronic exposure) plus residential exposure. The short-term risk estimates for the population subgroup Children, 1 to 6 years old, is summarized below. This population subgroup was chosen because it has the highest chronic food exposure and because toddlers have the highest exposure from the residential uses.

| Short-Term Aggregate Exposure and Risk (Includes Turf and Garden Uses of Imidacloprid) | | | | |
|---|---|---|---|---|
| Population Subgroup | Chronic Food Exposure (mg/kg bwt/day) | Residential Exposure[1] (mg/kg bwt/day) | Total Exposure[2] (mg/kg bwt/day) | Percent Acute RfD[3] |
| Children (1 to 6 years old) | 0.0081 | 0.072 | 0.080 | 19% |

[1]Residential Exposure = Total of imidacloprid exposure from incidental ingestion of residues on lawns from hand-to-mouth transfer plus ingestion of pesticide-treated grass plus ingestion of soil from treated gardens.
[2]Total Exposure = Chronic Food Exposure plus Residential Exposure.
[3]Percent Acute RfD = Acute RfD (0.42 mg/kg bwt/day)/Total Exposure (mg/kg bwt/day) x 100%.

| Short-Term Aggregate Exposure and Risk (Includes the Pet Use of Imidacloprid) | | | | |
|---|---|---|---|---|
| Population Subgroup | Chronic Food Exposure (mg/kg bwt/day) | Residential Exposure[1] (mg/kg bwt/day) | Total Exposure[2] (mg/kg bwt/day) | Percent Acute RfD[3] |
| Children (1 to 6 years old) | 0.0081 | 0.058 | 0.066 | 16% |

[1]Residential Exposure = Total of imidacloprid exposure from incidental ingestion of residues on pets from hand-to-mouth transfer.
[2]Total Exposure = Chronic Food Exposure plus Residential Exposure.
[3]Percent Acute RfD = Acute RfD (0.42 mg/kg bwt/day)/Total Exposure (mg/kg bwt/day) x 100%.

The estimated maximum concentrations of imidacloprid in surface and ground water (50.9 and 0.605 µg/mL, respectively) are less than EPA's level of concern for imidacloprid in drinking water (600 g/mL) as a contribution to short-term exposure from imidacloprid home garden, turf and pet uses. Therefore, taking into account the present uses and uses proposed in this action, EPA concludes with reasonable certainty that residues of imidacloprid in drinking water (when considered along with other sources of short-term exposure for which EPA has reliable data) would not result in unacceptable levels of short-term aggregate human health risk estimates at this time.

EPA bases this determination on a comparison of estimated maximum concentrations of imidacloprid in surface water to the back-calculated ''level of concern'' for imidacloprid in drinking water. The level of concern in drinking water was determined after EPA has considered all other non-occupational human exposures for which it has reliable data, including all current uses and uses considered in this action. The estimates of imidacloprid in surface and ground water are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of concern in drinking water may vary as those uses change. If new

uses are added in the future, EPA will reassess the potential impacts of imidacloprid in drinking water as a part of the a short-term aggregate risk assessment process.

As noted above, potential short-term exposure from drinking water is at a level well below EPA's level of concern. EPA concludes the short-term aggregate risk to the highest exposed population subgroup from home garden, turf, and pet uses of imidacloprid does not exceed our level of concern.

3. *Chronic risk*. The chronic dietary (food only) risk assessment utilized the following exposure assumptions: (i) tolerance level residues for the proposed tolerances of these petitions and all other commodities with published or pending, permanent or time-limited, imidacloprid tolerances; and (ii) percent crop-treated information on some of these crops. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to imidacloprid from food will utilize 6.8% of the Chronic RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is infants (discussed below in section E). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Aggregate cancer risk for U.S. population*. Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans. Therefore, a cancer risk assessment is not required.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population from aggregate exposure to imidacloprid residues.

*E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children*—i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. These studies are discussed under section A. of this unit. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or post-natal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the 2-generation reproduction toxicity study in rats, and the toxicology data base is complete as to core requirements, the Agency determined that the additional safety factor for the protection of infants and children will be retained but reduced to 3x based on the following weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data:

a. There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.

b. There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study.

c. The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development.

Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, EPA has applied the additional UF for FQPA for all population subgroups, and in both acute and chronic risk assessments.

ii. *Conclusion*. The toxicology data base for imidacloprid is complete with respect to core requirements; however, a developmental neurotoxicity study (Guideline No. 83-6) is required. Exposure data is estimated based on data that reasonably accounts for potential exposures; however, a study to quantify dislodgeable residues on toddler's hands from pets treated with imidacloprid is required.

2. *Acute risk*. Aggregate acute risks for the entire U.S. population and for population subgroups, including infants and children, are discussed in section D.1. of this unit.

3. *Short- and intermediate-term risk*. Aggregate short- and intermediate-term risks for the entire U.S. population and for population subgroups, including infants and children are discussed in section D.2. of this unit.

4. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to imidacloprid from food will utilize 5.6% of the RfD for nursing infants, 19% of the RfD for non-nursing infants, 14% of the RfD for children 1 to 6 years old, and 10% of the RfD for children 7 to 12 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

## III. Other Considerations

*A. Metabolism in Plants and Animals*

1. *Nature of the residue in plants and livestock*. Data concerning the metabolism of imidacloprid in apples, potatoes, tomatoes, eggplant,

cottonseed, field corn, ruminants and poultry have previously been submitted. The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472 (September 14, 1994, PP 4F4337 and September 23, 1997, PP 6F4765).

2. *Confined accumulation in rotational crops*. Data concerning the metabolism of imidacloprid in rotational crops was previously submitted. The nature of the residue in rotational crops is adequately understood and is nearly identical to that identified in the primary crops. The residue of concern in rotational crops is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent (September 23, 1997, PP 6F4765).

*B. Analytical Enforcement Methodology*

Adequate enforcement methods are available for determination of the regulated imidacloprid residue in plant (Bayer GC/MS Method 00200 and Bayer HPLC-UV Confirmatory Method 00357) and animal (Bayer GC/MS Method 00191) commodities. These methods have successfully completed EPA Tolerance Method Validation, and are awaiting publication in PAM II (November 8, 1994 and April 13, 1995, PP 5F4415, June 17, 1996, PP 5F4480). In the interim, these methods are available from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703–305–5229).

Bayer Corporation has previously submitted adequate multiresidue method (MRM) recovery data for imidacloprid and its olefin, hydroxy, guanidine, and 6-chloronicotininc acid metabolites through FDA's Protocols A through E. Imidacloprid and its metabolites were not recoverable by these methods. These data have been forwarded to FDA and we expect them to be published in PAM, Vol. I, Appendix I in a future update. Additional MRM recovery data are not required (June 18, 1993, PP 3F4169).

*C. Magnitude of Residues*

1. *Crop field trials*. The results of the previously submitted wheat, barley, and sugar beet field trials support the proposed tolerances for combined residues of imidacloprid and its regulable metabolites as follows (March 6, 1998, PP 4F4337):

| Crop | Commodity | Proposed Tolerance (ppm) |
|---|---|---|
| Beets, Sugar | tops<br>roots<br>molasses | 0.5<br>0.05<br>0.3 |
| Barley | grain<br>straw<br>hay | 0.05<br>0.5<br>0.5 |
| Wheat | grain<br>forage<br>straw<br>hay | 0.05<br>7.0<br>0.5<br>0.5 |

Residue data for aspirated grain fractions were not required for this seed treatment use (September 14, 1994, PP 4F4337).

2. *Field accumulation in rotational crops*. The results of the previously submitted rotational crop field trials support the proposed tolerances for inadvertent or indirect combined residues of imidacloprid and its regulable metabolites as follows (September 23, 1997, PP 6F4765):

| Crop Group or Crop | Commodity | Tolerance Level (ppm) |
|---|---|---|
| Cereal Grains (Crop Group) | grain | 0.05 |
| Forage, Fodder and Straw of Cereal Grains Crop Group | forage<br>straw<br>hay<br>stover | 2.0<br>3.0<br>6.0<br>0.3 |
| Sweet Corn | K+CWHR | 0.05 |
| Safflower | seed<br>meal | 0.05<br>0.5 |
| Legume Vegetables (Crop Group) | seed | 0.3 |
| Foliage of Legume Vegetables (Crop Group) | foliage | 2.5 |
| Soybean | meal | 0.5 |

K+CWHR = Kernel plus cob with husk removed.

3. *Magnitude of the residue in processed food/feed*—i. *Wheat*. The results of a previously submitted wheat processing study showed that residues of imidacloprid and its metabolites are not expected to concentrate into the processed products of wheat. The study utilized a 5x exaggerated application rate (September 14, 1994 and May 16, 1995, PP 4F4337).

ii. *Sugar beets*. The results of a previously submitted sugar beet processing study (2.7x exaggerated application rate) showed that residues of imidacloprid and its metabolites are not expected to concentrate into dehydrated pulp. However, the results did show residues are expected to concentrate into sugar beet molasses. A tolerance of 0.3 ppm is adequate for residues of imidacloprid and its metabolites in sugar beet molasses (September 14, 1994 and May 16, 1995, PP 4F4337).

iii. *Barley*. Processing data for barley were not required for this seed treatment use (September 14, 1994, PP 4F4337).

iv. *Field corn*. The results of a previously submitted field corn processing study showed that residues of imidacloprid and its metabolites are not expected to concentrate into the processed products of field corn. The study utilized exaggerated application rates of 2.5x and 4x (February 19, 1998, PP 6F4765).

v. *Safflower*. A safflower processing study has not been submitted. The petitioner has indicated that they intend to conduct a safflower processing study. This deficiency is not resolved. A safflower processing study for imidacloprid is required. EPA recommends in favor of the proposed tolerances for imidacloprid and its metabolites in/on safflower seed and meal provided the requirement for a safflower processing study is made a condition of the registration of imidacloprid on safflower. The proposed tolerances are based upon a maximum residue level of <0.05 ppm (estimated to be approximately 0.03 ppm) for total imidacloprid residues in safflower seed and a theoretical maximum concentration factor of 9.1x for safflower meal (September 23, 1997 and February 19, 1998, PP 6F4765).

vi. *Soybeans*. A soybean processing study has not been submitted. The petitioner has proposed establishing a permanent tolerance for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in soybean meal at 0.5 ppm in lieu of providing a soybean processing study. This request is based upon a maximum residue level of 0.2 ppm for total imidacloprid residues in soybean seed and a theoretical maximum concentration factor of 2.2x for soybean meal. EPA has considered this issue and has concluded that the requirement for a soybean processing study should be made a condition of the registration of imidacloprid on soybeans. Thus, a soybean processing study is required. The proposed tolerances for imidacloprid and its metabolites for soybean seed and meal are adequate pending submission of the soybean processing study (February 19, 1998, PP 6F4765).

4. *Magnitude of secondary residues in meat, milk, poultry eggs*—i. *Ruminants*. A ruminant feeding study was previously submitted. EPA has estimated the maximum imidacloprid dietary burden from proposed and established imidacloprid tolerances. The total dietary burden from our worst case diet for dairy cattle is approximately 20 ppm. The total dietary burden from our worst case diet for beef cattle is approximately 12 ppm. Tolerances are established for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, expressed as imidacloprid, in ruminant fat, meat, and meat byproducts at 0.3 ppm and in milk at 0.1 ppm. EPA concludes the established tolerances for imidacloprid and its metabolites in ruminant commodities will not be exceeded as a result of additional dietary burden from the tolerances proposed in these petitions (September 21, 1993, PP 3F4169 and March 6, 1998, PP 4F4337).

ii. *Poultry*. A poultry feeding study was previously submitted. EPA has estimated the maximum imidacloprid dietary burden for poultry from proposed and established imidacloprid tolerances. The total dietary burden from our worst case diet for poultry is approximately 2.2 ppm. Tolerances are established for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, expressed as imidacloprid, in poultry fat, meat and meat byproducts at 0.05 ppm and in eggs at 0.02 ppm. EPA concludes the established tolerances for imidacloprid and its metabolites in poultry commodities will not be exceeded as a result of additional dietary burden from the tolerances proposed in these petitions (September 21, 1993, PP 3F4169 and March 6, 1997, PP 4F4337).

### *D. International Residue Limits*

There are no established CODEX, Canadian, or Mexican residue limits for imidacloprid in/on the crop groups cereal grains, legume vegetables and the foliage of legume vegetables; and the crops sweet corn, safflower, wheat, barley and sugar beets. Thus, harmonization of the proposed tolerances with CODEX, Canada, and Mexico is not an issue for these petitions.

## IV. Conclusion

Therefore, the tolerances are established for the combined residues of imidacloprid (1-[(6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as (1-[(6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) in or on sugar beets -tops at 0.5, roots at 0.05, molasses at 0.3 parts per million (ppm), barley - grain at 0.05, straw at 0.5, hay at 0.5 ppm, wheat - grain at 0.05, forage at 7.0, straw at 0.5, hay at 0.5 ppm (40 CFR 180.472(a)); and cereal grains crop group - grain at 0.05, forage at 2.0, straw at 3.0, hay at 6.0, stover at 0.3 ppm, sweet corn (K+CWHR) at 0.05, safflower - seed at 0.05, meal at 0.5, legume vegetable crop group seed at 0.3, foliage at 2.5, soybean meal at 0.5 ppm (inadvertent or indirect residues, 40 CFR 180.472(d)).

## V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 17, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33. If a hearing is requested,

the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

## VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number OPP–300717 (including any comments and data submitted electronically). 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 (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may 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 of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

## VII. Regulatory Assessment Requirements

### *A. Certain Acts and Executive Orders*

This final rule establishes tolerances for imidacloprid under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances for imidacloprid in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

### *B. Executive Order 12875*

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local or Tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

### *C. Executive Order 13084*

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 1998.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority**: 21 U.S.C. 346a and 371.

## § 180.472 [Amended]

2. Section 180.472 is amended by adding the commoditiy wheat (hay) to the table in paragraph (a) and revising the following entries to paragraphs (a) and (d) to read as follows:

(a) * * *

| Commodity | Parts per million | Expiration/ Revocation date |
|---|---|---|
| * * | * * | * |
| Barley (grain) .... | 0.05 | None |
| Barley (hay) ..... | 0.5 | None |
| Barley (straw) .... | 0.5 | None |
| * * | * * | * |
| Beets, sugar (tops) ..... | 0.5 | None |
| Beets, sugar (roots) ..... | 0.05 | None |
| Beets, sugar, molasses ..... | 0.3 | None |
| * * | * * | * |
| Wheat (forage) .. | 7.0 | None |
| Wheat (grain) .... | 0.05 | None |
| Wheat (hay) ..... | 0.5 | None |
| Wheat (straw) .... | 0.5 | None |

* * * * *

(d) * * *

| Commodity | Parts per million | Expiration/ Revocation date |
|---|---|---|
| Cereal grains crop group (grain) ..... | 0.05 | None |
| Foliage of legume vegetables crop group (foliage) | 2.5 | None |
| Forage, fodder, and straw of cereal grains crop group (forage) ..... | 2.0 | None |
| Forage, fodder, and straw of cereal grains crop group (hay) ..... | 6.0 | None |
| Forage, fodder, and straw of cereal grains crop group (stover) ..... | 0.3 | None |
| Forage, fodder, and straw of cereal grains crop group (straw) ..... | 3.0 | None |
| Legume vegetables crop group (seed) .. | 0.3 | None |
| Safflower (meal) | 0.5 | None |
| Safflower (seed) | 0.05 | None |
| Soybean (meal) | 0.5 | None |
| Sweet corn (kernel plus cob with husk removed) ..... | 0.05 | None |
| * * | * * | * |

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[FRL–6161–5]**

## Georgia: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia's revisions consist of the provisions contained in the rules promulgated between July 1, 1995 and June 30, 1996, RCRA Cluster VI and requirements promulgated August 26, 1996 and February 19, 1997. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revisions is available for public review and comment.

**DATES:** Final authorization for Georgia shall be effective without further notice, November 17, 1998 if EPA receives no adverse comment on this document by October 19, 1998. Should EPA receive such comments EPA will withdraw this rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. Any comments on Georgia's program revision application must be filed by October 19, 1998.

**ADDRESSES:** Send comments to: Patricia Herbert, Chief, RCRA Programs Branch, Waste Management Division, EPA, 61 Forsyth Street, Atlanta, Georgia 30303. Copies of Georgia's program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying during regular office hours of 9 a.m. to 5 p.m., Monday through Friday, at the following addresses:

Georgia Department of Natural Resources, Environmental Protection Division, Floyd Towers East, Room 1154, 205 Butler Street, SE, Atlanta, Georgia 30334

U.S. EPA Region 4, Library, 61 Forsyth Street, Atlanta, Georgia 30303

**FOR FURTHER INFORMATION CONTACT:** Patricia Herbert, Chief, RCRA Service Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303; (404) 562–8449.

**SUPPLEMENTARY INFORMATION:**

## A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

## B. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. Georgia was de-authorized for section 3004(t) of the RCRA on July 30, 1992. Between 1984 and 1998 Georgia received authorization for revisions to its program for non-HSWA Clusters I through VII; HSWA Clusters I and II, including corrective action; Radioactive Mixed Wastes; the Toxicity Characteristics Rule and RCRA Clusters I through V.

On April 28, 1998, Georgia submitted a final, complete program revision application for RCRA Cluster VI, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Georgia's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Final Authorization for the program modifications contained in Georgia's program revision application.

The public may submit written comments on EPA's final decision until October 19, 1998. Copies of Georgia's application for program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

If EPA does not receive adverse written comment pertaining to Georgia's program revision by the end of the comment period, the authorization of Georgia's revision will become effective in 60 days from the date this document is published. If the Agency does receive adverse written comment, it will publish a document withdrawing this immediate final rule before its effective date. EPA will then address the comments in a later final rule based on the companion document appearing in the Proposed Rules section of today's **Federal Register**. EPA may not provide additional opportunity for comment. Any parties interested in commenting should do so at this time.

Today's rule will allow state statutes and regulations to: (1) provide that ECD 301B (Modified Sturm Test) may also be used to demonstrate that a sorbent is non-biodegradable (Checklist 145), (2) provide opportunities or earlier public involvement in the permitting process and expand public access to information throughout the permitting process and the operational lives of facilities (Checklist 148), (3) correct the text of a regulatory exclusion from the regulatory definition of solid waste for recovered oil which is inserted into the petroleum refining process (Checklist 150), (4) contain treatment standards for hazardous wastes from the production of carbamate pesticides and from primary aluminum production, contain the treatment standards for hazardous wastes that exhibit the characteristic of reactivity, put back into place the LDR ''Third Third'' provisions for the treatment of certain wastewaters, codify the Federal policy that combustion of inorganic waste is an impermissible form of treatment (Checklist 151), (5) identify the wastes, under the RCRA, that are subject to a graduated system of procedural and substantive controls when they move across national borders within the OECD for recovery (Checklist 152).

Georgia's program revisions are summarized in the table below:

| Checklist | Description | Federal Register date and page | State authority |
|---|---|---|---|
| 145* | Hazardous Waste Management Liquids in Landfills | 60 FR 35705, 07–11–95 | 391–3–11–.10 |
| 148 | RCRA Expanded Public Participation | 60 FR 63431, 12–11–95 | 391–3–11–.11 |
| 150* | Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste. | 61 FR 13106, 03–26–96 | 391–3–11–.07 |
| 151 | Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Waste, and Spent Potliners. | 61 FR 15597, 04–08–96<br>61 FR 15662, 04–08–96<br>61 FR 19117, 04–30–96<br>61 FR 33682, 06–28–96<br>61 FR 36419, 07–10–96<br>61 FR 43927, 08–26–96<br>62 FR 7504, 02–19–97 | 391–3–11–.16 |
| 152 | Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision. | 61 FR 16309, 04–12–96 | 391–3–11–.07<br>391–3–11–.08<br>391–3–11–.09<br>391–3–11–.10<br>391–3–11–.18 |

*Denotes optional rule.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

The State of Georgia's Hazardous Waste Management Program is not being authorized to operate in Indian Country.

## C. Decision

I conclude that Georgia's application for program revision authorization

meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Georgia Final Authorization to operate its hazardous waste program as revised. Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its program application, and its previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

*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 certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under Georgia's program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program. The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities. Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

*Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 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. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13045*

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the final rule is not subject to the requirements of Executive Order 13045.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus

standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Excessive paperwork, Hazardous waste, Hazardous waste transportation, Indian Country, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

**Authority:** This document is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 10, 1998.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 98–24735 Filed 9–17–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–6161–2]**

## National Priorities List for Uncontrolled Hazardous Waste Sites

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

This rule adds 1 new site to the General Superfund section of the NPL.

**EFFECTIVE DATE:** The effective date for this amendment to the NCP shall be October 19, 1998.

**ADDRESSES:** For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, ''Availability of Information to the Public'' in the ''Supplementary Information'' portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Keidan, phone (703) 603–8852, State and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC metropolitan area.

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### I. Background

*What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, 100 Stat. 1613 et seq.

*What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under Section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

*What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or

contaminants throughout the United States. The list, which is Appendix B of the NCP (40 CFR Part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. However, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites being addressed generally by other Federal agencies (the ''Federal Facilities Section''). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

*How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP):

(1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as Appendix A of the NCP (40 CFR Part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

(2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)).

(3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 6, 1998 (63 FR 11331).

*What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

*How Are Site Boundaries Defined?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.430(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are

completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

*How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

To date, the Agency has deleted 175 sites from the NPL.

*Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of September 1998, EPA has deleted portions of 11 sites.

*What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL.

In addition to the 166 sites that have been deleted from the NPL because they have been cleaned up (9 additional sites have been deleted based on deferral to other authorities and are not considered cleaned up), an additional 360 sites are also on the NPL CCL. Thus, as of September 1, 1998, the CCL consists of 526 sites.

## II. Availability of Information to the Public

*Can I Review the Documents Relevant to This Final Rule?*

Yes, the documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the Region 6 office.

*What Documents Are Available for Review at the Headquarters Docket?*

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—Tex-Tin Corporation, September 1998.''

*What Documents Are Available for Review at the Region 6 Docket?*

The Region 6 docket contains all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 6 docket.

*How Do I Access the Documents?*

You may view the documents, by appointment only, after the publication of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 6 Docket for hours.

You may also request copies from the Headquarters or the Region 6 docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any document.

Following is the contact information for the EPA Headquarters and the Region 6 dockets:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917

Brenda Cook, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6SF–RA, Dallas, TX 75202–2733, 214/655–7436

*How Can I Obtain a Current List of NPL Sites?*

You may obtain a current list of NPL sites via the internet at WWW.EPA.GOV/SUPERFUND (look under site information category) or by contacting the Superfund Docket (see contact information above).

## III. Contents of This Final Rule

*Addition to the NPL*

This final rule adds 1 site to the General Superfund section of the NPL:

The Tex-Tin Corp. site in Texas City, Texas. Its group number is 5/6.

Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has an HRS score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

*Status of NPL*

With the new site added in today's rule, the NPL now contains 1,194 sites, 1,041 in the General Superfund Section and 153 in the Federal Facilities Section. There are now 55 sites proposed and awaiting final agency action, 46 in the General Superfund Section and 9 in the Federal Facilities Section. Final and proposed sites now total 1,249.

*What Did EPA Do With the Public Comments It Received?*

EPA reviewed all comments received on the site in this rule. Based on comments received on the proposed site (published at 61 FR 30575, June 17, 1996), as well as investigation by EPA and the state (generally in response to comment), EPA responded to all relevant comments received. EPA's responses to site-specific public comments are addressed in the

''Support Document for the Revised National Priorities List Final Rule—Tex-Tin Corporation, September 1998.''

## IV. Executive Order 12866

*What Is Executive Order 12866?*

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether a 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.

*Is This Final Rule Subject to Executive Order 12866 Review?*

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

## V. Unfunded Mandates

*What Is the Unfunded Mandates Reform Act (UMRA)?*

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. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

*Does UMRA Apply to This Final Rule?*

No, EPA has determined that this rule does 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. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

## VI. Effect on Small Businesses

*What Is the Regulatory Flexibility Act?*

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

*Does the Regulatory Flexibility Act Apply to This Final Rule?*

While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding a site to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of any cleanup at the site. Further, no identifiable groups are affected. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when deciding on enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

## VII. Possible Changes to the Effective Date of the Rule

*Has This Rule Been Submitted to Congress and the General Accounting Office?*

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*Could the Effective Date of This Final Rule Change?*

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this notice, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

*What Could Cause the Effective Date of This Rule to Change?*

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

## VIII. National Technology Transfer and Advancement Act

*What Is the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

*Does the National Technology and Advancement Act Apply to This Final Rule?*

EPA is not using new test methods or other technical standards as part of today's rule, which adds a site to the NPL. Therefore, the Agency did not consider the use of any voluntary consensus standards in developing this final rule. EPA invites public comment on this analysis.

## IX. Executive Order 13045

*What Is Executive Order 13045?*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

*Does Executive Order 13045 Apply to This Final Rule?*

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

## X. Paperwork Reduction Act

*What Is the Paperwork Reduction Act?*

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

*Does the Paperwork Reduction Act Apply to This Final Rule?*

This action does not impose any burden requiring OMB approval under the Paperwork Reduction Act.

## XI. Executive Order 12875

*What Is Executive Order 12875 and Is It Applicable to This Final Rule?*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This final rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

## XII. Executive Order 13084

*What Is Executive Order 13084 and Is It Applicable to This Final Rule?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities.

Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

## List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 3, 1998.

**Michael H. Shapiro,**

*Acting Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.*

40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

## Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by adding the following site in alphabetical order to read as follows:

## Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

| State | Site name | City/ County | Notes(a)s |
|---|---|---|---|
| * | * | * | * |
| TX ..... | Tex-Tin Corp. | Texas City. | |
| * | * | * | * |

[FR Doc. 98–25087 Filed 9–17–98; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 65

**[Docket No. FEMA–7265]**

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief Executive Officer of community | Effective date community of modification | Community No. |
|---|---|---|---|---|---|
| Florida: Polk ..... | Unincorporated Areas. | June 4, 1998, June 11, 1998, *Lakeland Ledger*. | Mr. Jim Keene, Polk County Manager, P.O. Box 9005, Drawer CA 01, Bartow, Florida 33831. | May 28, 1998 ..... | 120261 D |
| Maine: Hancock .... | Town of Gouldsboro. | June 25, 1998, July 2, 1998, *Ellsworth American*. | Mr. Larry Barnes, Town Manager, P.O. Box 68, Prospect Harbor, Maine 04669. | June 16, 1998 ..... | 230283 B |
| Massachusetts: Middlesex. | City of Lowell ..... | July 20, 1998, July 27, 1998, *The Sun*. | Mr. Brian J. Martin, Manager of the City of Lowell, 375 Merrimack Street, Lowell, Massachusetts 01852. | October 25, 1998 | 250201 D |
| Mississippi: Marshall. | Town of Byhalia ... | June 4, 1998, June 11, 1998, *The South Reporter*. | The Honorable Bill Fisher, Mayor of the Town of Byhalia, P.O. Box 348, 2404 Church Street, lia, Mississippi 38611. | September 9, 1998. | 280112 B |
| Ohio: Warren ..... | City of Mason ..... | July 15, 1998, July 22, 1998, *Community Press of Mason*. | The Honorable Betty Davis, Mayor of the City of Mason, 202 West Main Street, Mason, Ohio 45040. | January 6, 1999 ... | 390559 C |
| South Carolina: Spartanburg. | Unincorporated Areas. | July 2, 1998, July 9, 1998, *Herald-Journal*. | Mr. Roland Windham, Spartanburg County Administrator, P.O. Box 5666, Spartanburg, South Carolina 29304. | June 18, 1998 ..... | 450176 B |
| Virginia: Loudoun .. | Unincorporated Areas. | May 6, 1998, May 13, 1998, *Loudoun Times-Mirror*. | Mr. Kirby Bowers, Loudoun County Administrator, P.O. Box 7000, Leesburg, Virginia 20177–7000. | August 11, 1998 .. | 510090 C |
| Prince William ..... | Unincorporated Areas. | June 24, 1998, July 1, 1998, *Potomac News*. | Mr. H. B. Ewert, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192. | June 18, 1998 ..... | 510119 D |
| West Virginia: Monongalia. | Unincorporated Areas. | July 16, 1998, July 23, 1998, *The Dominion Post*. | Mr. John W. Pyles, President, Monongalia County Commission, 243 High Street, Morgantown, West Virginia 26505. | July 8, 1998 ..... | 540139 B |
| Wisconsin: Fond du Lac. | City of Fond du Lac. | June 29, 1998, July 6, 1998, *The Reporter*. | Mr. Steve Nenonen, Fond du Lac City Manager, City-County Government Center, 160 South Macy Street, P.O. Box 150, Fond du Lac, Wisconsin 54936–0150. | October 4, 1998 ... | 550136 D |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 11, 1998.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 98–25073 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–03–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 67

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **ALABAMA** | |
| **Bessemer (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Valley Creek:* | |
| Approximately 165 feet upstream of 15th Street bridge | *459 |
| Approximately 0.38 mile upstream of U.S. Route 11 | *487 |
| *Shades Creek:* | |
| Approximately 75 feet upstream of Dickey Springs Road | *497 |
| Approximately 1.05 miles upstream of Morgan Road | *514 |
| *Unnamed Creek 41:* | |
| Approximately 1,675 feet upstream of 18th Avenue | *473 |
| Approximately 0.38 mile upstream of 18th Avenue | *473 |
| *Fivemile Creek (Valley Creek Basin):* | |
| (Backwater on an Unnamed Tributary) Approximately 800 feet upstream of Old U.S. Route 11 | *482 |
| **Maps available for inspection** at the City Hall/Engineering Department, 1800 3rd Avenue North, Bessemer, Alabama. | |
| **Birmingham (City), Jefferson County (FEMA Docket Nos. 7105 and 7255)** | |
| *Tarrant Springs Branch:* | |
| Approximately 25 feet upstream of confluence of Fivemile Creek | *591 |
| Approximately 250 feet downstream of Carson Road | *708 |
| *Valley Creek:* | |
| Approximately 750 feet upstream of U.S. Route 11 | *486 |
| Approximately 1,200 feet upstream of 4th Avenue | *565 |
| *Unnamed Creek 10:* | |
| Approximately 700 feet downstream of Houston Road | *659 |
| Approximately 450 feet upstream of Houston Road | *672 |
| *Black Creek (Fivemile Creek Basin):* | |
| At confluence with Fivemile Creek | *426 |
| Approximately 1,250 feet upstream of confluence with Fivemile Creek | *427 |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Village Creek:* | |
| Approximately 150 feet upstream of Avenue F | *523 |
| Approximately 800 feet downstream of Red Lang Road | *679 |
| *Unnamed Creek 32:* | |
| Approximately 0.4 mile downstream of 50th Street | *594 |
| Approximately 0.22 mile upstream of 64th Place South | *652 |
| *Old Unnamed Creek 34:* | |
| At confluence with Village Creek | *668 |
| At confluence with Unnamed Creek 34 | *684 |
| *Unnamed Creek 34:* | |
| At confluence with Village Creek | *679 |
| Approximately 0.47 mile upstream of Private Road | *695 |
| *Pinchgut Creek:* | |
| Approximately 0.67 mile upstream of Chalkville Road | *696 |
| Approximately 1,225 feet upstream of Industrial Road | *734 |
| *Dry Creek (Fivemile Creek Basin):* | |
| At the confluence with Fivemile Creek | *721 |
| Approximately 150 feet upstream of Westridge Road | *797 |
| *Fivemile Creek:* | |
| Approximately 0.4 mile downstream of Mineral Springs Republic Road | *392 |
| Approximately 0.4 mile upstream of confluence of Dry Creek (Fivemile Creek Basin) | *731 |
| *Shades Creek:* | |
| Approximately 850 feet downstream of Shannon Landfill Road | *604 |
| Approximately 0.88 mile upstream of Norris Dump Road | *748 |
| *Cotton Mill Branch:* | |
| At downstream side of Southern Railway | *582 |
| Approximately 350 feet upstream of First Avenue | *603 |
| *Unnamed Creek 23:* | |
| Just upstream of intersection between Lawson Road and Wedgewood Drive | *618 |
| At Robin Wood Drive | *637 |
| *Nabors Branch:* | |
| At confluence with Valley Creek | *519 |
| Approximately 50 feet downstream of Southern Railway | *522 |
| **Maps available for inspection** at the City Hall, Planning and Engineering Office, 710 North 20th Street, 5th Floor, Birmingham, Alabama. | |
| **Brighton (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Valley Creek:* | |
| Approximately 750 feet upstream of U.S. Route 11 | *486 |
| Approximately 50 feet downstream of Jaybird Road | *477 |
| **Maps available for inspection** at the City Hall, 3700 Main Street, Brighton, Alabama. | |
| **Brookside (Town), Jefferson County (FEMA Docket No. 7105)** | |
| *Fivemile Creek:* | |
| At downstream corporate limit | *366 |
| At upstream corporate limit | *380 |
| *Newfound Creek:* | |
| From its confluence with Fivemile Creek | *367 |
| At upstream corporate limits | *367 |
| **Maps available for inspection** at the Town Hall, 107 Market Street, Brookside, Alabama. | |
| **Cardiff (Town), Jefferson County (FEMA Docket No. 7105)** | |
| *Fivemile Creek:* | |
| Approximately 500 feet downstream of Cardiff Road | *364 |
| Approximately 1,000 feet upstream of Cardiff Road | *364 |
| **Maps available for inspection** at the Town Hall, Main Street, Cardiff, Alabama. | |
| **Fultondale (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Fivemile Creek:* | |
| At downstream corporate limit | *492 |
| At upstream corporate limit | *514 |
| **Maps available for inspection** at the City Hall, 1005 Walker Chapel Road, Fultondale, Alabama. | |
| **Graysville (City), Jefferson County (FEMA Docket Nos. 7105 and 7255)** | |
| *Fivemile Creek:* | |
| At downstream corporate limits | *323 |
| At upstream corporate limits | *330 |
| *Unnamed Creek 13:* | |
| At corporate limits | *378 |
| **Maps available for inspection** at the City Hall, 246 South Main Street, Graysville, Alabama. | |
| **Homewood (City), Jefferson County (FEMA Docket Nos. 7105 and 7255)** | |
| *Shades Creek:* | |
| Approximately 0.73 mile downstream of Interstate 65 | *621 |
| Approximately 1,500 feet downstream of U.S. Route 280 | *650 |
| **Maps available for inspection** at the Homewood Zoning Department, 175 Citation Court, Homewood, Alabama. | |
| **Hoover (City), Jefferson County (FEMA Docket Nos. 7105 and 7255)** | |
| *Patton Creek:* | |
| Approximately 530 feet upstream of Hurricane Branch | *424 |
| Approximately 600 feet upstream of Southland Drive | *513 |
| *Little Shades Creek (Cahaba River Basin):* | |
| Approximately 1,750 feet upstream from Old Rocky Ridge Road | *431 |
| Approximately 500 feet upstream of Loch Haven Road | *431 |
| *Hurricane Branch:* | |
| At Al Seier Road | *447 |
| Approximately 500 feet downstream of Private Road | *510 |
| **Maps available for inspection** at the City Hall, 100 Municipal Drive, Hoover, Alabama. | |
| **Hueytown (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Valley Creek:* | |
| Approximately 1,100 feet upstream of the confluence of Halls Creek | *455 |
| Approximately 0.6 mile upstream of 19th Street | *464 |
| **Maps available for inspection** at the City Hall Annex, 1320 Hueytown Road, Hueytown, Alabama. | |
| **Irondale (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Shades Creek:* | |
| Approximately 0.64 mile upstream of Grover Drive | *690 |
| Approximately 1,600 feet downstream of Norris Dump Road | *725 |
| **Maps available for inspection** at the City Hall/City Clerk's Office, 101 South 20th Street, Irondale, Alabama. | |
| **Jefferson County (Unincorporated Areas) (FEMA Docket Nos. 7105 and 7255)** | |
| *Unnamed Creek 11:* | |
| At the confluence with Unnamed Creek 10 | *616 |
| Approximately 130 feet upstream of Wood Drive Circle | *692 |
| *Barton Branch:* | |
| Just upstream of Sttae Highway 79 | *573 |
| Approximately 75 feet upstream of Goodrich Drive | *627 |
| *Tarrant Springs Branch:* | |
| Approximately 0.62 mile upstream of confluence with Fivemile Creek | *609 |
| Approximately 400 feet downstream of Carson Road | *707 |
| *Huckleberry Branch:* | |
| Approximately 825 feet upstream of Tyler Road | *513 |
| Approximately 0.27 mile upstream of Mountain Oaks Drive | *824 |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Patton Creek:* | |
| Approximately 300 feet upstream from confluence with Hurricane Branch | *424 |
| Downstream side of Westridge Drive | *533 |
| *Turkey Creek:* | |
| Approximately 0.67 mile downstream of Old Bradford Road | *565 |
| Approximately 325 feet upstream of Springville Road | *880 |
| *Unnamed Creek 9:* | |
| At the confluence with Turkey Creek | *587 |
| At upstream side of Pinson Heights Road | *633 |
| *Unnamed Creek 10:* | |
| At the confluence with Unnamed Creek 9 | *597 |
| Approximately 450 feet upstream of Houston Road | *672 |
| *Valley Creek:* | |
| Approximately 0.84 mile upstream of County Route 54 | *329 |
| Approximately 0.3 mile upstream of Midfield Street | *511 |
| *Dry Creek (Fivemile Creek Basin):* | |
| Approximately 550 feet upstream of confluence with Fivemile Creek | *725 |
| At Chalkville Road | *958 |
| *Pinchgut Creek:* | |
| Approximately 845 feet downstream of Chalkville Road | *691 |
| Approximately 1.44 miles upstream Morris Springs Lane | *851 |
| *Hurricane Branch:* | |
| Approximately 1,300 feet upstream of confluence with Patton Creek | *425 |
| Approximately 1.04 miles upstream of Al Seier Road | *536 |
| *Little Shades Creek (Cahaba River Basin):* | |
| Approximately 1,300 feet downstream of U.S. Highway 459 | *431 |
| Approximately 200 feet upstream of Cahaba Heights Road | *623 |
| *Shades Creek:* | |
| Approximately 0.4 mile downstream of confluence with Black Creek | *393 |
| Approximately 0.88 mile upstream of Norris Dump Road | *745 |
| *Fivemile Creek:* | |
| Approximately 1.4 miles upstream of the confluence with Locust Creek | *294 |
| Approximately 1,500 feet upstream of Curtis Drive | *840 |
| *Newfound Creek:* | |
| At downstream corporate limit of Town of Brookside | *367 |
| Approximately 1.5 miles downstream of Louisville and Nashville Railroad | *373 |
| *Halls Creek:* | |
| At confluence with Valley Creek | *455 |
| Approximately 370 feet upstream of Interstate Routes 20 and 59 | *455 |
| *Unnamed Creek 38:* | |
| At confluence with Halls Creek | *455 |
| Approximately 750 feet upstream of confluence with Halls Creek | *456 |
| *Opossum Creek:* | |
| At confluence with Valley Creek | *469 |
| Approximately 1,450 feet upstream of confluence with Valley Creek | *469 |
| *Unnamed Creek 45:* | |
| Approximately 875 feet upstream from confluence with Valley Creek | *504 |
| Approximately 0.2 mile upstream of confluence with Valley Creek | *504 |
| *Unnamed Creek 41:* | |
| At confluence with Valley Creek | *465 |
| Upstream of U.S. Highways 20 and 59 | *473 |
| **Maps available for inspection** at the Jefferson County Courthouse/Land Development, Room 202A, 716 North 21st Street, Birmingham, Alabama. | |
| **Kimberly (Town), Jefferson County (FEMA Docket No. 7105)** | |
| *Locust Fork:* | |
| Approximately 0.4 mile downstream of I–65 | *351 |
| Approximately 800 feet upstream of I–65 | *352 |
| *Turkey Creek:* | |
| At downstream corporate limits | *350 |
| At upstream corporate limits | *350 |
| **Maps available for inspection** at the Town Hall, 9256 Stouts Road, Kimberly, Alabama. | |
| **Lipscomb (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Unnamed Creek 43:* | |
| Approximately 50 feet upstream of U.S. Route 11 | *484 |
| Approximately 1,750 feet upstream of U.S. Route 11 | *484 |
| **Maps available for inspection** at the City Hall, 5512 Avenue H, Lipscomb, Alabama. | |
| **Midfield (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Valley Creek:* | |
| Approximately 400 feet downstream of Cairo Avenue | *496 |
| Approximately 1,850 feet upstream of Midfield Street | *511 |
| *Unnamed Creek 46:* | |
| At downstream corporate limit | *506 |
| Downstream side of U.S. Route 11 | *518 |
| *Unnamed Creek 45:* | |
| At confluence with Valley Creek | *499 |
| Approximately 875 feet upstream of confluence with Valley Creek | *503 |
| **Maps available for inspection** at the City Hall, 725 Bessemer Super Highway, Midfield, Alabama. | |
| **Morris (Town), Jefferson County (FEMA Docket No. 7105)** | |
| *Turkey Creek:* | |
| Approximately 0.79 mile downstream of Sardis Road | *361 |
| Approximately 600 feet upstream of Old U.S. Route 31 | *373 |
| **Maps available for inspection** at the Town Hall, 8304 State Road, Morris, Alabama. | |
| **Mountain Brook (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Little Shades Creek (Cahaba Basin):* | |
| Approximately 1,000 feet downstream of Caldwell Mill Road | *576 |
| Approximately 150 feet upstream of U.S. Highway 280 | *598 |
| *Shades Creek:* | |
| Approximately 100 feet downstream of Windsor Drive | *650 |
| Approximately 0.59 mile upstream of Grover Drive | *690 |
| **Maps available for inspection** at the City Hall, 56 Church Street, Mountain Brook, Alabama. | |
| **Tarrant City (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Fivemile Creek:* | *520 |
| Just upstream of Louisville and Nashville Railroad. | |
| Approximately 350 feet upstream of the confluence of Barton Branch | *568 |
| *Barton Branch:* | |
| At confluence with Fivemile Creek | *567 |
| Approximately 200 feet downstream of 6th Avenue | *581 |
| **Maps available for inspection** at the City Hall, 1604 Pinson Valley Parkway, Tarrant, Alabama. | |
| **Trussville (City), Jefferson County (FEMA Docket No. 7105)** | |
| *Pinchgut Creek:* | |
| Approximately 800 feet downstream of Southern Railroad | *691 |
| Approximately 0.44 mile upstream of Chalkville Road | *694 |
| **Maps available for inspection** at the City Hall, 131 Main Street, Trussville, Alabama. | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| VESTAVIA HILLS (CITY), JEFFERSON COUNTY (FEMA DOCKET NO. 7105) | |
| *Patton Creek:* | |
| Approximately 200 feet upstream of Creek View Drive | *509 |
| Just downstream of Westridge Drive | *533 |
| *Little Shades Creek (Cahaba River Basin):* | |
| Approximately 450 feet downstream of Gonnedo Road | *445 |
| Approximately 0.46 mile upstream of Rocky Ridge Road | *532 |
| *Huckleberry Branch:* | |
| At confluence with Patton Creek | *513 |
| Approximately 0.4 mile upstream of Hackenberry Lane | *636 |
| **Maps available for inspection** at the City Hall/City Clerk's Office, 513 Montgomery Highway, Vestavia Hills, Alabama. | |
| **MINNESOTA** | |
| **Red Wing (City), Goodhue County (FEMA Docket No. 7159)** | |
| *Mississippi River:* | |
| At downstream corporate limits | *682 |
| At upstream corporate limits | *687 |
| *Spring Creek:* | |
| At Chicago and Northwestern Railway | *693 |
| Approximately 0.8 mile upstream of Spring Creek Avenue | *799 |
| *Trout Brook:* | |
| At confluence with Hay Creek | *699 |
| Approximately 50 feet upstream of Pioneer Trail | *720 |
| *Hay Creek:* | |
| Chicago, Milwaukee, St. Paul, and Pacific Railroad | *686 |
| Approximately 350 feet downstream of Pioneer Trail | *705 |
| **Maps available for inspection** at the Building Department, 315 East Fourth Street, Red Wing, Minnesota. | |
| **Sibley County (Unincorporated Areas) (FEMA Docket No. 7190)** | |
| *Minnesota River:* | |
| Approximately 0.6 mile downstream of confluence of Rush River | *741 |
| At upstream side of Minnesota State Route 93 | *747 |
| **Maps available for inspection** at the Sible County Planning and Zoning Office, 400 Court Avenue, Gaylord, Minnesota. | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **NEW JERSEY** | |
| *Berkeley Heights (Township), Union County (FEMA Docket No. 7247)* | |
| *Green Brook:* | |
| At confluence of Blue Brook | *197 |
| Approximately 1,600 feet upstream of Apple Tree Road | *405 |
| *Blue Brook:* | |
| At confluence with Green Brook | *197 |
| Approximately 1.4 miles upstream of Seely's Pond Dam | *240 |
| *Branch Green Brook:* | |
| At confluence with Green Brook | *363 |
| Approximately 110 feet upstream of confluence with Green Brook | *363 |
| *Branch Blue Brook:* | |
| At confluence with Blue Brook | *210 |
| Approximately 10 feet upstream of confluence with Blue Brook | *210 |
| **Maps available for inspection** at the Berkeley Heights Township Engineering Office, 29 Park Avenue, Berkeley Heights, New Jersey. | |
| **Highlands (Borough), Monmouth County (FEMA Docket No. 7251)** | |
| *Sandy Hook Bay:* | |
| At the intersection of Bay Avenue and Central Avenue | *11 |
| Approximately 100 feet north from the intersection of Snug Harbor Avenue and Marine Place | *15 |
| *Shrewsbury River:* | |
| At shoreline Hillside Avenue extended | *11 |
| At shoreline Jackson Street extended | *13 |
| **Maps available for inspection** at the Borough of Highlands Municipal Building, 171 Bay Avenue, Highlands, New Jersey. | |
| **NORTH CAROLINA** | |
| **Alamance County (Unincorporated Areas) (FEMA Docket No. 7251)** | |
| *Cane Creek:* | |
| Approximately 1,700 feet upstream of the confluence with the Haw River | *420 |
| Just upstream of Bethel South Fork Road (SR 2351) | *501 |
| *Dry Creek:* | |
| Upstream side State Route 87 | *605 |
| Approximately 775 feet upstream of State Route 87 | *606 |
| *East Back Creek:* | |
| At confluence with the Haw River | *494 |
| Approximately 1,100 feet upstream of NC Highway 54 | *496 |
| *Gunn Creek:* | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 0.8 mile upstream of confluence with Big Alamance Creek | *504 |
| Approximately 1.0 mile upstream of confluence with Big Alamance Creek | *512 |
| *Meadow Creek:* | |
| Approximately 0.625 mile upstream of the confluence with the Haw River | *469 |
| Approximately 80 feet upstream of State Route 54 | *581 |
| *Mill Creek:* | |
| Approximately 0.61 mile downstream of Cooks Mill Road (SR 1920) | *534 |
| Approximately 0.61 mile downstream of Cooks Mill Road (SR 1920) | *534 |
| *Otter Creek:* | |
| At confluence with Graham-Mebane Lake | *534 |
| At upstream side of Mebane-Rogers Road | *620 |
| *Unnamed Tributary to East Back Creek:* | |
| At confluence with East Back Creek | *496 |
| Approximately 1.6 miles upstream of Governor Scott Farm Road | *581 |
| *Unnamed Tributary to the Haw River at Glencoe:* | |
| Approximately 550 feet upstream of confluence with Haw River | *572 |
| Approximately 50 feet upstream of Greenwood Drive (SR 1597) | *579 |
| *Varnals Creek:* | |
| Approximately 0.34 mile upstream of Preacher Holmes Road (SR 2116) | *472 |
| Approximately 0.92 mile upstream of Thompson Mill Road (SR 2328) | *555 |
| *Tickle Creek:* | |
| Approximately 0.52 mile upstream of State Route 1500 | *643 |
| Approximately 0.53 mile upstream of State Route 1500 | *643 |
| *Graham-Mebane Lake:* | |
| Entire shoreline within community | *534 |
| **Maps available for inspection** at the Alamance County Planning Department, 124 West Elm Street, Graham, North Carolina. | |
| **Burlington (City), Alamance County (FEMA Docket No. 7251)** | |
| *Gunn Creek:* | |
| Approximately 2,450 feet downstream of Anthony Road (SR 1148) | *512 |
| Approximately 1,300 feet upstream of Berwick Road | *638 |
| *Michaels Branch:* | |
| Approximately 320 feet upstream of confluence with West Back Creek | *575 |
| Approximately 50 feet upstream of U.S. Highway 70 | *616 |
| *Dry Creek:* | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Upstream side Powerline Road | *631 |
| Upstream side of Private Drive | *631 |
| *Unnamed Tributary to Gunn Creek:* | |
| Confluence with Gunn Creek | *540 |
| Upstream side of Interstate Route 40 and 85 | *623 |
| **Maps available for inspection** at the Burlington Engineering Department, 425 South Lexington Avenue, Burlington, North Carolina. | |
| **Elon College (Town), Alamance County (FEMA Docket No. 7251)** | |
| *Dry Creek:* | |
| Approximately 775 feet upstream of State Route 87 | *606 |
| Downstream side of Powerline Road | *626 |
| *Gunn Creek:* | |
| Approximately 1,300 feet upstream of Berwick Road | *638 |
| Approximately 1,100 feet upstream of Berwick Road | *636 |
| **Maps available for inspection** at the Elon College Town Hall, 104 South Williamson Avenue, Elon College, North Carolina. | |
| **Graham (City), Alamance County (FEMA Docket No. 7251)** | |
| *Steelhouse Branch:* | |
| Approximately 125 feet upstream of Gilbreath Street | *495 |
| Approximately 75 feet upstream of Ivey Street | *534 |
| *East Back Creek:* | |
| Approximately 350 feet upstream of State Route 54 | *494 |
| Approximately 5,800 feet upstream of Trollingwood Road (SR 1940) | *514 |
| *Unnamed Tributary to East Creek:* | |
| At the confluence with East Back Creek | *496 |
| Approximately 1.45 mile upstream of Governor Scott Farm Road (SR 2124) | *572 |
| **Maps available for inspection** at the Graham City Hall, 201 South Main Street, Graham, North Carolina. | |
| Green Level (Town), Alamance County (FEMA Docket No. 7251). | |
| *Otter Creek:* | |
| At upstream side of Deer Run Trail | *594 |
| Approximately 575 feet upstream of Deer Run Trail | *596 |
| **Maps available for inspection** at the Green Level Town Hall, 2510 Green Level Church Road, Green Level, North Carolina. | |
| Haw River (Town), Alamance County (FEMA Docket No. 7251) | |
| *East Back Creek:* | |
| Approximately 1.5 miles downstream of Stone Street Extension | *513 |
| At toe of Graham-Mebane Lake Spillway | *522 |
| *Graham-Mebane Lake:* | |
| Entire shoreline within community | *534 |
| *East Back Creek (Overflow Path):* | |
| At the confluence with East Back Creek | *515 |
| Approximately 700 feet downstream of Southern Railway | *517 |
| *McAdams Creek:* | |
| At confluence with East Back Creek (Overflow Path) | *517 |
| Approximately 58 miles upstream of confluence with East Back Creek (Overflow Path) | *517 |
| **Maps available for inspection** at the Haw River Town Hall, 403 East Main Street, Haw River, North Carolina. | |
| Mebane (City), Alamance County (FEMA Docket No. 7251). | |
| *Mill Creek:* | |
| Approximately 0.58 mile downstream of Cooks Mill Road (SR 1920) | *534 |
| Approximately 1.27 miles upstream of North First Street (State Route 119) | *584 |
| *Unnamed Tributary to East Back Creek:* | |
| 1.7 miles upstream of Governor Scott Farm Road (State Route 2124) | *580 |
| 2.2 miles upstream of Governor Scott Farm Road (State Route 2124) | *592 |
| *Graham-Mebane Lake:* | |
| Entire shoreline within community | *534 |
| *Eastside Creek:* | |
| At confluence with Mill Creek | *564 |
| Approximately 200 feet downstream of Diet Road | *566 |
| *Lake Michael Tributary:* | |
| Confluence with Mill Creek | *581 |
| Approximately 300 feet upstream of confluence with Mill Creek | *585 |
| **Maps available for inspection** at the Mebane City Hall, 106 East Washington Street, Mebane, North Carolina. | |
| **Pennsylvania** | |
| **Reynoldsville (Borough), Jefferson County (FEMA Docket No. 7219)** | |
| *Soldier Run:* | |
| Approximately 600 feet upstream of Worth Street | *1,368 |
| At corporate limits | *1,376 |
| **Maps available for inspection** at the Reynoldsville Municipal Building, 460 Main Street, Reynoldsville, Pennsylvania. | |
| **TENNESSEE** | |
| **Murfreesboro (City), Rutherford County (FEMA Docket Nos. 7182 and 7243)** | |
| *Lytle Creek:* | |
| Approximately 200 feet upstream of Old Fort Parkway at the upstream side of Louisville and Nashville Railroad | *581 |
| Approximately 200 feet upstream of Country Club Drive | *604 |
| *Bushman Creek:* | |
| At upstream side of Compton Road | *546 |
| Approximately 200 feet downstream of New Lascassas Road | *585 |
| *Middle Fork Stones River:* | |
| At confluence with West Fork Stones River | *597 |
| Approximately 0.6 mile upstream of confluence with West Fork Stones River | *597 |
| **Maps available for inspection** at the Murfreesboro City Hall, City Planning Department, 111 West Vine Street, Murfreesboro, Tennessee. | |
| **Smyrna (Town), Rutherford County (FEMA Docket Nos. 7182 and 7243)** | |
| *Stewart Creek:* | |
| Approximately 0.6 mile downstream of 8th Avenue | *506 |
| Approximately 500 feet upstream of I–24 Eastbound | *547 |
| *Rock Spring Branch:* | |
| Approximately 0.29 mile upstream of confluence with Harts Branch | *543 |
| Approximately 0.33 mile upstream of Last Crossing of Rock Spring Road | *702 |
| *J. Percy Priest Reservoir:* | |
| Shoreline within community | *506 |
| *Olive Branch:* | |
| At the confluence with Stewart Creek | *532 |
| Approximately 375 feet upstream of Rosewood Drive | *559 |
| *West Fork Stones River:* | |
| Approximately 0.5 mile southeast of intersection of Enon Springs Road and Florence Road | *509 |
| Northwest corner of intersection of Wade Herrod Road and Florence Road | *520 |
| **Maps available for inspection** at the Smyrna Town Hall, 315 South Lowry Street, Smyrna, Tennessee. | |
| **WEST VIRGINIA** | |
| **Jefferson County (Unincorporated Areas) (FEMA Docket No. 7247)** | |
| *Rockymarsh Run:* | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 430 feet downstream of Billmyer Mill Road | *411 |
| Approximately 700 feet upstream of State Route 45 | *442 |
| *Tributary to Rockymarsh Run:* | |
| At confluence with Rockymarsh Run | *427 |
| Approximately 820 feet upstream of State Route 45 | *436 |
| **Maps available for inspection** at the Jefferson County Clerk's Office, 100 East Washington Street, Charlestown, West Virginia. | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 11, 1998.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 98–25074 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–04–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 65

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Georgia: | | | | | |
| Glynn (FEMA Docket No. 7249). | Unincorporated Areas. | December 19, 1997, December 26, 1997, *Brunswick News*. | Mr. Lee Gilmour, Glynn County Administrator, P.O. Box 879, Brunswick, Georgia 31521. | December 11, 1997. | 130092 D |
| Illinois: | | | | | |
| Kane & Cook (FEMA Docket No. 7249). | City of Elgin ..... | November 5, 1997, November 12, 1997, *The Courier-News*. | The Honorable Kevin Kelly, Mayor of the City of Elgin, 150 Dexter Court, Elgin, Illinois 60120–5555. | October 29, 1997 | 170087 C |
| Lake (FEMA Docket No. 7245). | Unincorporated Areas. | September 11, 1997, September 18, 1997, *News-Sun*. | Mr. Robert L. Grever, Chairman of the Lake County Board, 18 North County Street, Room 901, Waukegan, Illinois 60085. | December 17, 1997. | 170357 F |
| Will (FEMA Docket No. 7249). | Unincorporated Areas. | January 14, 1998, January 21, 1998, *Herald-News*. | Mr. Charles R. Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432. | April 21, 1998 ..... | 170695 E |
| Indiana: | | | | | |
| Noble (FEMA Docket No. 7249). | Unincorporated Areas. | December 24, 1997, December 31, 1997, *Albion New Era*. | Mr. Harold Troyer, President of the Noble County Board of Commissioners, 3378 South 500 East, Laotto, Indiana 46763. | March 31, 1998 .... | 180183 A |
| Kentucky: | | | | | |
| Warren (FEMA Docket No. 7249). | City of Bowling Green. | October 21, 1997, October 28, 1997, *Daily News*. | The Honorable Elden Renaud, Mayor of the City of Bowling Green, P.O. Box 430, Bowling Green, Kentucky 42102–0430. | October 14, 1997 | 210219 D |
| Maine: | | | | | |
| Cumberland (FEMA Docket No. 7249). | Town of Harpswell | December 24, 1997, December 31, 1997, *Times Record*. | Mr. Robert E. Waddle, First Selectman for the Town of Harpswell, P.O. Box 139, South Harpswell, Maine 04079. | December 17, 1997. | 230169 C |
| Massachusetts: | | | | | |
| Worcester (FEMA Docket No. 7253). | Town of Milford .... | January 13, 1998, January 20, 1998, *Milford Daily News*. | Mr. John Speroni, Jr., Chairman of the Board of Selectmen, Town of Milford, 52 Main Street, Milford, Massachusetts 01757. | April 20, 1998 ..... | 250317 B |
| Michigan: | | | | | |
| Oakland (FEMA Docket No. 7253). | City of Novi ..... | February 12, 1998, February 19, 1998, *Novi News*. | The Honorable Kathleen McCallen, Mayor of the City of Novi, Civic Center, 45175 West Ten Mile Road, Novi, Michigan 48375–3024. | February 5, 1998 | 260175 C |
| Wayne & Oakland (FEMA Docket No. 7249). | City of Northville .. | November 6, 1997, November 13, 1997, *Northville Record*. | The Honorable Christopher J. Johnson, Mayor of the City of Northville, City Hall, 215 West Main Street, Northville, Michigan 48167. | February 11, 1998 | 260235 A |
| Wayne (FEMA Docket No. 7249). | City of Grosse Pointe Park. | November 20, 1997, November 27, 1997, *Grosse Pointe News*. | The Honorable Palmer Heenan, Mayor of the City of Grosse Pointe Park, 15115 East Jefferson Avenue, Grosse Pointe Park, Michigan 48230. | May 18, 1998 ..... | 260230 B |
| New Jersey: | | | | | |
| Middlesex (FEMA Docket No. 7253). | Borough of Metuchen. | February 20, 1998, February 27, 1998, *Metuchen/Edison Review*. | The Honorable Edmund O'Brien, Mayor of the Borough of Metuchen, P.O. Box 592, Borough Hall, Metuchen, New Jersey 08840. | May 28, 1998 ..... | 340266 A |
| Morris (FEMA Docket No. 7249). | Township of Jefferson. | December 17, 1997, December 24, 1997, *Aim Newspapers*. | The Honorable Evelyn Brown, Mayor of the Township of Jefferson, 1033 Weldon Street, Lake Hopatcong, New Jersey 07849. | March 24, 1998 .... | 340522 B |
| Morris (FEMA Docket No. 7249). | Borough of Morris Plains. | November 27, 1997, December 4, 1997, *Morris News-Bee*. | The Honorable Frank Druetzler, Mayor of the Borough of Morris Plains, 531 Speedwell Avenue, P.O. Box 305, Morris Plains, New Jersey 07950–0305. | March 4, 1998 ..... | 340351 B |
| New York: | | | | | |
| Erie (FEMA Docket No. 7249). | Town of Orchard Park. | December 20, 1997, December 27, 1997, *The Southtowns Citizen*. | Mr. Dennis J. Mill, Supervisor of the Town of Orchard Park, 4295 South Buffalo Street, Orchard Park, New York 14127. | March 27, 1998 .... | 360255 B |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Steuben (FEMA Docket No. 7249). | City of Hornell ..... | September 19, 1997, September 26, 1997, *The Evening Tribune*. | The Honorable Shawn D. Hogan, Mayor of the City of Hornell, 108 Broadway, Hornell, New York 14843. | September 12, 1997. | 360776 B |
| Steuben (FEMA Docket No. 7249). | Town of Hornellsville. | September 19, 1997, September 26, 1997 *The Evening Tribune*. | Mr. Charles Flanders, Supervisor for the Town of Hornellsville, P.O. Box 1, Ackport, New York 14807. | September 12, 1997. | 360777 B |
| Steuben (FEMA Docket No. 7249). | Village of North Hornell. | September 19, 1997, September 26, 1997, *The Evening Tribune*. | The Honorable Kenneth Beckerink, Mayor of the Village of of North Hornell, West Maplewood Avenue, Hornell, New York 14843. | September 12, 1997. | 361477 A |
| Ohio: | | | | | |
| Lake (FEMA Docket No. 7233). | Unincorporated Areas. | June 18, 1997, June 25, 1997, *The News Herald*. | Ms. Mildred Teuscher, President of the Lake County, Board of Commissioners, P.O. Box 490, 105 Main Street, Painesville, Ohio 44077. | June 11, 1997 ..... | 390771 C |
| Cuyahoga (FEMA Docket No. 7253). | City of Solon ..... | February 19, 1998, February 26, 1998 *Solon Times*. | The Honorable Kevin C. Patton, Mayor of the City of Solon, 34200 Bainbridge Road, Solon, Ohio 44139. | February 12, 1998 | 390130 B |
| Lorain (FEMA Docket No. 5249). | City of Avon ..... | February 4, 1997, February 11, 1997, *The Morning Journal*. | The Honorable James A. Smith, Mayor of the City of Avon, 36774 Detroit Road, Avon, Ohio 44011–1588. | January 27, 1997 | 390348 C |
| South Carolina: | | | | | |
| Sumter (FEMA Docket No. 7249). | City of Sumter ..... | December 15, 1997, December 22, 1997 *The Item*. | Mr. Talmadge Tobias, City Manager for the City of Sumter, P.O. Box 1449, Sumter, South Carolina 29151. | December 9, 1997 | 450184 B |
| Virginia: | | | | | |
| Middlesex (FEMA Docket No. 7253). | Unincorporated Areas. | January 22, 1998, January 29, 1998, *The Southside Sentinel*. | Mr. Charles M. Culley, Jr., Middlesex County Commissioner, P.O. Box 428, Saluda, Virginia 23149. | January 16, 1998 | 510098 B |
| Wisconsin: | | | | | |
| Barron (FEMA Docket No. 7249). | Unincorporated Areas. | December 18, 1997, December 25, 1997, *The Chetek Alert*. | Mr. Arnold Ellison, County Board Chairman, Barron County Courthouse, 330 East LaSalle Avenue, Barron, Wisconsin 54812. | December 9, 1997 | 550568 C |
| Waukesha (FEMA Docket No. 7249). | City of Muskego ... | December 11, 1997, December 18, 1997, *Muskego Sun*. | The Honorable David DeAngelis, Mayor of the City of Muskego, W182 South 8200 Racine Avenue, Muskego, Wisconsin 53150. | December 3, 1997 | 550486 B |
| Ozaukee (FEMA Docket No. 7253). | Unincorporated Areas. | January 22, 1998, January 29, 1998, *Ozaukee Press*. | Mr. Leroy Bley, Ozaukee County Chairman of the Board of Supervisors, 121 West Main Street, P.O. Box 994, Port Washington, Wisconsin 53074–0994. | January 14, 1998 | 550310 D |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 11, 1998.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 98–25076 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–03–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

**[CC Docket No. 96–262, 94–1, 91–213; FCC 97–368]**

### Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects portions of the Commission's rules that were published in the **Federal Register** of October 29, 1997 (62 FR 56121).

**DATES:** Effective on September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Britt (202) 418–0310.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document amending part 69 of the Commission's rules in the **Federal Register** of October 29, 1997 (62 FR 56121), this document corrects 47 CFR 69.153 as it appeared. In rule FR Doc. 97–28548, published on October 29, 1997, (62 FR 56121) make the following correction:

**§ 69.153 [Corrected]**

1. On page 56132, in the third column, § 69.153 amendatory instruction no. 80 is corrected to read as follows:

80. Section 69.153 is amended by revising paragraphs (c)(1), (d) introductory text, (d)(1) introductory text, (d)(1)(i), (d)(2) introductory text and (d)(2)(i) and adding paragraph (g) to read as follows:

Dated: September 11, 1998.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–24976 Filed 9–17–98; 8:45 am]

BILLING CODE 6712–01–M

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 21 and 78

**[ET Docket No. 97–94; FCC–58]**

## Streamlining the Equipment Authorization Process; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects portions of the Commission's rules that were published in the **Federal Register** of July 7, 1998 (63 FR 36591).

**DATES:** Effective on September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Barbara Britt (202) 418–0310.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document amending part 21 of the Commission's rules in the **Federal Register** of July 7, 1998 (63 FR 36591), this document corrects 47 CFR 21.42 as it appeared. In rule FR Doc. 98–17670, published on July 7, 1998, (63 FR 36603) make the following corrections:

**§ 21.42 [Corrected]**

1. On page 36603, in the third column, § 21.42 amendatory instruction no. 69 is corrected to read as follows:

69. Section 21.42, paragraph (c)(1)(i) is amended by removing the term ''type-accepted'' each place it appears and adding in its place ''certificated'' and by removing the term ''(or type notified)'' each place it appears.

**§ 78.107 [Amended]**

2. On page 36606, in the first column, § 78.107 amendatory instruction no. 106 is corrected to read as follows:

106. Section 78.107 is amended by removing paragraph (a) and by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (a), (b), (c), and (d). The newly redesignated paragraph (a) is amended by revising paragraph (a) introductory text, and paragraph (a)(2) introductory text to read as follows:

Dated: September 11, 1998.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–24975 Filed 9–17–98; 8:45 am]

BILLING CODE 6712–01–M

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MM Docket No. 97–246; RM–9205, RM–9250]**

## Radio Broadcasting Services; Walla Walla and Pullman, WA and Hermiston, OR; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects portions of the Commission's rules that were published in the **Federal Register** of July 29, 1998 (63 FR 40373).

**DATES:** Effective on September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Barbara Britt (202) 418–0310.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document amending part 73 of the Commission's rules in the **Federal Register** of July 29, 1998 (63 FR 40373), this document corrects 47 CFR 73.202 as it appeared. In rule FR Doc. 98–19906, published on July 29, 1998, (63 FR 40373) make the following correction:

1. On page 40374, in the first column, § 73.202 amendatory instruction no. 3 is corrected to read as follows:

**§ 73.202 [Corrected]**

3. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 257A and adding Channel 263A at Hermiston.

Dated: September 11, 1998.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–24978 Filed 9–17–98; 8:45 am]

BILLING CODE 6712–01–M

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

## Radio Broadcasting Services; Various Locations; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects portion of the Commission's rules that were published in the **Federal Register** of July 20, 1998 (63 FR 38756).

**DATES:** Effective on September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Barbara Britt (202) 418–0310.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document amending part 73 of the Commission's rules in the **Federal Register** of July 20, 1998 (63 FR 38756), this document corrects 47 CFR 73.202 as it appeared. In rule FR Doc. 98–19302, published on July 20, 1998, (63 FR 38757) make the following correction:

1. On page 38757, in the first column § 73.202 amendatory instruction no. 2 is corrected to read as follows:

**§ 73.202 [Corrected]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288A and adding Channel 288C2 at Apalachicola, by removing Channel 253C and adding Channel 253C1 at Crystal City, by removing Channel 249A and adding Channel 249C3 at Punta Rassa, and by removing Channel 245A and adding Channel 245C3 at Tavernier.

Dated: September 11, 1998.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–24977 Filed 9–17–98; 8:45 am]

BILLING CODE 6712–01–M

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 80

**[PR Docket No. 90–480, FCC 98–180]**

## Global Maritime Distress and Safety System

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission amended its rules to require that at-sea maintenance for GMDSS vessels be conducted by an FCC-licensed technician holding a GMDSS Maintainer's License and providing a grace period until February 1999, so that existing technicians have an opportunity to obtain the license. This action was taken in an effort to fully address the safety issues raised regarding at-sea maintenance for GMDSS vessels. Release of the *Memorandum Opinion and Order* ensures that only qualified, FCC licensed technicians would provide at-sea maintenance on board GMDSS-equipped vessels.

**EFFECTIVE DATE:** October 19, 1998.

**FOR FURTHER INFORMATION CONTACT:** Freda Lippert Thyden of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680 or via e-mail at fthyden@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order,* FCC 98–180, adopted July 28, 1998, and released August 10, 1998. The full text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington D.C. 20036, telephone (202) 857–3800. This *Memorandum Opinion and Order* imposes no paperwork burden on the public.

## Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order,* we deny the American Radio Association's (ARA) Petition for Partial Reconsideration (Petition) of our Report and Order, 57 FR 9063 (March 16, 1992) adding the technical and operational requirements of the Global Maritime Distress and Safety System (GMDSS) to Part 80 of the Commission's Rules.[1] Our rules are consistent with the GMDSS provisions of the International Convention for the Safety of Life at Sea (Safety Convention)[2] as adopted by the International Maritime Organization (IMO),[3] and provide flexibility for vessel operators to choose maintenance methods based on the routes of each particular vessel and the availability of shore-based maintenance. Duplication of equipment and shore-based maintenance are as effective a means for ensuring successful operation of GMDSS radio installations as at-sea maintenance. Also, Congress recently affirmed that U.S. vessels should not have to carry dual safety systems prior to full implementation of the GMDSS in 1999. Section 365 of the Communications Act of 1934, as amended, (Communications Act) prohibits any requirement that passenger vessels and large cargo vessels carry manual Morse code radiotelegraph installations, so long as these vessels operate in accordance with the GMDSS provisions of the Safety Convention,[4] and have been certified by the U.S. Coast Guard as having GMDSS equipment installed and operating in good working condition.[5]

2. Prior to the enactment of the 1996 Telecommunications Act, Section 351 of the Communications Act required passenger vessels and large cargo vessels to be equipped with manual Morse code radiotelegraph installations when navigating on the open seas or on international voyages.[6] This requirement derived from the Wireless Ship Act of 1910,[7] and the Radio Communications Act of 1912.[8] At that time, the radiotelegraph was part of an international distress communications system providing a common radio link between large vessels at sea via manual Morse code telegraphy on 500 kHz. In 1988, the international maritime community agreed to replace the required radiotelegraph with the GMDSS—an automated ship-to-shore distress and safety radio communications system that relies on satellites and advanced terrestrial systems.[9] In 1992, the Commission in the *Report and Order,* 57 FR 9063 (March 16, 1992) adopted rules implementing the new international GMDSS requirements, requiring each passenger vessel and cargo vessel over 300 gross tons (hereafter ''compulsory vessels'') to carry a complete GMDSS radio installation by February 1, 1999.[10] Four years later, in 1996, Congress amended the Communications Act to eliminate the radiotelegraph carriage requirement for vessels carrying a GMDSS radio installation.[11]

3. The GMDSS rules ensure that qualified personnel are available to operate the radio installation during an emergency. Each GMDSS vessel must carry two persons licensed by the Commission to operate the radio installation. Although these operators may have other duties on board the vessel, one of them must be dedicated to operating the GMDSS installation during an emergency, while the other operator serves as a backup.[12] In addition to the two licensed operators on board, the vessel owner must choose among three maintenance methods: duplication of equipment, shore-based maintenance, and/or at-sea maintenance.[13] If at-sea maintenance is chosen, the vessel must carry one person licensed by the Commission to maintain the GMDSS radio installation.[14] The number and types of maintenance options required depend on the routes of the vessel.

4. After having carefully reviewed the arguments of ARA, the opposition pleading submitted by the American Institute of Merchant Shipping, and Congressional correspondence, we affirm our original decision. All arguments presented by the petitioner and commenters are essentially the same as those previously considered by the Commission.[15] Moreover, these issues are the same as those examined by the international maritime community during the development of the GMDSS.

5. *At-sea-maintenance for GMDSS vessels.* In adopting the GMDSS rules in 1992, we found that requiring two licensed GMDSS radio operators and providing maintenance options based on vessels' routes would ensure safety at sea.[16] All safety concerns were reviewed by the IMO and again in the Commission's Report and Order with emphasis on U.S. vessels. In addition, the Commission concurred with the IMO view that, in considering the proper operation of radio equipment, requiring two licensed GMDSS radio operators is superior to reliance on one individual who might be unable to perform communications during a distress situation.[17] The GMDSS requires multiple radio operators who

[1] Report and Order, 7 FCC Rcd 951 (1992).

[2] International Convention for the Safety of Life at Sea, 1974 (Safety Convention), 32 U.S.T. 47, T.I.A.S. 9700.

[3] The IMO is a specialized agency of the United Nations that promotes the safety of ships and property at sea and the lives of people on board.

[4] Pub. L. No. 104–104, 110 Stat. 56 (1996) (1996 Telecommunications Act).

[5] See Section 365 of the Communications Act, as amended, 47 U.S.C. § 363.

[6] 47 U.S.C. § 351.

[7] Pub. L. No. 262, 36 Stat. 629 (1910).

[8] Pub. L. 264, 37 Stat. 302 (1912).

[9] See Final Acts of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, on the Global Maritime Distress and Safety System, London (1988) (1988 SOLAS Amendments).

[10] Report and Order, 7 FCC Rcd at 951.

[11] The Commission implemented Section 365 of the Communications Act—a provision created by Section 206 of the 1996 Telecommunications Act—by Order released April 12, 1996. See Amendment of the Commission's Rule to Conform the Maritime Service Rules to the Provisions of the Telecommunications Act of 1996, Order, 11 FCC Rcd 17069 (1996).

[12] 47 C.F.R. § 80.1073.

[13] The term ''duplication of equipment'' refers to carrying redundant systems to meet GMDSS functional requirements as specified in 47 C.F.R. § 80.1105(g). The term ''shore-based maintenance'' refers to maintaining and repairing GMDSS systems at ports of call as specified in 47 C.F.R. § 80.1105(i). The term ''at-sea maintenance'' refers to carrying at least one person qualified to maintain and repair GMDSS systems while the vessel is at sea, as specified in 47 C.F.R. § 80.1105(j).

[14] 47 C.F.R. § 80.1074.

[15] See Report and Order, 7 FCC Rcd at 955–58.

[16] Id. at 954.

[17] This position was reaffirmed at the World Administrative Radio Conference held in February 1992 (WARC–92), where the international community conformed the international Radio Regulations to the 1988 SOLAS Amendments concerning this point.

are familiar with the radio equipment and who use it daily to satisfy the ship's operational needs. They must be licensed and familiar with GMDSS emergency procedures, and possess the basic technical skills necessary to replace equipment and adjust antennas.

6. In response to safety concerns expressed by ARA and others about operator availability during a distress situation, we adopted the Coast Guard's suggestion that the radio operator and his/her alternate must be listed on the ship's station bill. Further, the Commission's GMDSS rules implement the Safety Convention regulations that require vital safety communications equipment to be functioning properly before a ship leaves port. Moreover, in 1996 Congress endorsed the GMDSS requirements set forth in the Safety Convention, which do not require at-sea maintenance. Congress, the Safety Convention, and the Commission's GMDSS rules are in agreement concerning at-sea maintenance.

7. In an effort to fully address the safety issues raised regarding at-sea maintenance for GMDSS vessels, we are amending Section 80.1074(b) to require that all at-sea maintenance be conducted by an FCC-licensed technician holding a GMDSS Radio Maintainer's License, and providing a grace period until February 1999 so that existing technicians have an opportunity to obtain the license. In 1993, the Commission amended Part 13 of the rules, creating a GMDSS Radio Maintainer's License to ensure that only qualified, FCC-licensed technicians would provide at-sea maintenance on board GMDSS-equipped vessels.[18] In order to be licensed by the Commission as a GMDSS Radio Maintainer, an applicant must pass a written examination demonstrating knowledge of GMDSS systems and repair procedures.[19] We are amending the rules to reflect the Commission's intent in creating the new GMDSS Radio Maintainer's License.[20]

8. Presently, Section 80.1074(b) permits at-sea maintenance to be performed by a licensed technician holding either a First Class Radiotelegraph Operator's Certificate (T–1), Second Class Radiotelephone Operator's Certificate (T–2), or a General Radiotelephone Operator License (G). In order to minimize the impact of this amendment on vessel operators that may have already made arrangements for at-sea maintenance, we are providing a grace period whereby persons holding the non-GMDSS related licenses listed above will have ample opportunity to take the examination(s) required to obtain a GMDSS Maintainer's License. Therefore, persons holding a T–1, T–2, or G may serve as an at-sea maintainer on GMDSS vessels until the full implementation of the GMDSS on February 1, 1999.

9. *Transition period.* The Commission no longer has the statutory authority to require GMDSS vessels to carry a manual Morse code radiotelegraph installation. Section 365 of the Communications Act prohibits any requirement that compulsory vessels carry manual Morse code radiotelegraph installations, so long as they operate in accordance with the GMDSS provisions of the Safety Convention and have been certified by the U.S. Coast Guard as having GMDSS equipment installed and operating in good working condition.[21] On April 12, 1996, the Commission released an Order implementing Section 365 of the Communications Act by revising the general exemption in 47 CFR § 80.836. Furthermore, perpetuating an outmoded ship-to-ship manual Morse code radiotelegraph system on 500 kHz that has little potential to communicate with radio stations of the major maritime nations risks American lives and property.[22] Many countries are already in the process of eliminating the 500 kHz manual Morse code system and converting their ships to GMDSS. Further, the Coast Guard has already eliminated its shore watch on 500 kHz. Thus, carrying dual systems is not required by the international regulations and would be an unnecessary burden for the U.S. shipping industry.

10. *Ordering Clauses.* It is further ordered that, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and the authority contained in section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and Section 1.412(c) of the Commission's Rules, 47 CFR 1.412(c), part 80 of the Commission's Rules is amended as set forth below, effective October 29, 1998.

11. It is further ordered that, pursuant to the authority contained in Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 405, and Section 1.429(i) of the Commission's Rules, 47 CFR 1.429(i), the Petition for Partial Reconsideration filed by the American Radio Association is denied.

12. It is further ordered that this proceeding is terminated.

### List of Subjects in 47 CFR Part 80

Marine safety, Telegraph, Vessels, Global maritime distress and safety system (GMDSS).

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations Part 80 is amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.1074 is amended by revising paragraph (b) to read as follows:

**§ 80.1074 Radio maintenance personnel for at-sea maintenance.**

* * * * *

(b) The following licenses qualify personnel as GMDSS radio maintainers to perform at-sea maintenance of equipment specified in this subpart. For the purposes of this subpart, no order is intended by this listing or the alphanumeric designator.

(1) GM: GMDSS Maintainer's License;

(2) GB: GMDSS Operator's/Maintainer's License; or,

(3) Until February 1, 1999:

(i) T–1: First Class Radiotelegraph Operator's Certificate;

(ii) T–2: Second Class Radiotelegraph Operator's Certificate; or,

(iii) G: General Radiotelephone Operator License.

* * * * *

[FR Doc. 98–25043 Filed 9–17–98; 8:45 am]

BILLING CODE 6712–01–P

[18] Amendment of Part 13 of the Commission's Rules to Privatize the Administration of Examinations for Commercial Operator Licenses and to Clarify Certain Rules, FO Docket No. 92–206, Report and Order, 8 FCC Rcd 1046 (1993). See also Public Notice, 8 FCC Rcd 919 (1993).

[19] 47 C.F.R. § 13.203(a)(7).

[20] In creating the GMDSS Maintainer's License in 1993, the Commission postponed amending § 80.1074(b) pending final resolution of the maintenance issues in the subject Petition for Reconsideration. Now that the maintenance issues have been resolved, this amendment is necessary in order to ensure that at-sea maintenance is provided by qualified individuals. A notice and comment rulemaking proceeding in this matter, however, is unnecessary and would be contrary to the public interest. See 47 CFR § 1.412(c), 5 USC § 553(b)(B).

[21] 47 U.S.C. § 363.

[22] Report and Order, 7 FCC Rcd at 953.

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 285**

**[I.D. 091198A]**

## Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category

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

**ACTION:** Opening of New York Bight fishery.

**SUMMARY:** NMFS opens the Atlantic Bluefin Tuna (BFT) General category New York Bight fishery. This action is being taken to provide for General category fishing opportunities in the New York Bight area only and to ensure additional collection of biological assessment and monitoring data.

**DATES:** Effective September 16, 1998, 1 a.m. local time until September 30, 1998, or until the date that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Maria Uitterhoeve 301–713–2347, or Pat Scida, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Implementing regulations at 50 CFR 285.22 subdivide the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Section 285.22(a)(3) was amended on May 21, 1998 (63 FR 27862) to permit implementation of the set-aside for the traditional fall New York Bight fishery when the coast-wide General category fishery has been closed in any quota period. The New York Bight set-aside area is defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. (Delaware Bay). This regulatory amendment allows for more flexibility in making the quota of 10 mt set aside for this area available, to coincide with the presence of BFT in the Mud Hole area. Previously, on August 8, 1998, NMFS closed the General category for the June-August period, and on September 8, 1998, NMFS closed the General category fishery for September. The New York Bight fishery will open effective Wednesday, September 16, 1998, 1 a.m. local time until September 30, 1998, or until the date, that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**, if necessary. Upon the effective date of the New York Bight opening, persons aboard vessels permitted in the General category may fish for, retain, possess, or land large medium and giant BFT only in the New York Bight set-aside area specified above, until the set-aside quota for that area has been harvested. BFT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. Vessels permitted in the Charter/Headboat category, when fishing for large medium and giant BFT, are subject to the same rules as General category vessels when the General category is open.

The announcement of the closure date will be filed with the Office of the Federal Register, and further communicated through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of the closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713-1279 and (978) 281-9305. Information regarding the Atlantic tuna fisheries is also available toll-free through NextLink Interactive, Inc., at (888) USA-TUNA.

### Classification

This action is taken under 50 CFR 285.22 and is exempt from review under E.O. 12866.

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

Dated: September 14, 1998.

**Bruce C. Morehead,**

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

[FR Doc. 98–24991 Filed 9–14–98; 4:47 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 63, No. 181
Friday, September 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.

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Parts 545, 560

**[No. 98–92]**

**RIN 1550–AB21**

## Letters of Credit, Suretyship and Guaranty

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) is proposing to amend its regulations to clarify that a Federal savings association may act as guarantor and may issue letters of credit. Additionally, the proposed rule would impose restrictions, based on safety and soundness, on suretyship and guaranty agreements issued by Federal and state-chartered savings associations. The OTS is also requesting comment on whether it should adopt a regulation addressing the escrow authority of Federal savings associations.

**DATES:** Comments must be received on or before November 17, 1998.

**ADDRESSES:** Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, Attention Docket No. 98–92. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; Raynette Gutrick, Attorney, (202) 906–6265, Regulations and Legislation Division or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street N.W., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** The OTS is proposing this rule to clarify a Federal savings association's authority to act as guarantor and to issue letters of credit. Additionally, the proposed rule would impose restrictions, based on safety and soundness, on suretyships and guaranty agreements issued by Federal and state-chartered savings associations. The OTS also is seeking comment on whether it should adopt a regulation to address the escrow authority of Federal savings associations.

### I. Suretyship and Guaranty

Section 5(b)(2) of the Home Owners' Loan Act (the ''HOLA'') provides ''[t]o such extent as the Director may authorize in writing, a Federal savings association * * * may be surety as defined by the Director * * *''[1] The OTS's current regulations at 12 CFR 545.103 authorize Federal savings associations to act as surety subject to several requirements.

The OTS is proposing to make several modifications to the surety regulation. Initially, the OTS would move this regulation from part 545, which governs the general operations of Federal savings associations, to Part 560, subpart A, which addresses the lending and investment powers of Federal thrifts. *See* proposed § 560.45.

Neither HOLA nor the current OTS regulations specifically address a Federal savings association's authority to issue a guaranty. Under a suretyship agreement, the surety is bound with its principal to pay or perform an obligation to a third party.[2] Under a guaranty agreement, on the other hand, the guarantor agrees to satisfy the obligation of the principal to another only if the principal fails to pay or perform.[3] While both a surety and guarantor agree to be bound for the principal, there are other differences between the two types of agreements. A surety is usually bound with the principal by the same instrument, which is executed simultaneously.[4] On the other hand, a guarantor usually enters into a separate agreement with the third party in which the principal does not join.[5] The guaranty agreement is usually entered into before or after that of the principal, and is often founded on a separate consideration from that supporting the contract of the principal.[6]

The OTS and its predecessor, the Federal Home Loan Bank Board (''FHLBB''), have long recognized that the authority of a Federal savings association to act as guarantor is subsumed within section 5(b)(2) of the HOLA.[7] To clarify this point, proposed § 560.45 would specifically state that a Federal savings association is also authorized to act as guarantor.

Currently, § 545.103 contains various provisions designed to ensure the safety and soundness of surety agreements by Federal savings associations. These safety and soundness concerns are the same for suretyship and guaranty agreements by state-chartered savings associations. Accordingly, the OTS proposes to incorporate these requirements in part 560, subpart B, which contains the safety and soundness-based lending and investment restrictions applicable to all savings associations. Proposed § 560.115(a) would state that to the extent that a savings association has the legal authority to do so, it may enter into an agreement to act as surety or guarantor, if the agreement meets stated requirements. Proposed section 560.115(b) is a new provision, which explains the terms ''suretyship and guaranty agreement.''

[1] 12 U.S.C.A. 1464(b)(2) (West 1998).

[2] *Black's Law Dictionary* 1441–42 (6th ed. 1990).

[3] *Id.* at 705.

[4] *Id.* at 1441–42.

[5] *Id.*

[6] *Id.* Suretyship and guaranty agreements are similar to letters of credit to the extent that they are used for a common purpose—ensuring against the obligor's nonperformance. Under a letter of credit, however, the savings association's obligation to honor depends on the presentation of specified documents and not upon non-documentary conditions or resolutions of questions of law or fact at issue between the account party and the beneficiary. *See* 12 CFR 560.120(a) (1998).

[7] *See e.g.*, 48 FR 23032, 23043 (May 23, 1983) (stating that section 5(b)(2) of the HOLA empowers the FHLBB to authorize by regulation the issuance of suretyship devices by Federal savings associations for the purpose of guaranteeing the obligations of others); FHLBB Op. Assoc. Gen Counsel (July 5, 1983) (permitting the association to act as surety or guarantor under section 5(b)(2) of the HOLA). *See also* 12 CFR 545.16(a)(3) (1998) (''surety'' means surety under real and/or personal suretyship, and includes guarantor).

Proposed § 560.115(c) would contain four restrictions on surety and guaranty agreements. The first restriction is new. It would require that the association's obligation under the suretyship or guaranty agreement be limited to a fixed amount and limited in duration. Without a restriction limiting the amount and duration of the agreement, a Federal savings association may take on more risk than it bargained for in the agreement. The remaining three restrictions are based on the current rule on suretyship agreements at § 545.103. Under the proposed rule, a savings association may enter into an agreement only if its performance under the agreement (e.g., the payment of the obligation on behalf of the principal) would create a loan or other investment that is authorized for the association under applicable law. Additionally, the savings association's obligation under the agreement would be treated as a contractual commitment to advance funds to the principal under the loans-to-one-borrower limits and loans to insider restrictions. Finally, the savings association must take and maintain a perfected security interest in collateral sufficient to cover its obligation under the agreement.

The proposed rule would modify the collateral requirements currently imposed under existing § 545.103. Under the current rule, a Federal savings association must take and maintain a security interest in real estate or marketable securities equal to 110 percent of its obligation under the agreement.[8] If the collateral is real estate, the Federal savings association must establish the value of the property by a signed appraisal consistent with 12 CFR part 564. If the collateral is marketable securities, the Federal savings association must be authorized to invest in the securities and must ensure that the value of the securities is equal to 110 percent of the obligation at all times. These requirements are retained for all savings associations at proposed § 560.45(d)(1).

The proposed rule, however, would permit a savings association to hold collateral of a lesser amount under certain circumstances. This new provision is modeled on the Office of Comptroller of the Currency's (OCC) rule on suretyship and guaranty agreements.[9] Under proposed § 560.45(d)(2), a savings association would be permitted to maintain a security interest equal to 100 percent of the obligation, if the collateral is cash, obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, or notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank.[10]

The OTS requests comment on whether there are other suretyship, guaranty, or similar arrangements that the OTS should permit either by rule or through an approval process. For example, the OCC has determined that an arrangement whereby a national bank holds out to the public that it will honor checks drawn on it up to a certain amount, is essentially an agreement by the bank to extend credit to the depositor and is a permissible activity.[11] The OTS requests comment on whether the final rule should clarify how it will treat such arrangements.

## II. Letters of Credit and Other Independent Undertakings

Under existing OTS and FHLBB precedent, Federal savings associations are authorized to issue letters of credit. Although the HOLA does not explicitly confer the authority to issue letters of credit, both agencies determined that the express authority to invest in or make loans necessarily includes the authority to make loan commitments and to issue letters of credit.[12]

Until recently, the OTS regulations specifically authorized Federal savings associations to issue commercial and standby letters of credit.[13] In the recent rule on lending and investment, the OTS proposed to include an express authorization for letters of credit in the lending and investment chart at 12 CFR 560.30. However, the OTS deleted this authorizing provision in the final rule ''because issuing a letter of credit is not in and of itself a loan or investment.'' The OTS, nonetheless, included prudent standards for the issuance of letters of credit and other approved independent undertakings by all savings associations at 12 CFR 560.120. These standards, however, apply only to the extent that a savings association has legal power to issue and commit to issue letters of credit and other approved independent undertakings.

The deletion of § 545.48 has inadvertently created confusion as to whether Federal savings associations continue to hold authority to issue letters of credit and other approved independent undertakings. To clarify this point, the OTS is proposing to add a new section to part 560, subpart A, which addresses the lending and investment powers of Federal saving associations. While a letter of credit technically is neither a loan nor an investment, once funds are advanced under a letter of credit, the advance is treated as an extension of credit and is subject to investment limits and other restrictions on lending. *See* § 560.31(a). Accordingly, the OTS believes it is appropriate to place this new provision in part 560.

Proposed § 560.50 would state that a Federal savings association may issue letters of credit and such other independent undertakings as are approved by the OTS, subject to the restrictions of § 560.120. Like existing § 560.120, the new section uses the phrase ''letters of credit and other independent undertakings.'' The OTS has used this phrase to encompass letters of credit as well as all commitments where the Federal savings association's obligation to honor the commitment is dependent solely on the proper presentation of specified documents regardless of extrinsic factors (except fraud, forgery, or an overriding public policy issue). The term covers a broad array of transactions including commercial letters of credit, standby letter of credit, and other undertakings that are functionally identical or equivalent to letters of credit.

In the thrift context, the broad scope of the term ''independent undertakings'' and its recent evolution require close

[8] 12 CFR 545.103(b) (1998).

[9] 12 CFR 7.1017 (1998).

[10] Certain provisions of existing § 545.103 have not been retained. For example, current § 545.103(c) addresses what happens if a Federal savings association is required to perform under the suretyship agreement. This section states that a Federal savings association would be required to treat the amount advanced as an extension of credit, subject to investment limits and other restrictions applicable to such an extension of credit. The OTS has not retained this paragraph because it duplicates existing § 560.31(a).

[11] *See* 12 CFR 7.7015 (1996).

[12] 61 FR 50951, 50958 (September 30, 1996). This authority was first recognized in 1983 by the FHLBB, which determined that this power was implicit under new lending authority in the Garn-St.Germain Depository Institutions Act of 1982 (DIA), Pub. L. No. 97–320, 96 Stat. 1469 (1982). This lending authority included the authority to make secured or unsecured loans for commercial, corporate, business, or agricultural purposes (currently 12 U.S.C. 1464(c)(2)(A)), and the authority to make loans on the security of liens upon nonresidential real property (currently 12 U.S.C. 1464(c)(2)(B)). The FHLBB reasoned that the DIA was intended to give Federal savings associations competitive parity with national banks with respect to credit services provided to business customers. Because the authority to issue commercial and standby letters of credit was a well-established incidental power of national banks, the FHLBB determined that this authority was also conferred on Federal savings associations. 48 FR 23032, 23043 (May 23, 1983). The FHLBB also noted that 12 U.S.C. 1464(b)(2), which authorizes Federal associations to act as surety, supported this determination.

[13] 12 CFR 545.48 (1996), removed 61 FR 50951 (September 30, 1996).

supervision and review when such undertakings fall outside the more traditional activities generally known as letters of credit. Accordingly, OTS believes that allowing Federal savings associations to issue independent undertakings of a type specifically approved by OTS strikes the appropriate balance between allowing a Federal savings association the flexibility to engage in such transactions and, at the same time, ensuring that thrifts have properly evaluated the risks posed by a particular transaction consistent with prudent banking practice. OTS anticipates that its approval may take the form of legal opinions, general guidance, or case-by-case approvals, depending upon how the undertakings are presented to the agency.[14]

## III. Escrow Accounts

Although the HOLA does not expressly address escrow accounts, the OTS and the FHLBB have authorized Federal savings associations to provide escrow services in several instances. For example, the FHLBB, in 1959 issued a policy statement permitting Federal savings associations to provide escrow services in connection with real estate loans. This policy statement provided:

> A Federal savings association may not act generally as an agent for the public in handling escrows. It may, however, handle escrows relating to real estate loans it makes and, to the extent reasonably incidental to accomplishing its express purposes, may handle escrows for others involving the type of real estate transactions common to the savings association business.[15]

This policy statement remained substantively unchanged until 1996 when OTS removed it because the ''authority to establish escrow accounts is subsumed within the authority of Federal savings associations to make loans and does not need to be specifically identified in the CFR.'' [16]

Some questions have been raised concerning the scope of Federal savings associations' authority to handle escrow accounts that are not related to loans. For example, even while the policy statement was effective, the OTS indicated that fiduciary activities involving non-discretionary activities such as escrow or safekeeping services, or acting as a custodian or paying agent are implicit in the express powers of Federal savings associations, including deposit powers.[17]

More recently, the OTS issued an opinion stating that a Federal savings association may hold an account that would escrow funds representing down-payments on vacations for its customer, a vacation organizer.[18] The OTS concluded that the activity fell within the incidental powers of Federal savings associations.[19] The OTS reasoned that the proposed escrow service would allow the savings association to provide its customer with more convenient access to needed financial services and is, thus, consistent with Congress' intent that Federal savings associations meet the needs of their business customers. Moreover, the OTS found that the proposed escrow service is similar to deposit taking and other escrow, safekeeping and document custodian services that Federal savings associations are already authorized to conduct. Further, the OTS noted that the proposed escrow activities would support funds intermediation by facilitating the conduct of financial transactions and would permit thrifts to compete more equally with commercial banks, which are permitted to provide such services.[20]

While the OTS has not proposed any new regulatory text on escrow accounts in today's rulemaking, it requests comment whether it should issue a rule clarifying the scope of escrow authority of Federal savings associations. Commenters are also specifically asked to address whether the OTS should place any restrictions on the exercise of the escrow authority.

## IV. Executive Order 12866

The Director of the OTS has determined that this proposed regulation does not constitute a ''significant regulatory action'' for the purpose of Executive Order 12866.

## V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. Today's proposed rule would not impose any additional burdens or requirements on small entities. Rather, the proposed rule simply clarifies the authority of Federal savings associations to act as guarantor and issue letters of credit. While the proposed rule also restricts the circumstances under which Federal and state-chartered savings associations may enter into surety and guaranty agreements, the proposed restrictions are the minimum necessary for safe and sound operations and should not impose a significant burden on small savings associations.

## VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

## List of Subjects

*12 CFR Part 545*

Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

*12 CFR Part 560*

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations as set forth below:

## PART 545—[AMENDED]

## PART 560—LENDING AND INVESTMENT

1. The authority citation for part 560 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j-3, 1828, 3803, 3806; 42 U.S.C. 4106.

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[14] *See* 61 FR 50951, 50958 (September 30, 1996).

[15] 12 CFR 556.2 (1996).

[16] 61 FR 50951, 50961 (September 30, 1996).

[17] OTS Regulatory Handbook: Trust Activities, § 140 (1992) and Op. Chief Counsel (October 17, 1995) (The authority to engage in these basic banking activities is derived from the incidental powers doctrine, not from section 5(n) of the HOLA. Thus, a Federal savings association is not required to obtain trust powers ''to perform limited duties and responsibilities such as escrow, safekeeping, or custodian services, even though the performance of such duties requires a degree of trust and care.'')

[18] OTS Op. Chief Counsel (August 19, 1998).

[19] *See* OTS Op. Acting Chief Counsel (March 25, 1994) at 7–8 and (October 17, 1994) at 4–5, which set forth the factors that OTS considers in its incidental powers analysis.

[20] In a OCC Letter No. 86–11 (1986), the OCC did not object to an impound arrangement where the bank without trust powers would receive as deposits the funds submitted by subscribers to a limited partnership.

**§ 545.103 [Redesignated as § 560.115]**

2. Section 545.103 is redesignated as § 560.115 and revised to read as follows:

**§ 560.115 Suretyship and guaranty.**

(a) *May a savings association act as surety or guarantor?* To the extent that a savings association has legal authority to do so, it may enter into an agreement to act as surety or guarantor if the agreement meets the requirements of this section.

(b) *What is a suretyship or guaranty agreement?* Under a suretyship or guaranty agreement, a savings association is bound with its principal to pay or perform an obligation to a third person. Under a guaranty agreement, a savings association agrees to satisfy the obligation of the principal only if the principal fails to pay or perform.

(c) *What requirements apply to these agreements?* A savings association may enter into a suretyship or guaranty agreement if the agreement meets each of the following requirements:

(1) The savings association's obligations under the agreement are limited to a fixed dollar amount and are limited in duration.

(2) The savings association's performance under the agreement would create a loan or other investment that is authorized under applicable law.

(3) The savings association's obligation under the agreement is treated as a contractual commitment to advance funds to the principal under § 560.93 of this part and § 563.43 of this chapter.

(4) The savings association must take and maintain a perfected security interest in collateral sufficient to cover its total obligation under the agreement.

(d) *What collateral is sufficient?*

(1) The savings association must take and maintain a perfected security interest in real estate or marketable securities equal to at least 110 percent of its obligation under the agreement, except as provided in paragraph (d)(2) of this section.

(i) If the collateral is real estate, the savings association must establish the value by a signed appraisal consistent with part 564 of this chapter. The savings association must consider the value of prior mortgages, liens or other encumbrances on the property, except those held by the principal to the suretyship or guaranty agreement.

(ii) If the collateral is marketable securities, the savings association must be authorized to invest in that security taken as collateral. The savings association must ensure that the value of the security is 110 percent of the obligation at all times during the term of agreement.

(2) The savings association may take and maintain a perfected security interest in collateral which is at all times equal to at least 100 percent of its obligation, if the collateral is:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank.

3. Section 560.45 is added to subpart A to read as follows:

**§ 560.45 Suretyship and guaranty authority.**

A Federal savings association is authorized to enter into an agreement to act as surety or guaranty, subject to the restrictions in § 560.115 of this part.

4. Section 560.50 is added to subpart A to read as follows:

**§ 560.50 Letters of credit and other independent undertakings—authority.**

A Federal savings association is authorized to issue letters of credit and may issue such other independent undertakings as are approved by the OTS, subject to the restrictions in § 560.120 of this part.

Dated: September 14, 1998.

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 98–25022 Filed 9–17–98; 8:45 am]

BILLING CODE 6720–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–ANE–19–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Aircraft Engines CF34 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CF34 series turbofan engines. This proposal would require rework of the main fuel control (MFC) to add a flange vent groove and installation of a reworked MFC with improved overspeed protection. This proposal is prompted by reports of rapid uncommanded engine acceleration events. The actions specified by the proposed AD are intended to prevent uncommanded engine accelerations, which could result in an engine overspeed, uncontained engine failure, and damage to the aircraft.

**DATES:** Comments must be received by November 17, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–19–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from GEAE Technical Publications, Attention: N. Hanna MZ340M2, 1000 Western Avenue, Lynn, MA. 01910. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Norman Brown, Controls Specialist, Engine Certification Office, ANE–141, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7129, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–19–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–19–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

## Discussion

The Federal Aviation Administration (FAA) has received reports of rapid uncommanded engine acceleration events on certain General Electric Aircraft Engines (GE) CF34–3A1, CF34–3B and CF34–3B1 series turbofan engines. Subsequent investigations have revealed that fuel seepage may become trapped between the main fuel control (MFC) and the main fuel pump flanges, resulting in an uncommanded engine acceleration, and also preventing a portion of the engine overspeed protection system from properly functioning. Under specific conditions, the trapped fuel can lead to an overspeed condition of sufficient severity to cause uncontained rotor failure. In addition, all GE CF34 series MFCs contain a feature that prevents a portion of the overspeed protection system, called the cutback schedule, from performing its intended function. The cutback schedule allows a rapid reduction in fuel flow in the event of increasing engine speed due to acceleration above the overspeed cutoff region. This feature can similarly permit an uncommanded engine acceleration to result in an overspeed and uncontained rotor failure. This condition, if not corrected, could result uncontained engine failure, and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE CF34 Alert Service Bulletin (ASB) No. A73–18, Revision 1, dated September 24, 1997, and CF34 ASB No. A73–32, Revision 1, dated September 24, 1997, that describe procedures for reworking MFCs by adding a flange vent groove; and CF34 ASB No. A73–33, dated November 21, 1997, and CF34 ASB No. A73–19, Revision 1, dated February 20, 1998, that describe procedures for installation of a reworked MFC with improved overspeed protection.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, within 800 hours time in service (TIS), or 120 days after the effective date of this AD, whichever occurs first, installation of a reworked MFC incorporating a flange vent groove. In addition, this proposed AD would require installation of a reworked MFC with improved overspeed protection: for CF34–3A1 and –3B1 series engines, installed on Canadair Regional Jet aircraft, within 4,000 hours TIS after the effective date of this AD, or 24 months after the effective date of this AD, whichever occurs first; and for CF34–1A, –3A, 3A1, –3A2, and –3B series engines, installed on Canadair Challenger aircraft, at the next hot section inspection, or 5 years after the effective date of this AD, whichever occurs first. The different calendar times were determined based upon engine utilization rates during Regional Jet and Challenger aircraft operation, and based upon shop and parts availability. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 1,310 engines of the affected design in the worldwide fleet. The FAA estimates that 450 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $567,000. The manufacturer has advised the FAA that labor allowances may be provided.

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**General Electric Aircraft Engines:** Docket No. 98–ANE–19–AD.

*Applicability:* General Electric Aircraft Engines (GE) CF34–1A, CF34–3A, –3A1, –3A2, and CF34–3B and –3B1 series turbofan engines, installed on but not limited to Canadair aircraft models CL–600–2A12, –2B16, and –2B19.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncommanded engine accelerations, which could result in an engine overspeed, uncontained engine failure, and damage to the aircraft, accomplish the following:

(a) For all CF34–3A1 –3B, and –3B1 engines, with main fuel control (MFC) part

number 6078T55P02, P03, P04, P05, P06, P07, P08, P09, or P10 installed, within 800 hours time in service (TIS), or 120 days after the effective date of this AD, whichever occurs first, install an MFC with a flange vent groove reworked in accordance with the Accomplishment Instructions of GE CF34 Alert Service Bulletin (ASB) No. A73–18, Revision 1, dated September 24, 1997, or CF34 ASB No. A73–32, Revision 1, dated September 24, 1997, as applicable.

(b) Install a reworked MFC with improved overspeed protection as follows:

(1) For all CF34–1A, –3A, and –3A2, series engines, install MFC part number 6047T74P11, 6047T74P12, or 6091T07P02, at the next hot section inspection, or 60 months after the effective date of this AD, whichever occurs first, in accordance with the Accomplishment Instructions of GE CF34 ASB No. A73–33, dated November 21, 1997.

(2) For CF34–3A1, and –3B series engines, installed on Canadair aircraft models CL601 or CL604 (Challenger aircraft), install MFC part number 6078T55P12, 6078T55P13, 6078T55P14, 6078T55P15, or 6078T55P16, at the next hot section inspection, or 60 months after the effective date of this AD, whichever occurs first, in accordance with the Accomplishment Instructions of GE CF34 ASB No. A73–33, dated November 21, 1997.

(3) For CF34–3A1 and –3B1 series engines, installed on Canadair aircraft model CL601R (Regional Jet aircraft), install MFC part number 6078T55P12, 6078T55P13, 6078T55P14, 6078T55P15, or 6078T55P16, within 4,000 hours TIS after the effective date of this AD, or 24 months after the effective date of this AD, whichever occurs first, in accordance with the Accomplishment Instructions of GE CF34 ASB No. A73–19, Revision 1, dated February 20, 1998.

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

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 11, 1998.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 98–25009 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–ANE–56–AD]**

**RIN 2120–AA64**

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

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFM International CFM56–5 series turbofan engines. This proposal would reduce the low cycle fatigue (LCF) retirement lives for certain high pressure turbine rotor (HPTR) front air seals, and provide a drawdown schedule for those affected parts with reduced LCF retirement lives. This proposal is prompted by results of a refined life analysis performed by the manufacturer that revealed minimum calculated LCF lives significantly lower than the published LCF retirement lives. The actions specified by the proposed AD are intended to prevent a LCF failure of the HPTR front air seal, which could result in an uncontained engine failure and damage to the aircraft.

**DATES:** Comments must be received by October 19, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–56–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–56–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–56–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

During a routine engine shop visit, a crack was detected in a CFM International CFM56–5 high pressure turbine rotor (HPTR) front air seal. Investigation revealed that the crack initiated from a nick in the scallop fillet. Review of the manufacturing records revealed documented surface nicks in the scallop area of the cracked seal, as well as three other seals. As a precaution, these three additional seals were removed from service. As part of this investigation, CFM International also performed a study using updated lifing analyses that revealed that certain

HPTR front air seals have minimum calculated low cycle fatigue (LCF) lives that are significantly lower than published LCF retirement lives. This condition, if not corrected, could result in a LCF failure of the HPTR front air seal, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of CFM International CFM56–5 Service Bulletin (SB) No. 72–541, dated July 27,1998, that describes the drawdown schedule for those affected parts with reduced LCF retirement lives.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would reduce the LCF retirement lives for certain HPTR front air seals, and provide a drawdown schedule for those affected parts with reduced LCF retirement lives. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 863 engines of the affected design in the worldwide fleet. The FAA estimates that 131 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would not take any additional work hours per engine to accomplish the proposed actions. Assuming that the parts cost is proportional to the reduction of the LCF retirement lives, the required parts would cost approximately $14,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,834,000.

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**CFM International:** Docket No. 98–ANE–56–AD.

*Applicability:* CFM International CFM56–5 series turbofan engines installed on, but not limited to, Airbus A319 and A320 series aircraft.

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

*Compliance:* Required as indicated, unless accomplished previously.

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

(a) Remove from service CFM International CFM56–5–A1 and –5–A1/F HPTR front air seals, Part Number (P/N) 1319M11P06, 1319M11P07, 1319M11P08, and 1319M11P09, and CFM56–5–A1 HPTR front air seals, P/N 1319M11P05, and replace with a serviceable part, in accordance with CFM56–5 Service Bulletin (SB) No. 72–541, dated July 27, 1998, as follows:

(1) For seals that have accumulated less than 4,000 cycles since new (CSN) on the effective date of this AD, remove the seal from service prior to accumulating 11,000 CSN.

(2) For seals that have accumulated 4,000 CSN or more, but less than 11,000 CSN on the effective date of this AD, accomplish the following:

(i) For engines that have an engine shop visit (ESV) prior to the seal accumulating 11,000 CSN, remove the seal from service prior to the seal accumulating 11,000 CSN.

(ii) For engines that do not have an ESV prior to the seal accumulating 11,000 CSN, remove the seal from service prior to the seal accumulating 7,000 cycles in service (CIS) after the effective date of this AD, or prior to the seal accumulating 15,300 CSN, whichever occurs first.

(3) For seals that have accumulated 11,000 CSN or more on the effective date of this AD, remove the seal from service at the next ESV, or prior to the seal accumulating 15,300 CSN, whichever occurs first.

(b) Remove from service CFM International CFM56–5A3 HPTR front air seals, P/N 1319M11P06, 1319M11P07, 1319M11P08, and 1319M11P09, and replace with a serviceable part, in accordance with CFM56–5 SB No. 72–541, dated July 27, 1998, as follows:

(1) For seals that have accumulated less than 3,000 CSN on the effective date of this AD, remove the seal from service prior to accumulating 7,700 CSN.

(2) For seals that have accumulated 3,000 CSN or more, but less than 7,700 CSN on the effective date of this AD, accomplish the following:

(i) For engines that have an ESV prior to the seal accumulating 7,700 CSN, remove the seal from service prior to the seal accumulating 7,700 CSN.

(ii) For engines that do not have an ESV prior to the seal accumulating 7,700 CSN after the effective date of the AD, remove the seal from service prior to the seal accumulating 4,700 CIS after the effective date of this AD, or prior to the seal accumulating 13,000 CSN, whichever occurs first.

(3) For seals that have accumulated 7,700 CSN or more on the effective date of this AD, remove the seal from service at the next ESV, or prior to the seal accumulating 13,000 CSN, whichever occurs first.

(c) For CFM56–5A4, –5A4/F, –5A5, and –5A5/F HPTR front air seals, P/N 1319M11P05, 1319M11P06, 1319M11P07, 1319M11P08, and 1319M11P09, that have previously operated in CFM56–5–A1, –5–A1/F, or –5A3 engine models, recalculate the HPTR front air seal total cycles remaining using 11,000 cycles for the CFM56–5–A1 and CFM56–5–A1/F engine models, and 7,700 cycles for the CFM56–5A3 engine model, in accordance with CFM56–5 SB No. 72–541, dated July 27, 1998, within 750 CIS after the effective date of this AD.

**Note 2:** The current HPTR front air seal life for the CFM56–5A4, –5A4/F, –5A5, and –5A5/F engine models is 9,100 cycles, and is not affected by this AD.

**Note 3:** For additional information on recalculating the HPTR front air seal total cycles remaining see Chapter 05, Section 05–11–00, of the CFM56–5 series Engine Shop Manual, CFMI–TP.SM.7.

(d) This AD establishes new LCF retirement lives of 11,000 cycles for CFM56–

5–A1 and –5–A1/F HPTR front air seals, and 7,700 cycles for CFM56–5A3 HPTR front air seals, which is published in Chapter 05, Section 05–11–03, of the CFM56–5 series Engine Shop Manual, CFMI–TP.SM.7. The following conditions also apply:

(1) Except as provided in paragraph (g) of this AD, no alternative retirement lives may be approved for the CFM56–5–A1, –5–A1/F, and –5A3 HPTR front air seals.

(2) After the effective date of this AD, no CFM56–5–A1 and –5–A1/F HPTR front air seals may be installed or reinstalled on an engine if the seals have accumulated more than 11,000 CSN.

(3) After the effective date of this AD, no CFM56–5A3 HPTR front air seals may be installed or reinstalled on an engine if the seals have accumulated more than 7,700 CSN.

(e) For the purpose of this AD, an ''engine shop visit'' is defined as the induction of an engine into the shop for maintenance involving the separation of any major mating engine flanges, or the removal of a disk or spool, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

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

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

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on September 11, 1998.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 98–25008 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–CE–65–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; SOCATA-Groupe AEROSPATIALE Model TBM 700 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA-Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. The proposed AD would require repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to detect and correct cracks in a flap carriage, which could result in loss of the flap function with consequent reduced and/or loss of airplane control.

**DATES:** Comments must be received on or before October 16, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–65–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: (33) 5.62.41.76.52; facsimile: (33) 5.62.41.76.54; or the Product Support Manager, SOCATA-Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. This information also may be examined at the Rules Docket at the address above.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–65–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–65–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain SOCATA TBM 700 airplanes. The DGAC reports several occurrences of cracks in the web of the left and right flap carriages on the above-referenced airplanes.

Cracks in the flap carriages, if not detected and corrected, could result in loss of the flap function with consequent reduced and/or loss of airplane control.

### Relevant Service Information

SOCATA has issued Service Bulletin SB 70–048 57, Amendment 1, dated January 1995, which specifies procedures for inspecting the web of both the left and right flap carriages for cracks. This service bulletin also specifies either stop drilling a cracked flap carriage or replacing a cracked flap carriage with a part of improved design depending on the extent of the crack.

The DGAC classified this service bulletin as mandatory and issued French AD 94–110(B)R1, dated March 15, 1995, in order to assure the continued airworthiness of these airplanes in France.

### The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other SOCATA TBM 700 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed repetitive inspections would no longer be required on those flap carriages replaced with improved design parts.

Accomplishment of the proposed inspections would be required in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995. The replacements, if necessary, would be accomplished in accordance with Chapter 57–50–03 of the applicable maintenance manual. The parts necessary are referenced in the service bulletin and are available from the manufacturer.

### Cost Impact

The FAA estimates that 44 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspections specified in the proposed AD on U.S. operators is estimated to be $7,920, or $180 per airplane.

These figures only take into account the costs of the initial inspection and do not take into account the costs of any repetitive inspections or the costs of replacing any flap carriage found cracked. The FAA has no way of determining the number of repetitive inspections each owner/operator would incur over the life of the affected airplanes; or the number of flap carriages that would be found cracked during the inspections and need to be replaced.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**SOCATA-Groupe Aerospatiale:** Docket No. 95–CE–65–AD.

*Applicability:* Model TBM 700 airplanes, serial numbers 1 through 92, 97, and 98; certificated in any category.

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

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

To detect and correct cracks in a flap carriage, which could result in loss of the flap function with consequent reduced and/or loss of airplane control, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect (using visual methods) the web of the left and right flap carriages (both the inboard and outboard carriages) for cracks. Accomplish these inspections in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995.

(b) If any cracked flap carriage is found during any inspection required by this AD, prior to further flight, replace it with a carriage of improved design. Accomplish this replacement in accordance with Chapter 57–50–03 of the applicable maintenance manual. The parts necessary are referenced in SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995, and are available from Socata at the address referenced in paragraph (e) of this AD.

(1) Repetitive inspections will no longer be required on those flap carriages replaced with improved design parts.

(2) Flap carriages may be replaced with improved design parts at any time (but must immediately be replaced if found cracked), as terminating action for the repetitive inspections of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January, 1995, should be directed to SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: (33) 5.62.41.76.52; facsimile: (33) 5.62.41.76.54; or the Product Support Manager, SOCATA-Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Note 3:** The subject of this AD is addressed in French AD 94–110(B)R1, dated March 15, 1995.

Issued in Kansas City, Missouri, on September 3, 1998.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98–25004 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 17, 18 and 150

### Revision of Federal Speculative Position Limits and Associated Rules

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'') on July 17, 1998, published in the **Federal Register** a Notice of Proposed Rulemaking. In that notice, the Commission proposed to revise Commission speculative position limits, to codify various policies relating to the requirement that exchanges set speculative position limits as required by Commission rule 1.61, to amend the applicability of the limited exemption from non-spot month speculative position limits under Commission rule 150.3 for entities that authorize independent account controllers to trade on their behalf and to amend the Commission's rule on aggregation. Comments on the proposals were due by September 15, 1998.

On September 10, 1998, the Managed Funds Association requested that the Commission extend the comment period for thirty days, ''to insure that a more complete and responsive comment letter can be prepared.'' The Commission is granting this request.

**DATES:** Comments must be received by October 19, 1998.

**ADDRESSES:** Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Speculative Position Limits.''

**FOR FURTHER INFORMATION CONTACT:** Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5260, or electronically, [PArchitzel@cftc.gov].

Issued in Washington, DC, on this 14th day of September, 1998, by the Commodity Futures Trading Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 98–25046 Filed 9–17–98; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 4

**[Notice No. 867; Ref: Notice No. 861]**

**RIN 1512–AB70**

### Net Contents Statement on Wine Labels (95R–054P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This notice reopens the comment period for Notice No. 861, a notice of proposed rulemaking, published in the **Federal Register** on May 15, 1998. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

**DATES:** Written comments must be received on or before October 19, 1998.

**ADDRESSES:** Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 861.*

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 15, 1998, ATF published a notice of proposed rulemaking (NPRM) in the **Federal Register** soliciting comments from the public and industry on a proposal to amend the regulations to provide that the net contents statement for wine in containers of less than 1 liter may be expressed on the label in centiliters (cl) as an alternative to milliliters (ml) (Notice No. 861; 63 FR 27017).

The comment period for Notice No. 861 was scheduled to close on August 13, 1998. Prior to the close of the comment period ATF received a request from a trade association, the Wine Institute, to extend the comment period 60 days. The Wine Institute, representing over 450 California winery and associate members, stated that it needed additional time to consider information recently raised by its members and to develop a thorough response to the issues addressed in the notice.

In consideration of the above, ATF finds that a reopening of the comment period is warranted. However, the comment period is being reopened for 30 days. The Bureau believes that a comment period totaling 120 days is a sufficient amount of time for all interested parties to respond.

#### Disclosure

Copies of this notice, Notice No. 861, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

*Drafting Information.* The author of this document is James P. Ficaretta,

Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

### List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

### Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: September 14, 1998.

**John W. Magaw,**

*Director.*

[FR Doc. 98–25049 Filed 9–17–98; 8:45 am]

BILLING CODE 4810–31–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[FRL–6161–6]**

## Georgia: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Georgia. In the final rules section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the authorization is set forth in the immediate final rule. If no adverse written comments are received on this action, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. EPA will then respond to public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments on the immediate final rule must be received on or before October 19, 1998.

**ADDRESSES:** Mail written comments to: Patricia Herbert, Chief, RCRA Service Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303; (404) 562–8449.

You can examine copies of the materials submitted by Georgia during normal business hours at the following locations:

Georgia Department of Natural Resources, Environmental Protection Division, Floyd Towers East, Room 1154, 205 Butler Street, SE, Atlanta, Georgia 30334.

U.S. EPA Region 4, Library, 61 Forsyth Street, Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Patricia Herbert, Chief, RCRA Service Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303; (404) 562–8449.

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

Dated: August 10, 1998.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 98–24736 Filed 9–17–98; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 67

**[Docket No. FEMA–7263]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

### Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Illinois | Buffalo Grove (Village), Lake County. | Des Plaines River | At Lake-Cook county boundary | *642 | *644 |
| | | | Approximately 0.89 mile upstream of Deerfield Road. | *645 | *646 |
| | | Aptakisic Creek | Approximately 625 feet upstream of Milwaukee Avenue. | *643 | *645 |
| | | | Approximately 1,900 feet upstream of Busch Parkway. | *645 | *646 |
| Maps available for inspection at the Buffalo Grove Engineer's Office, 50 Raupp Boulevard, Buffalo Grove, Illinois. | | | | | |
| Send comments to Mr. Sidney Mathias, Buffalo Grove Village President, 50 Raupp Boulevard, Municipal Building, Buffalo Grove, Illinois 60089. | | | | | |
| Illinois | Gurnee (Village), Lake County. | Des Plaines River | Approximately 500 feet downstream of Belvidere Road. | *662 | *665 |
| | | | Approximately 2.45 miles upstream of Skokie Highway. | *666 | *669 |
| | | Gurnee Tributary | At confluence with Des Plaines River | *664 | *667 |
| | | | At State Route 132 (approximately 250 feet upstream of Wisconsin Central Limited Railroad). | *666 | *667 |
| | | Suburban Country Club Tributary. | Approximately 50 feet upstream of Wisconsin Central Limited Railroad. | *665 | *665 |
| | | | Approximately 1,100 feet upstream of Unnamed Road. | *665 | *668 |
| Maps available for inspection at the Gurnee Village Engineering Department, 325 North O'Plaine Road, Gurnee, Illinois. | | | | | |
| Send comments to Mr. James T. Hayner, Gurnee Village Administrator, 325 North O'Plaine Road, Gurnee, Illinois 60031. | | | | | |
| Illinois | Lake County (Unincorporated Areas. | Des Plaines River | At Lake-Cook county boundary | *642 | *644 |
| | | | At state boundary | *674 | *676 |
| | | Des Plaines River Tributary (at Russell). | At confluence with Des Plaines River | *673 | *675 |
| | | | Just downstream of Kilbourne Road | *673 | *675 |
| | | Suburban Country Club Tributary. | At confluence with Des Plaines River | *665 | *668 |
| | | | Just downstream of Delaney Road | *666 | *668 |
| | | Bull Creek | Confluence with Des Plaines River | *659 | *661 |
| | | | Approximately 140 feet upstream of Unnamed Road. | *660 | *661 |
| | | Tributary No. 1 | At confluence with Des Plaines River | *656 | *658 |
| | | | Just downstream of confluence of Tributary No. 1 with Meadow Haven Creek. | *657 | *658 |
| | | Aptakisic Creek | At confluence with Des Plaines River | *643 | *645 |
| | | | Approximately 1,900 feet upstream of Busch Parkway. | *645 | *646 |
| | | Mill Creek | Downstream side of Skokie Highway (U.S. Route 41). | *667 | *670 |
| | | | Approximately 1,100 feet downstream of Dilleys Road. | *669 | *670 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Lake County Office of Planning and Development, Division of Building and Zoning, 5th Floor, 18 North County Street, Waukegan, Illinois. | | | | | |
| Send comments to Mr. Robert L. Grever, Chairman of the Lake County Board of Commissioners, 18 North County Street, 10th Floor, Waukegan, Illinois 60085. | | | | | |
| Illinois | Libertyville (Village), Lake County. | Des Plaines River | Approximately 1,900 feet upstream of State Route 60 (Townline Road) (at corporate limits). | *651 | *652 |
| | | | Upstream side of Buckley Road (at corporate limits). | *659 | *660 |
| Maps available for inspection at the Libertyville Village Public Works Department, Engineering Division, 200 East Cook Avenue, Libertyville, Illinois. | | | | | |
| Send comments to The Honorable Duane Laska, Mayor of the Village of Libertyville, 118 West Cook Avenue, Libertyville, Illinois 60048. | | | | | |
| Illinois | Lincolnshire (Village), Lake County. | Des Plaines River | Approximately 1.76 miles upstream of Deerfield Road. | *646 | *647 |
| | | | Approximately 0.95 mile downstream of Halfday Road (State Route 22). | *646 | *647 |
| Maps available for inspection at the Lincolnshire Village Hall, One Olde Half Day Road, Lincolnshire, Illinois. | | | | | |
| Send comments to The Honorable Barbara LaPiana, Mayor of the Village of Lincolnshire, One Olde Half Day Road, Lincolnshire, Illinois 60069. | | | | | |
| Illinois | Mettawa (Village), Lake County. | Des Plaines River | Approximately 1.02 miles downstream of State Route 60 (Townline Road). | *651 | *650 |
| | | | Approximately 0.68 mile downstream of Rockland Road. | *653 | *655 |
| Maps available for inspection at the Mettawa Village Hall, 1000 Allanson Road, Mundelein, Illinois. | | | | | |
| Send comments to The Honorable Barry LacLean, Mayor of the Village of Mettawa, 1000 Allanson Road, Mundelein, Illinois 60060. | | | | | |
| Illinois | Riverwoods (Village), Lake County. | Des Plaines River | Approximately 600 feet upstream of Lake-Cook Road. | *643 | *645 |
| | | | Approximately 0.92 mile upstream of Deerfield Road. | *645 | *646 |
| Maps available for inspection at the Riverwoods Village Hall, 300 Portwine Road, Riverwoods, Illinois. | | | | | |
| Send comments to Mr. Roy L. Stanger, Riverwoods Village President, 300 Portwine Road, Riverwoods, Illinois 60015. | | | | | |
| Illinois | Vernon Hills (Village), Lake County. | Des Plaines River | Approximately 1.02 miles downstream of State Route 60 (Townline Road). | *657 | *650 |
| | | | Approximately 1,900 feet upstream of State Route 60 (Townline Road) at corporate limits. | *657 | *650 |
| Maps available for inspection at the Vernon Hills Public Works Department, 490 Greenleaf Drive, Vernon Hills, Illinois. | | | | | |
| Send comments to Mr. Larry Laschen, Vernon Hills Village Manager, 290 Evergreen Drive, Vernon Hills, Illinois 60061. | | | | | |
| Illinois | Wadsworth (Village), Lake County. | Des Plaines River | Approximately 1.16 miles downstream of McCarthy Road. | *666 | *669 |
| | | | Approximately 1.6 miles upstream of Wadsworth Road. | *669 | *671 |
| | | Mill Creek | At confluence with Des Plaines River | *668 | *670 |
| | | | Approximately 1,100 feet downstream of Dilleys Road. | *669 | *670 |
| Maps available for inspection at the Wadsworth Village Hall, 14155 Wadsworth Road, Wadsworth, Illinois. | | | | | |
| Send comments to Mr. Donald T. Craft, Wadsworth Village President, 14155 Wadsworth Road, Wadsworth, Illinois 60083. | | | | | |
| Illinois | Waukegan (City), Lake County. | Des Plaines River | Approximately 2.1 miles downstream of Belvidere Road. | *660 | *661 |
| | | | Approximately 1.2 miles downstream of Belvidere Road. | *660 | *662 |
| | | Suburban Country Club Tributary. | Approximately 1,750 feet upstream of Unnamed Road. | *665 | *668 |
| | | | Approximately 200 feet upstream of Delaney Road. | *667 | *668 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Waukegan City Engineer's Office, 106 North Utica Street, Waukegan, Illinois. | | | | | |
| Send comments to The Honorable William Durkin, Mayor of the City of Waukegan, 106 North Utica Street, Waukegan, Illinois 60085. | | | | | |
| Kentucky | Dover (City) Mason County. | Ohio River | Approximately 350 feet downstream of the downstream corporate limits. | None | *512 |
| | | | Approximately 4,350 feet upstream of the downstream corporate limits. | None | *513 |
| Maps available for inspection at the City of Dover V.F.D. Building, Lucretia Street, Dover, Kentucky. | | | | | |
| Send comments to the Honorable David R. Henson, Mayor of the City of Dover, P.O. Box 161, Dover, Kentucky 41034. | | | | | |
| Massachusetts | Wilmington (Town), Middlesex County. | Lubber's Brook | Approximately 0.07 mile upstream of Glen Road. | *93 | *92 |
| | | | Approximately 0.92 mile upstream of State Route 129. | None | *103 |
| Maps available for inspectoin at the Wilmington Town Hall, 121 Glen Road, Wilmington, Massachusetts. | | | | | |
| Send comments to Mr. Michael A. Caira, Wilmington Town Manager, Wilmington Town Hall, 121 Glen Road, Wilmington, Massachusetts. | | | | | |
| Minnesota | Centerville (City), Anoka County. | Peltier Lake | Shoreline within community | None | *887 |
| | | Centerville Lake | Shoreline within community | None | *886 |
| Maps available for inspection at the Centerville City Hall, 1880 Main Street, Centerville, Minnesota. | | | | | |
| Send comments to Mr. Jim March, City of Centerville Administrator, 1880 Main Street, Centerville, Minnesota 55038. | | | | | |
| New Hampshire | Concord (City) Merimack County. | Merrimack River | Approximately 850 feet downstream of Garvins Falls Dam. | *205 | *204 |
| | | | At upstream corporate limits | *254 | *252 |
| | | Soucook River | At confluence with Merrimack River | *203 | *204 |
| | | | Approximately 1,850 feet upstream of confluence with Merrimack River. | *203 | *204 |
| Maps available for inspection at the Concord City Hall Lobby, Engineering Office and Code Enforcement Office, 41 Green Street, Concord, New Hampshire. | | | | | |
| Send comments to the Honorable William J. Veroneau, Mayor of the City of Concord, 41 Green Street, Concord, New Hampshire 03301. | | | | | |
| New York | Deerfield (Town) Oneida County. | West Canada Creek | Approximately 0.4 mile downstream of State Routes 28 and 8. | None | *696 |
| | | | At upstream corporate limits | None | *715 |
| Maps available for inspection at the Deerfield Municipal Building, 6329 Walker Road, Deerfied, New York. | | | | | |
| Send comments to Mr. Philip Sacco, Supervisor of the Town of Deerfield, 6329 Walker Road, Deerfield, New York 13502. | | | | | |
| New York | Poland (Village) Herkimer County. | West Canada Creek | Approximately 200 feet downstream of CONRAIL bridge. | None | *686 |
| | | | Approximately 650 feet upstream of State Routes 8 and 28. | None | *698 |
| Maps available for inspection at the Poland Village Office, Case Street, Poland, New York. | | | | | |
| Send comments to The Honorable Stephen Olney, Mayor of the Village of Poland, P.O. Box 133, Poland, New York 13431. | | | | | |
| New York | Russia (Town) Herkimer County. | West Canada Creek | Approximately 0.9 mile downstream of State Route 28 (Creek Road). | None | *698 |
| | | | At Hinckley Dam | None | *1230 |
| Maps available for inspection at the Russia Town Hall, Route 28, Poland, New York. | | | | | |
| Send comments to Mr. Thomas Ingersoll, Supervisor of the Town of Russia, P.O. Box 126, Poland, New York 13431. | | | | | |
| Tennessee | Belle Meade (City), Davidson County. | Richland Creek | Approximately 100 feet upstream of the confluence of Sugartree Creek. | *459 | *461 |
| | | | Approximately 550 feet upstream of Belle Meade Boulevard. | None | *537 |
| | | Belle Meade Branch | At confluence with Richland Creek | None | *529 |
| | | | Approximately 60 feet upstream of Warner Place. | None | *557 |
| | | Sugartree Creek | At the confluence with Richland Creek | *459 | *461 |
| | | | At Valley Forge Drive | *475 | *477 |
| | | Vaughn's Gap Branch | Approximately 50 feet upstream of Harding Place. | *505 | *507 |
| | | | Approximately 580 feet upstream of Harding Place. | None | *509 |
| | | Jocelyn Hollow Branch | At confluence with Richland Creek | None | *494 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Just upstream of U.S. Route 705 ..... | *493 | *494 |
| Maps available for inspection at the Belle Meade City Hall, 4705 Harding Road, Nashville, Tennessee. | | | | | |
| Send comments to the Honorable T. Scott Fillebrown, Mayor of the City of Belle Meade, 4705 Harding Road, Nashville, Tennessee 37205. | | | | | |
| Tennessee ..... | Berry Hill (City), Davidson County. | East Fork Browns Creek .... | At the confluence with Browns Creek ..... | *472 | *473 |
| | | | Approximately 0.6 mile upstream of Berry Road. | None | *496 |
| | | Browns Creek ..... | Approximately 950 feet upstream of Craighead Street. | *470 | *469 |
| | | | Approximately 265 feet upstream of CSX Transportation. | *479 | *478 |
| Maps available for inspection at the Berry Hill City Hall, 698 Thompson Lane, Berry Hill, Tennessee. | | | | | |
| Send comments to The Honorable James Haskins, Mayor of the City of Berry Hill, 698 Thompson Lane, Berry Hill, Tennessee 37204. | | | | | |
| Tennessee ..... | Goodlettsville (City), Davidson and Sumner Counties. | Dry Creek ..... | Approximately 100 feet downstream of CSX Transportation. | *442 | *443 |
| | | | Approximately 2,110 feet upstream of Dickerson Pike. | *515 | *516 |
| | | Mansker Creek ..... | Approximately 2.07 miles upstream of confluence with Cumberland River. | *430 | *432 |
| | | | Approximately 2.84 miles upstream of confluence with Cumberland River. | *431 | *432 |
| Maps available for inspection at the Goodlettsville City Hall, 105 South Main Street, Goodlettsville, Tennessee. | | | | | |
| Send comments to The Honorable Bobby Jones, Mayor of the City of Goodlettsville, 105 South Main Street, Goodlettsville, Tennessee 37072. | | | | | |
| Tennessee ..... | Gordonsville (Town), Smith County. | Caney Fork River ..... | At the confluence of Mulherrin Creek ..... | None | *489 |
| | | | Approximately 0.3 mile upstream of the confluence of Hickman Creek. | None | *493 |
| | | Mulherrin Creek ..... | Approximately 25 feet upstream of Southern Railway. | None | *489 |
| | | | Approximately 1,100 feet upstream of State Route 53/Carthage Road. | None | *490 |
| | | Hickman Creek ..... | At the confluence with Caney Fork River | None | *492 |
| | | | Approximately 1.2 miles upstream of Southern Railway. | None | *493 |
| Maps available for inspection at the Gordonsville City Hall, 63 East Main Street, Gordonsville, Tennessee. | | | | | |
| Send comments to The Honorable Joseph K. Anderson, Mayor of the Town of Gordonsville, 63 Main Street, Gordonsville, Tennessee 38563–0357. | | | | | |
| Tennessee ..... | Lakewood (City), Davidson County. | Cumberland River ..... | Approximately 1,000 feet south of Gail Drive and Rifle Range Road intersection. | None | *428 |
| | | | Approximately 1,500 feet west of Meadow Street and Ray Avenue intersection. | *426 | *428 |
| Maps available for inspection at the Lakewood City Hall, 3401 Hadley Avenue, Old Hickory, Tennessee. | | | | | |
| Send comments to The Honorable Charles Gann, Mayor of the City of Lakewood, 3401 Hadley Avenue, Old Hickory, Tennessee 37138. | | | | | |
| Tennessee ..... | Nashville and Davidson County Metropolitan Government. | Richland Creek ..... | At confluence with Cumberland River ..... | *408 | *409 |
| | | | Approximately 0.5 mile upstream of Harding Place. | None | *515 |
| | | McCrory Creek ..... | At confluence with Stones River ..... | *426 | *425 |
| | | | Approximately 0.3 mile upstream of Couchville Pike. | None | *508 |
| | | North Fork Ewing Creek .... | Approximately 130 feet upstream of the confluence with Ewing Creek. | *468 | *469 |
| | | | Approximately 50 feet downstream of Dickerson Pike. | *543 | *542 |
| | | North Fork Ewing Creek Tributary. | At confluence with North Fork Ewing Creek. | *527 | *530 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 0.4 mile upstream of confluence with North Fork Ewing Creek. | None | *549 |
| | | Vhoins Branch | Approximately 0.08 mile upstream of the confluence with Ewing Creek. | *543 | *454 |
| | | | Approximately 0.8 mile upstream of Knights Drive. | *505 | *506 |
| | | Eaton Creek | At confluence with Whites Creek | None | *494 |
| | | | Approximately 0.87 mile upstream of Sulphur Creek Road. | &411 | *412 |
| | | Pages Branch Tributary A | Approximately 15 feet upstream of confluence with Pages Branch. | *467 | *468 |
| | | | Approximately 530 feet upstream of Jones Avenue. | *575 | *574 |
| | | Earthman Fork | At confluence with Whites Creek | *460 | *462 |
| | | | Approximately 2.0 miles upstream of Old Hickory Boulevard. | None | *521 |
| | | Elm Hill Tributary | At confluence with McCrory Creek | *449 | *450 |
| | | | Approximately 1,800 feet upstream of Timber Valley Drive. | None | *506 |
| | | Jocelyn Hollow Branch | Upstream side of U.S. Route 705 | *493 | *494 |
| | | | Approximately 370 feet upstream of Robin Hill Road. | None | *570 |
| | | Sugartree Creek | At confluence with Richland Creek | *459 | *461 |
| | | | Approximately 0.14 mile upstream of Hillsboro Pike. | *574 | *573 |
| | | Vaughn's Gap Branch | At confluence with Richland Creek | None | *499 |
| | | | Approximately 0.2 mile upstream of Park Lane. | *580 | *581 |
| | | Whites Creek | At confluence with Cumberland River | *411 | *412 |
| | | | Approximately 0.8 mile upstream of Ingram Road. | *532 | *531 |
| | | Whites Creek Tributary | At the confluence with Whites Creek | *427 | *430 |
| | | | Approximately 1,267 feet upstream of Rowan Drive. | None | *471 |
| | | Drake Branch | At confluence with Whites Creek | *414 | *416 |
| | | | Approximately 0.58 mile upstream of Kings Lane. | *471 | *472 |
| | | Dry Fork Creek | At confluence with Whites Creek | *447 | *449 |
| | | | Approximately 1.21 miles upstream of Dry Fork Road. | None | *501 |
| | | West Fork Browns Creek | At confluence with Browns Creek | *489 | *511 |
| | | | Approximately 50 feet upstream of Sewanee Drive. | *603 | *604 |
| | | Middle Fork Browns Creek | At confluence with Browns Creek | *489 | *511 |
| | | | Just upstream of Woodmont Boulevard | *499 | *511 |
| | | East Fork Browns Creek | At downstream corporate limits | None | *495 |
| | | | Approximately 475 feet upstream of Armory Drive. | None | *524 |
| | | Browns Creek | At confluence with Cumberland River | *416 | *418 |
| | | | At confluence of Middle and West Forks Browns Creek. | *489 | *511 |
| | | East Fork Hamilton Creek | At confluence with Percy Priest Reservior | None | *506 |
| | | | Approximately 685 feet upstream of Bell Road. | None | *570 |
| | | Little Creek | At confluence with Whites Creek | *476 | *477 |
| | | | Approximately 0.43 mile upstream of Old Hickory Boulevard. | None | *583 |
| | | Pages Branch | At confluence with Cumberland River | *413 | *415 |
| | | | Approximately 0.1 mile upstream of Oakwood Avenue. | *537 | *538 |
| | | Pulley Tributary | At confluence with McCrory creek | None | *487 |
| | | | Approximately 0.3 mile upstream of Reynolds Road. | None | *541 |
| | | Tributary No. 1 to East Fork Hamilton Creek. | At confluence with East Fork Hamilton Creek. | *515 | *518 |
| | | | Approximately 0.22 mile upstream of Hamilton Church Road. | None | *568 |
| | | Tributary No. 2 to East Fork Hamilton Creek. | At confluence with East Fork Hamilton Creek. | None | *509 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 100 feet upstream of Anderson Road. | None | *564 |
| | | Tributary to Richland Creek | At confluence with Richland Creek ..... | *453 | *454 |
| | | | Approximately 0.2 mile upstream of Bowling Avenue. | None | *510 |
| | | Dry Creek ..... | At confluence with Cumberland River ..... | *429 | *431 |
| | | | Downstream side of Dickerson Pike ..... | *496 | *497 |
| | | Cumberland River ..... | Approximately 6.6 miles downstream of confluence of Overall Creek. | *404 | *405 |
| | | | At downstream side of Old Hickory Dam | *430 | *432 |
| | | Mill Creek ..... | At the confluence with Cumberland River | *417 | *419 |
| | | | Approximately 1,214 feet upstream of Concord Road. | None | *557 |
| | | | J. Percy Priest Reservoir Entire shoreline within community. | None | *506 |
| | | Pages Branch Tributary B .. | Approximately 0.44 mile upstream of confluence with Pages Branch. | None | *479 |
| | | | Approximately 80 feet downstream of Brick Church Pike. | *508 | *507 |
| | | Stones River ..... | At confluence with Cumberland River ..... | *424 | *425 |
| | | | Approximately 1,584 feet upstream of Interstate Highway 40 (at J. Percy Priest Dam). | *426 | *425 |
| | | Windemere Branch ..... | At confluence with Cumberland River ..... | *418 | *419 |
| | | | Approximately 0.25 mile upstream of Broley Parkway. | *418 | *419 |
| | | Gibson Creek ..... | At the confluence with Cumberland River | *420 | *422 |
| | | | Approximately 0.27 mile downstream of Gallatin Pike. | *421 | *422 |
| | | Gibson Creek Tributary ..... | At the confluence with Gibson Creek ..... | *420 | *422 |
| | | | Approximately 50 feet downstream of Madison Boulevard. | *421 | *422 |
| | | Mansker Creek ..... | At confluence with Cumberland River ..... | *430 | *432 |
| | | | Approximately 0.39 mile downstream of Long Hollow Pike. | *431 | *432 |
| | | Collins Creek ..... | At confluence with Mill Creek ..... | *515 | *517 |
| | | | Approximately 0.1 mile downstream of Bell Road. | *516 | *517 |
| | | Ewing Creek ..... | At confluence with Whites Creek ..... | *429 | *431 |
| | | | Approximately 0.32 mile downstream of Whites Creek Pike. | *431 | *432 |
| | | Sevenmile Creek ..... | At confluence with Mill Creek ..... | *469 | *468 |
| | | | Approximately 260 feet upstream of Antioch Pike. | *469 | *468 |
| | | Sorghum Branch ..... | At confluence with Mill Creek ..... | *476 | *475 |
| | | | Approximately 100 feet downstream of Antioch Pike. | *476 | *475 |
| Maps available for inspection at the Metropolitan Government of Nashville and Davidson County, 720 South Fifth Street, Nashville, Tennessee. | | | | | |
| Send comments to The Honorable Philip Bredesen, Mayor of the City of Nashville, 107 Metropolitan Courthouse, Nashville, Tennessee 37201. | | | | | |
| Tennessee ..... | Oak Hill (City), Davidson County. | West Fork Browns Creek ... | Approximately 1,100 feet downstream of Gateway Lane. | None | *604 |
| | | | Approximately 370 feet upstream of Tyne Boulevard. | None | *650 |
| | | Middle Fork Browns Creek | Approximately 50 feet upstream of Woodmont Boulevard. | *499 | *511 |
| | | | Approximately 211 feet upstream of Oak Valley Lane. | None | *627 |
| Maps available for inspection at the Oak Hill City Hall, 5548 Franklin Road, Nashville, Tennessee. | | | | | |
| Send comments to The Honorable Warren Wilkerson, Mayor of the City of Oak Hill, 5548 Franklin Road, Suite 102, Nashville, Tennessee 37220. | | | | | |
| Tennessee ..... | Smith County (Unincorporated Areas). | Caney Fork River ..... | At the confluence of Mulherrin Creek ..... | None | *489 |
| | | | Approximately 0.53 mile upstream of the confluence of Hickman Creek. | None | *493 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Mulherrin Creek ..... | Approximately 25 feet upstream of Southern Railway. | None | *489 |
| | | | Approximately 1,250 feet upstream of State Route 53/Carthage Road. | None | *490 |
| | | Hickman Creek ..... | At the confluence with Caney Fork River | None | *492 |
| | | | Approximately 1.2 miles upstream of Southern Railway. | None | *493 |

Maps available for inspection at the Smith County Executive's Office, 122 Turner High Circle, Carthage, Tennessee.

Send comments to Mr. C. E. Hackett, Smith County Executive, 122 Turner High Circle, Carthage, Tennessee 37030.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: September 11, 1998.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 98–25072 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–04–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. NHTSA 98–4124; Notice 2]**

## Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Extension of Comment Period for a Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This document extends the comment period on an NPRM proposing that the maximum light emitted from daytime running lamps (DRLs) be reduced. This reduction is proposed to take place in three stages.

In response to a petition from the American Automobile Manufacturers Association (AAMA), the agency is extending the comment period 45 days from September 21, 1998 to November 5, 1998. The reason for the extension is to give AAMA sufficient time to collect information from its members which it has outlined in its petition for extension. AAMA requested that the comment period be extended by 60 days. The agency is allowing an additional 45 days to accommodate the need for additional time to gather information and the public interest in a prompt resolution to this matter.

**DATES:** Comments on Docket No. NHTSA 98–4124; Notice 1 must be received by November 5, 1998.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Jere Medlin, Office of Safety Performance Standards (202–366–5276).

**SUPPLEMENTARY INFORMATION:** The agency proposed in an NPRM published on August 7, 1998 (63 FR 42348) that the maximum allowable light emitted from DRLs be decreased in three stages. One year after publication of the final rule, DRLs utilizing the upper headlamp beam would not be permitted to exceed 3,000 cd at any point, thus becoming subject to the maximum cd permitted for DRLs other than headlamps. This same limit would be applied to the upper half of lower beam DRLs two years after publication of the final rule. Finally, four years after publication of a final rule, all DRLs, except lower beam DRLs, would be subject to a flat 1,500 cd limit. Lower beam DRLs would be limited to 1,500 cd at horizontal or above. This action is intended to provide the public with all the conspicuity benefits of DRLs while reducing glare.

On August 31, 1998, AAMA petitioned for a 60 day extension of the comment period. AAMA has requested key information from its member companies that it would like to examine before it submits its comments on the NPRM. It needs this extra time to collect all the information and analyze it. The information being collected includes determining the cost, implementation and timing to meet the proposed rule. This analysis will take into account potential styling implications, such as the use of clear lenses and cadmium glass bulbs. Cadmium glass bulbs, which produce orange light through clear lenses, are being phased out due to negative environmental impacts and there are no practicable alternatives that would allow the use of clear lenses on turn signal lamps. AAMA is also obtaining the value of the traditional glare point (½U, ½) on typical low- and high-beam headlamps. It will extrapolate the glare value of a DRL from this data. In addition, one of AAMA's member companies is attempting research to determine the relative effectiveness of the various types of DRL systems. Previous DRL studies have relied on performance data from DRL designs that would have to be changed to meet the current proposal.

In addition, AAMA would like to share this information with its European counterparts to assess the likelihood of the Europeans allowing turn signal DRLs. AAMA states that it is important to consider global harmonization in all future rulemakings.

After considering the arguments raised by AAMA, NHTSA has decided that it is in the public interest to extend the comment period pursuant to the petitioner's request. However, the agency is extending it by 45 days, instead of the 60 days requested by AAMA. The additional 45 days means the total comment period will have been 90 days. A 90-day comment period allows ample time to evaluate the proposal, while recognizing the public interest in prompt decisions on proposed rulemaking actions.

(Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on: September 15, 1998.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 98–25052 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–59–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[I.D. 090998B]**

**RIN 0648–AL20**

## Fisheries of the Exclusive Economic Zone Off Alaska; Vessel Moratorium Program

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

**ACTION:** ACTION: Notice of availability of amendments to fishery management plans; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 59 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 57 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 9 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These amendments, submitted by the Council, would extend the Vessel Moratorium Program for a vessel with a Moratorium Qualification for which a Vessel Moratorium Permit was issued on or before December 31, 1998, or for which a Vessel Moratorium Permit was applied for on or before December 31, 1998. The Vessel Moratorium Program is managed under the FMP for the Groundfish Fishery of the BSAI, the FMP for Groundfish of the GOA, and the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. The Vessel Moratorium Program extension, from January 1, 1999, to December 31, 1999, is intended to prevent a hiatus between the ending of the Vessel Moratorium Program and the beginning of the License Limitation Program. Comments are requested from the public.

**DATES:** Comments on the FMP amendments must be received by November 17, 1998.

**ADDRESSES:** Comments on the proposed FMP amendments must be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the proposed amendments and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Room 306, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares for review and approval, disapproval, or partial disapproval. The Magnuson-Stevens Act also requires that NMFS, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment.

NMFS implemented the Vessel Moratorium Program (60 FR 40763, August 10, 1995) in 1996 to impose a temporary moratorium on the entry of new vessels into the commercial groundfish fisheries in the exclusive economic zone of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands. The Vessel Moratorium Program was designed to curtail increases in fishing capacity and provide industry stability while the Council developed a comprehensive solution to problems affecting these fisheries.

In June 1995, the Council took final action on recommending the License Limitation Program (LLP) as the next step towards the comprehensive resolution to problems of excess harvesting capacity and conflicts between industry sectors and gear in the affected fisheries. NMFS approved the LLP on September 12, 1997, and anticipated that the LLP could be implemented by January 1, 1999. However, the design and implementation of the LLP required more time than was originally anticipated. Fishing under the LLP is now scheduled to begin January 1, 2000; however, the Vessel Moratorium currently is scheduled to expire December 31, 1998. Unless an extension is provided, a 1-year hiatus between the Vessel Moratorium Program and the LLP will occur.

Amendments 9, 57, and 59 will extend the Vessel Moratorium Program for 1 year. Under these amendments, (1) a Moratorium qualified vessel for which an application for a Vessel Moratorium Permit has not been made on or before December 31, 1998, or (2) a Moratorium qualified vessel for which a Vessel Moratorium Permit has not been issued on or before December 31, 1998, based on that qualification, will no longer be eligible for a Moratorium Permit based on that qualification. This action is intended to eliminate the potential for latent capacity to enter the affected fisheries.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. The proposed regulations are scheduled to be published within 15 days of this document. Public comments on the proposed rule must be received by the end of the comment period on the amendments to be considered in the approval/disapproval decision on the amendments; comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received by close of business of the last day of the comment period.

Dated: September 11, 1998.

**Gary C. Matlock**

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

[FR Doc. 98–25093 Filed 9–17–98; 8:45 am]

BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 63, No. 181
Friday, September 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 AGRICULTURE

### Forest Service

### National Survey on Recreation and the Environment

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of information collection: request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection. This collection is necessary to ensure that the Forest Service and other land managing agencies meet the recreational needs of the public, understand the public's attitudes and preferences for management of public lands and the environment, and meet the Congressionally mandated reporting requirements for the Renewable Resources Planning Act and the Government Performance and Results Act. Respondents will be adults in the United States.

**DATES:** Comments must be received in writing on or before November 17, 1998.

**ADDRESSES:** All comments should be addressed to: H. Ken Cordell, Southern Research Station, Forest Service, USDA, 320 Green Street, Athens, GA 30602–2044 or faxed to (706) 559–4262. Comments also may be sent via e-mail to kcordell/srs__athens@fs.fed.us.

The public may inspect comments at the offices of the Southern Research Station, Research Work Unit SRS–4901, Forest Service, USDA, 320 Green Street, Athens, Georgia.

**FOR FURTHER INFORMATION CONTACT:** H. Ken Cordell, Southern Research Station, at (706) 559–4263 or e-mail kcordell/srs__athens@fs.fed.us.

**SUPPLEMENTARY INFORMATION:**

### Description of Information Collection

*Title:* National Survey on Recreation and the Environment: The Seventh National Recreation Survey.

*OMB Number:* 0596–0127.

*Expiration Date of Approval:* September 30, 1998.

*Type of Request:* Extension of a previously approved information collection.

*Abstract:* The collected information will be used to measure the demands the public makes on National Forests and other public lands and recreational sites; to identify the recreational preferences of visitors to public and private recreational sites; to identify the public's, especially persons with disabilities, perceptions of accessibility to recreational sites; to gain feedback from the public about management of National Forests and other recreational lands; to ask the public how they think public agencies could improve management of public land and recreational areas; and to keep abreast of shifts in recreational demands that might influence delivery of recreational services. The Forest Service also will use the collected information in developing the Renewable Resources Planning Act Assessment for the year 2000, which will look at emerging public recreational trends.

The first National Survey on Recreation and the Environment was conducted in 1960. Since then, the survey has been conducted every 5 years. The data collected in this series of information collections has enabled Federal and State agencies to keep up to date on changing public recreational trends that place demands on public recreational facilities and areas.

In 1987, the Forest Service coordinated the National Survey on Recreation and the Environment in collaboration with five other Federal agencies (the Bureau of Land Management, Corps of Engineers, Environmental Protection Agency, Economic Research Service, and National Oceanic and Atmospheric Administration), three private sector interests (the Sporting Goods Manufacturers Association, Sports Fishing Institute, and Outdoor Recreation Coalition of America), and five universities (the University of Georgia, Indiana University, Georgia Southern University, Purdue University, and the University of Tennessee). The Forest Service assumed the principle investigative role for the Survey and, in 1994, conducted the most recent survey in the continuing national series. As the lead agency, Forest Service personnel led the conceptualization, design, and execution of the 1994–95 National Survey on Recreation and the Environment.

The Forest Service will coordinate the next National Survey on Recreation and the Environment to be conducted from March, 1999, through February, 2000. It will be the seventh in this series of Federally-sponsored recreational surveys. To maintain the historical integrity of the data, this survey will incorporate many of the same interviewing protocols used since the beginning survey in 1960.

As with the 1994–95 National Survey on Recreation and the Environment, interviews will be conducted by telephone. The telephone numbers of respondents will be selected at random. Respondents will be interviewed by personnel trained in interviewing techniques and will be bilingual to overcome language barriers.

Data gathered in this information collection is not available from other sources.

*Estimate of Burden:* 20 minutes.

*Type of Respondents:* Individuals 16 years or older with access to a telephone.

*Estimated Number of Respondents:* 50,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 16,667 hours.

### Comment Is Invited

The agency invites comments on the following: (a) Whether the information proposed for collection is appropriate for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

**Use of Comments**

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: September 14, 1998.

**Robert C. Joslin,**

*Acting Associate Chief.*

[FR Doc. 98–25053 Filed 9–17–98; 8:45 am]

BILLING CODE 3410–11–P

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## Rio Sabana Day Use Picnic Area, Caribbean National Forest, Naguabo, Puerto Rico

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The Forest Service, USDA will prepare an environmental impact statement (EIS) on a proposed action to develop the Rio Sabana Day Use Picnic Area in the municipality of Naguabo, reconstruct 2.5 miles of the Rio Sabana Trail and trailhead, reconstruct 0.8 miles of entrance road, and construct a cable trail bridge over Rio Sabana.

The Forest Service invites comments and suggestions that are within the scope of the proposed action and analysis. In addition, the agency gives notice of the environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATES:** Following are the dead lines established for pubic comments: (a) Comments to be incorporated into the draft environmental impact statement should be received by September 30th, 1998; (b) Comments to be incorporated into the final environmental impact statement should be received within 45 days following publication of the Notice of Availability of the draft environmental impact statement.

**ADDRESSES:** Send written comments to: Abigail Rivera, Team Leader; Caribbean National Forest, P.O. Box 490, Palmer, Puerto Rico, 00721.

**FOR FURTHER INFORMATION CONTACT:** Abigail Rivera, Rio Sabana Picnic Area EIS Team Leader, 787 888–5643.

**SUPPLEMENTARY INFORMATION:** The Caribbean National Forest is proposing: (a) To develop a day use picnic area located in the vicinity of the Rio Sabana Bridge, on the southern end of Highway #191, at Km. 21.1, in the Cubuy Sector of the Municipality of Naguabo; (b) the rehabilitation of 2.5 miles of the Rio Sabana Trail #6 and trailhead; (c) repair and reconstruction of 0.8 miles of entrance road, on Hwy. #191, Km. 22.3, to project site, Km. 21.1; (d) and construction of a cable bridge over the Rio Sabana. Currently, the area has not been developed for recreation but receives heavy use. This use, coupled with a sensitive ecosystem in which it is located, gives rise to a potential conflict between the need to protect and conserve natural resources and the need to provide a well managed natural setting where our customers can enjoy a satisfying recreational experience.

Access to the proposed site is via Hwy #191, at Km. 22.3. On April 13, 1992, U.S. District Judge Guierbolini permanently enjoined and restrained the U.S. Forest Service and the Federal Highway Administration from proceeding with construction activities on the closed portion of Highway P.R. #191, from Km. 13.5 to Km. 20, until completion of an environmental impact statement. The proposed project is located on a segment of Hwy. #191 that is outside of the area under court order.

The proposed action would meet the objectives of: (a) Correcting the current managerial situation and social settings in relation to the physical setting and actual use; (b) protect the natural resources in the vicinity; (c) increase Forest Service presence on the southern end of the Forest, which currently is minimal.

The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA) and the Endangered Species Act (ESA). The U.S. Forest Service will be the lead agency and the Puerto Rico Department of Public Transportation (DTOP) will be a cooperating agency.

Public participation will be especially important at several points during analysis. The first point is when scoping officially begins (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action.Comments must be received by *September 30, 1998.* This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include: (1) Identifying potential issues; (2) Identifying issues to be analyzed in depth; (3) Eliminating insignificant issues or those which have been covered by a relevant previous environmental process; (4) Exploring additional alternatives; (5) Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions). Public participation will include notifying interested and affected publics of the proposed action in person and/or by mail. News releases will be used to provide general notice to the public.

The following preliminary issues have been identified through internal scoping: (1) Possible effects of development of picnic area and reconstruction of Rd. #191 on the threatened and endangered species identified in the project area; (2) Possible effects on natural resources due to an increase in visitors to picnic area and trail; (3) Reconstruction of the historic CCC Rio Sabana Trail, which connects with the Tradewinds/El Toro Trail, may generate greater use than is allowed in the proposed Wilderness Management Area; (4) Security issues in the area in relation to 24-hour presence of Forest Service hosts of volunteers; (5) Potential hazards to Forest users caused by a nearby water impoundment and transmission facility, located on private land.

A draft environmental impact statement is expected to be available for public review, for 45 days, in October 1998.

It is very important that those interested in this proposed action participate at that time. Upon release of the draft environmental impact statement, projected for *October 1998,* reviewers should structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S.C. 519, (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). It is also helpful if comments refer to specific pages of chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing

the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period on the draft environmental impact statement ends, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by February 1999. The Responsible Official will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The decision will be subject to appeal in accordance with 36 CFR 215.

The Responsible Official is: Pablo Cruz, Forest Supervisor, Caribbean National Forest, P.O. Box 490, Palmer, Puerto Rico, 00721.

Dated: August 25, 1998.

**Pablo Curz,**

*Forest Supervisor.*

[FR Doc. 98–25001 Filed 9–17–98; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** October 19, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Call Center Services*

Defense Logistics Information Service (DLIS), Battle Creek Customer Support Center (CSC), Federal Center, 74 North Washington Avenue, Battle Creek, Michigan

*NPA:* Peckham Vocational Industries, Inc., Lansing, Michigan

*Janitorial/Custodial*

Austin Memorial AFRC/AMSA #1, Austin, Texas,

*NPA:* Goodwill Industries of Central Texas, Inc., Austin, Texas.

### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

*Commodities*

Cover, Bed 7210–01–116–7856

7210–01–120–0679
7210–01–120–8019
7210–01–116–7855
7210–01–120–8018
7210–01–120–8009
7210–01–120–8017
7210–01–120–8014
7210–01–120–8016
7210–01–116–7853
7210–01–124–8303
7210–01–118–4085
7210–01–120–8022
7210–01–120–8021
7210–01–122–5015
7210–01–123–5149
7210–01–125–9250
7210–01–120–8015
7210–01–120–8012
7210–01–120–8011
7210–01–116–7859
7210–01–123–5148
7210–01–116–7858
7210–01–116–7860
7210–01–120–8020
7210–01–116–7857
7210–01–116–7854
7210–01–120–8013
7210–01–124–7626
7210–01–120–8010

*Service*

Grounds Maintenance, U.S. Army Reserve Center, 1816 East Main Street, Albemarle, North Carolina.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 98–25099 Filed 9–17–98; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** October 19, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodity*

Firing Attachment, Blank, 1005–01–361–8208, *NPA:* Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina

*Services*

Janitorial/Custodial, Fort Campbell, Kentucky, *NPA:* Lakeview Center, Inc., Pensacola, Florida

Operation of Postal Service Center, Vandenberg Air Force Base, California, *NPA:* Lighthouse for the Blind of Houston, Houston, Texas.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 98–25100 Filed 9–17–98; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

**EFFECTIVE DATE:** October 19, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On July 24 and 28, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 39812, 40877 and 40878) of proposed additions to and deletions from the Procurement List.

### Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

*Commodity*

Anti-Microbial Textiles Shipper, M.R. 1911

*Services*

Customer Service Representatives, General Services Administration, Northwest Arctic Region, 400 15th Street, SW, Auburn, Washington

Food Service Attendant (Postwide), Fort Carson, Colorado

Janitorial/Custodial, West LA VA Community Base Clinic, 1063 N. Vine Street, Los Angeles, California, San Diego Vet Center, 2900 Sixth Avenue, San Diego, California

Janitorial/Custodial, Federal Records Center and USDA Laboratory, East Point, Georgia

Janitorial/Custodial, GPO Laurel Warehouse, 8610 & 8660 Cherry Lane, Laurel, Maryland

GPO Springbelt Warehouse, 7701 Southern Drive, Springfield, Virginia

Janitorial/Custodial, U.S. Courthouse, 4th and Lomas, Albuquerque, New Mexico

Janitorial/Custodial, Carr Inlet Acoustical Range, 630—3rd Avenue, Fox Island, Washington.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Box, Wood

8115–00–L00–1528
8115–00–L00–1527
8115–00–L00–1526
8115–00–L00–1780
8115–00–L00–1525
8115–00–L00–1649
8115–00–L00–1532
(Requirements of the Defense Industrial Plant Equipment Center, Memphis, TN only)

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 98–25101 Filed 9–17–98; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

## Bureau of the Census

## Current Population Survey—Annual Demographic Survey for March 1999

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before November 17, 1998.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bonnie Tarsia, Bureau of the Census, FOB 3, Room 3340, Washington, DC 20233–8400, at (301) 457–3806.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Census Bureau will conduct the Annual Demographic Survey (ADS) in conjunction with the March 1999 Current Population Survey (CPS). The Census Bureau has conducted this supplement annually for over 50 years. The Census Bureau, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement.

In the ADS we collect information on work experience, personal income, noncash benefits, expanded race items, and migration.

The work experience items in the ADS provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by persons, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ADS are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use March data to determine the effects of various economic forces, such as inflation, recession, recovery, etc., and their differential effects on various population groups.

A prime statistic of interest is the classification of persons as being in poverty and how this measurement has changed over time for various groups. Researchers evaluate March income data not only to determine poverty levels but also to determine whether government programs are reaching eligible households.

The March 1999 supplement instrument will consist of the same items that were included in the March 1998 instrument with a few minor changes. These include:

- Dropping the phrase ''because your income was low'' in the question which asks about receiving government payments, such as public assistance or welfare.
- Adding two new answer categories to the migration questions that ask about reasons for moving.
- Adding TRICARE to questions in the health insurance section. TRICARE has replaced CHAMPUS in some areas of the country.
- Adding the phrase ''FROM AN INSURANCE COMPANY'' to a question about health care coverage in the health insurance section.

### II. Method of Collection

The ADS is conducted at the same time as the Basic CPS by personal visits and telephone interviews, using computer-assisted personal interviewing and computer-assisted telephone interviewing.

### III. Data

*OMB Number:* 0607–0354.

*Form Number:* None. We conduct all interviewing on computers.

*Type of Review:* Regular.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 52,000 per month.

*Estimated Time Per Response:* 25 minutes.

*Estimated Total Annual Burden Hours:* 21,666.

*Estimated Total Annual Cost:* There are no costs to the respondents other than their time to answer the CPS questions.

*Respondent's Obligation:* Voluntary.

**Legal Authority:** Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 14, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98–25050 Filed 9–17–98; 8:45 am]

BILLING CODE 3510–70–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcing a Meeting of the Computer System Security and Privacy Advisory Board

**AGENCY:** National Institute of Standards and Technology.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, September 29, 1998, and Wednesday, September 30, 1998 from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All systems will be open to the public.

**DATES:** The meeting will be held on September 29 and 30, 1998, from 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will take place at the National Institute of Standards and Technology, 820 West Diamond Avenue (NIST North Building), Gaithersburg, MD in Room 618.

*Agenda:*

—Welcome and Overview
—Issues Update and Briefings
—Health Care Privacy Update
—On-line Privacy Briefings
—NIST Computer Security Updates
—Discussion
—Pending Business
—Public Participation
—Agenda Development for December Meeting
—Wrap-Up

*Public Participation:* The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions 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 Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if 35 copies of written material ere submitted for distribution to the Board and attendees no later than September 23, 1998. Approximately 15 seats will be available for the public and media.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: September 15, 1998.

**Robert E. Hebner,**

*Acting Deputy Director.*

[FR Doc. 98–25091 Filed 9–17–98; 8:45 am]

BILLING CODE 3510–CN–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 980716179–8179–01]**

**RIN 0648–ZA45**

### Announcement of Graduate Research Fellowships in the National Estuarine Research Reserve System for Fiscal Year 1999

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** The Sanctuaries and Reserves Division (SRD) of the Office of Ocean and Coastal Resource Management is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. This notice sets forth funding priorities, selection criteria, and application procedures.

The National Estuarine Research Reserve System of the National Oceanic and Atmospheric Administration (NOAA) announces the availability of Graduate Research Fellowships. SRD anticipates that 26 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one Reserve. Fellowships will start no earlier than June 1, 1999.

**DATES:** Applications must be postmarked no later than *November 1, 1998*. Notification regarding the awarding of fellowships will be issued on or about March 1, 1999.

**ADDRESSES:** Dr. Dwight D. Trueblood, Science Coordinator, NOAA/Sanctuaries and Reserves Division, 1305 East-West Highway, N/ORM2, SSMC4, 11th Floor, Silver Spring, MD 20910, Attn: FY99 NERRS Research. Phone: 301–713–3145 ext. 174 Fax: 301–713–0404, internet: dtrueblood@ocean.nos.noaa.gov. Web page: http://wave.nos.noaa.gov/ocrm/nerr/nerrs__research.html. See Appendix I for National Estuarine Research Reserve addresses.

**FOR FURTHER INFORMATION CONTACT:** For further information on specific research opportunities at National Estuarine Research Reserve sites, contact the site staff listed in Appendix I. For application information, contact the Science Coordinator of the Sanctuaries and Reserves Division (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

### I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. § 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. § 1461(e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under ''Coastal Zone Management Estuarine Research Reserves,'' Number 11.420.

### II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States and its territories which are designated and managed for

research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact the individual site staff or refer to the NERR internet web site provided in the **ADDRESSES** section.

## III. Availability of Funds

Funds are expected to be available on a competitive basis to qualified graduate students for research within National Estuarine Research Reserves leading to a graduate degree. No more than two fellowships at any one site will be funded at any one time; based upon fellowships awarded in the 1998 funding cycle, we anticipate only 26 openings for Fellowships in FY99. Fellowships are expected to be available at the following sites.

| NERR site | Fellow-ships |
|---|---|
| Apalachicola | 1 |
| Chesapeake Bay, MD | 2 |
| Chesapeake Bay, VA | 1 |
| Delaware | 1 |
| Elkhorn Slough | 1 |
| Grand Bay | 2 |
| Great Bay | 1 |
| Guana-Tolomato-Matanzas | 2 |
| Hudson River | 1 |
| Jacques Cousteau | 2 |
| Jobos Bay | 2 |
| Kachemak Bay | 2 |
| North Inlet-Winyah Bay | 2 |
| Old Woman Creek | 1 |
| Tijuana River | 2 |
| Waquoit Bay | 1 |
| Weeks Bay | 1 |
| Wells | 1 |

Because NOAA is an active partner in NERRS research, funds will be awarded through a cooperative agreement. NOAA may be involved in the award in the following manner:

The Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity under this award if it becomes obvious that award activities are not fulfilling the mission of the National Estuarine Research Reserve System. While day-to-day management is the responsibility of the recipient, frequent guidance and direction is provided by the Federal Government for the successful conduct of this award. Non-compliance with a Federally approved project may result in immediate halting of the award.

SRD generally will review and approve each stage of work annually before the next begins to assure that studies will produce viable information on which to form valid coastal management decisions.

All staff at NERRS sites are ineligible to submit an application for a fellowship under this Announcement. Federal funds requested must be matched by the applicant by at least 30% of the *TOTAL cost, not the Federal share, of the project.* It is anticipated that fellowships receiving funding under this announcement will begin by June 1, 1999.

## IV. Purpose and Priorities

NERR Research funds are provided to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR § 921.50).

The NERR Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with hands-on training in ecological monitoring.

Research projects proposed in response to this announcement must: (1) address coastal management issues identified as having local, regional, or national significance, described in the ''Scientific Areas of Support'' below; and (2) be conducted within one or more designated NERR sites. Funding ($16,500 per year) is intended to provide any combination of research support, salary, tuition, supplies, or other costs as needed, including overhead. Fellows will be expected to participate in an ecological training program that will entail some aspect of ecological monitoring or research for up to a maximum of 15 hours per week. Fellows conducting multi-site projects may fulfill this requirement at one or a combination of sites but for no more than a total of 15 hours per week. This training program may occur throughout the academic year or may be concentrated during a specific season. Students are encouraged, but not required, to incorporate these training activities into their own research programs.

*Scientific Areas of Support*

The NERRS program has identified the following as areas of nationally significant research interest. Proposed research projects submitted in response to this announcement must address one of the following topics (see #1 above):

- The effects of non-point source pollution on estuarine ecosystems;
- Evaluative criteria and/or methods for estuarine ecosystem restoration;
- The importance of biodiversity and effects of invasive species on estuarine ecosystems; or
- Mechanisms for sustaining resources within estuarine ecosystems.

Each NERR has local issues of concern that fall within one of the topics above. Applicants are responsible for contacting the NERR site of interest to determine those site-specific research needs.

**Note:** It is strongly suggested that applicants contact the host Reserve (see Appendix I) for information on site-specific information and to discuss the training opportunities at the site.

## V. Guidelines for Application Preparation, Review, and Reporting Requirements

Applicants for SRD research fellowships must follow the guidelines presented in this announcement. Applications not adhering to these guidelines may be returned to the applicant without further review.

Applications for graduate fellowships in the NERRS are solicited annually for award the following fiscal year. Application due dates and other pertinent information are contained in this announcement of research opportunities. *Applicants must submit an original and two (2) copies of each application and all supporting documents (curricula vitae, literature referenced, transcripts, etc.), excluding letters of reference which must come directly from their source.*

Applicants may request funding for up to three years; funding for years two and three will be made available based on availability of funds and satisfactory progress of research as determined by the NERR Research Staff and the student's faculty advisor, in consultation with SRD. Therefore, the

annual awards must have scopes of work that are clearly severable and can be easily separated into annual increments of meaningful work which represent solid accomplishments if prospective funding is not made available to the Applicant. The amount of the award is $15,000/annum plus 10% overhead for a total of $16,500/annum. Requested Federal funds must be matched by at least 30 percent of the *award total.*

Applicants who are selected for funding will be required to: (1) Work with the Research Coordinator or Reserve Manager to develop an ecological training program for up to 15 hours per week; (2) submit an annual technical report to SRD and the host Reserve before the end of each funding cycle on the research accomplishments to-date; and (3) acknowledge NERRS support in all relevant scientific presentations and publications. In addition, fellows will be strongly encouraged to publish their results in peer-reviewed literature and make presentations at scientific meetings.

*A. Applications*

Students admitted to or enrolled in a full-time Master's or Doctoral program at U.S. accredited universities are eligible to apply. Students should have completed a majority of their course work at the beginning of their fellowship and have an approved thesis research program.

Applicants are required to submit:

(1) An academic résumé or a curriculum vitae that includes all graduate and undergraduate institutions (department or area of study, degree, and year of graduation), all publications (including undergraduate and graduate theses), awards or fellowships, and work/research experience;

(2) A cover letter from the applicant indicating current academic status, research interests, career goals, and how the proposed research fits into their degree program, and the results of any discussion with NERR staff regarding the ecological monitoring training program;

(3) A titled research proposal (double-spaced in a font no smaller than 12-point courier) that includes an Abstract, Introduction, Methods and Materials, Project Significance, and Bibliography;

(4) A proposed budget (see Section B, Proposal Content, below for specific guidelines);

(5) An unofficial copy of all undergraduate and graduate transcripts;

(6) A letter of support from the applicant's graduate advisor indicating the advisor's contribution (financial and otherwise) to the applicant's graduate studies, and an assurance that the student is in good academic standing; and

(7) Two letters of recommendations (from other than the applicant's graduate advisor) sent directly from their source.

The original and two (2) copies of the information requested above, excluding letters of reference, must be submitted to the SRD Science Coordinator at the address in the Addresses section, postmarked no later than November 1, 1998. *Applications postmarked November 2, 1998 or later, will be returned without review.* Receipt of all applications will be acknowledged and a copy sent to the appropriate Reserve staff.

*B. Proposal Content*

The research proposal should contain the sections described below.

1. Title Page

A title page must be provided which lists:

- Student name, address, telephone number, fax number and email address.
- Project title.
- Amount of funding requested.
- Name of graduate institution.
- Name of institution providing matching funds and amount of matching funds.
- Name, address, telephone number, fax number & email address of faculty advisor.
- NERR site where research is to be conducted, and
- Number of years of requested support.

If it is a multi-site project, the title page must indicate which Reserve will be the primary contact (''host Reserve'') for the training program.

2. Abstract

The abstract should state the research objectives, scientific methods to be used, and the significance of the project to a particular Reserve and the NERRS program. The abstract must be limited to *one page.*

3. Project Description

The project description must be limited to *6 double-spaced pages* excluding figures. The main body of the proposal should be a detailed statement of the work to be undertaken, and include the following components:

*(a) Introduction.* This section should introduce the research setting and environment. It should include a brief review of pertinent literature and describe the research problem in relation to relevant coastal management issues and the research priorities. This section should also present the primary hypothesis upon which the project is focused, as well as any additional or component hypotheses which will be addressed by the research project.

*(b) Methods.* This section should state the methods(s) to be used to accomplish the specific research objectives, including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and accompanied by a statistically sound sampling scheme. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but also provide baseline data related to ecological and management questions concerning the Reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products.

A map clearly showing the study location and any other features of interest *must* be included; a U.S. Geological Survey topographic map, or an equivalent, is suggested for this purpose. Consultation with Reserve personnel to identify existing maps is strongly recommended.

*(c) Project Significance.* This section should provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary; i.e., why is the proposed research important and how will the results contribute to coastal resource managements? This section must also discuss the relation of the proposed research the research priorities stated in Section IV. Applicability of research findings to other NERRS and coastal areas should also be mentioned.

4. Milestone Schedule

A milestone schedule is required. This schedule should show, in table form, anticipated dates for completing field work and data collection, data analysis, progress reports, the final technical report and other related activities. Use ''Month 1, and Month 2,'' rather than June, July, etc., in preparing these charts.

5. Personnel and Project Management.

The proposal must include a description of how the project will be managed, including the name and expertise of faculty advisors and other team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts performed.

6. Literature Cited

This section should provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

7. Budget

The amount of Federal funds requested must be matched by the applicant by at least 30% of the *total* project cost (i.e., $7,072 match for $16,500 in Federal funds for total project cost of $23,572). Cash or the value of goods and services (except land) directly benefiting the research project may be used to satisfy the matching requirements. Overhead costs for these wards are limited to $1,500 of the Federal share (i.e., $15,000 for project and $1,500 for overhead) and waiver overhead costs may also be used as match. *Funds from other Federal agencies and NERRS staff salaries supported by Federal Funds may not be used as match.* Requirements for the non-Federal share are contained in the OMB Circular A–110. SRD strongly suggests that the applicant work with their institution's research office to develop their budget (see section D, below).

The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research. The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and non-Federal shares *side by side:*

*Salary.* The rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.

*Fringe Benefits.* Fringe benefits (i.e., social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

*Equipment.* While not their primary purpose, fellowship funds may be approved for the purchase of equipment only if the following conditions are met: (a) a lease versus purchase analysis has been conducted by the applicant or the applicant's institution and the findings determine that purchase is the most economical method of procurement; and (b) the equipment does not exist at the recipient's institution or the Reserve site and is essential for the successful completion of the project.

The justification must discuss each of these points along with the purpose of the equipment and a justification for its use, and include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the fellowship, disposition of equipment will be determined by the NOAA Property Administrator.

*Travel.* The type, extent, and estimated cost (broken down by transportation, lodging and per diem) of travel should be explained and justified in relation to the proposed research; the justification should also identify the person traveling. Travel expense is limited to round trip travel to field research locations and professional meetings to present the research results and should not exceed 40 percent of total award costs.

*Other Direct Costs.* Other anticipated costs should be itemized under the following categories:

- *Materials and Supplies.* The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs;
- *Research Vessel or Aircraft Rental.* Include purpose, unit cost, duration of use, user, and justification;
- *Laboratory Space Rental.* Funds may be requested for use of laboratory space at research establishments away from the student's institution while conducting studies specifically related to the proposed effort;
- *Telecommunication Services and Reproduction Costs.* Include expenses associated with telephone calls, facsimile, copying, reprint charges, film duplication, etc.;
- *Computer Services.* The cost of unusual or costly computer services may be requested and must be justified.

*Indirect Costs.* Requested overhead costs under NERRS fellowship awards are limited to $1,500 of the Federal amount.

8. Requests for Reserve Support Services

On-site Reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for Reserve support services, including any services provided as match, should be approved by the Reserve Manager or Research Coordinator prior to application submission and be included as part of the application package in the form of written correspondence. Reserve resources which are supported by Federal funds are not eligible to be used as match.

9. Coordination With Other Research in Progress or Proposed

SRD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applications should include a description of how the research will be coordinated with other research projects that are in progress or proposed, if applicable.

10. Permits

The applicant must apply for any applicable local, state or Federal permits. A copy of the permit application and supporting documentation should be attached to the application as an appendix. SRD must receive notification of the approval of the permit application before funding can be approved.

*C. Application Review and Evaluation*

All applications will be evaluated for scientific merit by SRD staff, the host Reserve scientific panel of no less than three reviewers from the scientific community, and the appropriate Research Coordinator and/or Reserve Manager. Criteria for evaluation include: (1) the quality of proposed research and its applicability to the NERRS Scientific Areas of Support listed earlier in this announcement (70%); (2) the research's applicability to specific reserve research and resource management goals as they relate to the Scientific Areas of Support listed in this announcement (20%); and (3) academic excellence based on the applicant's transcripts and two letters of reference (10%). No more than two Fellowships will be awarded at any one time for any one Reserve. Final selection will be made by the Chief of the Sanctuaries and Reserves Division, based upon scientific review, the research's applicability to NERRS research and

resource management goals, and the applicant's academic excellence.

*D. Fellowship Awards*

Awards are normally made to the fellow's graduate institution through the use of a cooperative agreement. Applicants whose projects are recommended for funding will be required to complete all necessary Federal financial assistance forms (SF–424, SF–424A, SF–424B, CD–511, and SF–LLL, OMB Control Numbers 0348–0043, 0348–0044, and 0348–0046), which will be provided by SRD with the letter of fellowship notification. SRD recommends that all applicants work with their graduate institution during the development of their budget to ensure concurrence on budgetary issues (e.g. the use of salary and fringe benefits as match).

## VI. Other Requirements

Recipients and subrecipients are subject to all Federal laws and federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD.

A false statement on an application is grounds for denial or termination of funds and grounds for punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001.

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. However, funding priority will be given to the additional years of multi-year proposals upon satisfactory completion of the current year of research.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. § 1352, ''Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form which applies to applications/bids for grands, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

5. *Lower Tier Certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

*Buy American-Made Equipment or Products:* Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible.

*Indirect Costs:* The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or $1,500, whichever is less.

*Preaward Activities:* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

## VII. Classification

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

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice involves a collection of information subject to the requirements of the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: September 11, 1998.

**John Oliver,**

*Policy, Management and Information Officer, National Ocean Service.*

**Appendix I. NERRS On-site Staff**

*Alabama*

Mr. L.G. Adams, Manager; Mr. Bob McCormack, Interpretive Coordinator, Weeks Bay National Estuarine Research Reserve, 11300 U.S. Highway 98, Fairhope, AL 36532, (334) 928–9792, ladams@surf.nos.noaa.gov, bmccormack@surf.nos.noaa.gov

*Alaska*

Mr. Glenn Seaman, Manager, Kachemak Bay National Estuarine Research Reserve, Department of Fish and Game, 333 Raspberry Road, Anchorage, AK 99518–1599, (907) 267–2331, glenns@fishgame.state.ak.us

*California*

Dr. Jane Caffrey, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–2822, jcaffrey@cats.ucsc.edu

Phil Jenkins, Manager, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3615, pjenk10025@aol.com

*Delaware*

Ms. Betsy Archer, Manager; Dr. William Meredith, Research Coordinator, Delaware National Estuarine Research Reserve, Department of Natural Resources and Environmental Control, Division of Soil and Water Conservation, 89 Kings Highway, Dover, DE 19903, (302) 739–3451 (Archer), (302) 739–3493 (Meredith), bdarcher@dnrec.state.de.us, wmeredith@state.de.us

*Florida*

Mr. Woodward Miley II, Manager; Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, Department of Environmental Protection, 350 Carroll Street, Eastpoint, FL 32320, (850) 670–4783, edmist@mail.state.fl.us

Mr. Larry Nall, Guana-Tolomato-Matanzas National Estuarine Research Reserve, Department of Environmental Protection, Coastal and Aquatic Manged Areas, 3900 Commonwealth Blvd., Tallahassee, FL 32399, 850–488–3456, nall__1@epic6.dep.state.fl.us

Mr. Gary Lytton, Manager; Dr. Todd Hopkins, Research Coordinator, Rookery Bay National Estuarine Research Reserve, Department of Environmental Protection, 300 Tower Road, Naples, FL 34113–8059, (941) 417–6310, hopkins__t@dep.state.fl.us

*Georgia*

Mr. Buddy Sullivan, Manager; Dr. Stuart Stevens, Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, P.O. Box 15, Sapelo Island, GA 31327, (912) 485–2251 (Sullivan), (912) 264–7218 (Stevens), stuart@dnrcrd3.dnr.state.ga.us

*Maine*

Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555 x36, dionne@cybertours.com

*Maryland*

Ms. Kathy Ellett, Manager; Mr. David Nemazie, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, E–2, 580 Taylor Avenue, Annapolis, MD 21401, (410) 260–8740 (Ellett), (410) 228–9250 x615 (Nemazie), nemazie@ca.umces.edu

*Massachusetts*

Ms. Christine Gault, Manager; Dr. Richard Crawford, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P.O. Box 3092, Waquoit, MA 02536, (508) 457–0495, wbnerr@capecod.net

*Mississippi*

Mr. Peter Hoar, Grand Bay National Estuarine Research Reserve, Department of Marine Resources, 1141 Bayview Avenue, Biloxi, MS 39530, (228) 374–5000, phoar@datasync.com

*New Hampshire*

Mr. Peter Wellenberger, Manager, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095

*New Jersey*

Mr. Michael De Luca, Manager; Dr. Ken Able, Research Coordinator, Mullica River National Estuarine Research Reserve, Institute of Marine and Coastal Sciences, Rutgers University, P.O. Box 231, New Brunswick, NJ 08903, 732–932–9489 x512 (De Luca), 689–296–5260 (Able), able@arctic.rutgers.edu

*New York*

Ms. Elizabeth Blair, Manager; Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–5193, cnieder@ocean.nos.noaa.gov

*North Carolina*

Dr. John Taggart, Manager; Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, 7205 Wrightsville Avenue, Wilmington, NC 28403, (910) 256–3721 (Taggart), (910) 395–3905 (Ross), rosss@uncwil.edu

*Ohio*

Mr. Eugene Wright, Manager; Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601, dklarer@ocean.nos.noaa.gov

*Oregon*

Mr. Michael Graybill, Manager; Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR 97420, (541) 888–5558, ssnerr@harborside.com

*Puerto Rico*

Ms. Carmen Gonzalez, Manager, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, Call Box B, Aguirre, PR 00704, (809) 853–4617, cgonzalez@ocean.nos.noaa.gov

*Rhode Island*

Mr. Allan Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–5061, allanbeck@aol.com

*South Carolina*

Mr. Michael D. McKenzie, Manager; Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 294212, (803) 762–5052 (McKenzie), (803) 736–5050 (Wenner), wennere@cofc.edu

Dr. Dennis Allen, Manager, North Inlet-Winyah Bay National Estuarine Research Reserve, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623, dallen@belle.baruch.sc.edu

*Virginia*

Dr. Maurice P. Lynch, Manager; Dr. William Reay, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 684–7135, wreay@vims.edu

*Washington*

Mr. Terry Stevens, Manager; Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (360) 428–1558, bulthuis@padillabay.gov

[FR Doc. 98–25092 Filed 9–17–98; 8:45 am]

BILLING CODE 3510–08–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board Meeting

The S&T Propulsions Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Wright-Patterson Air Force Base, OH, and Edwards Air Force Base, CA, on November 30-December 4, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force S&T Programs.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

**Carolyn A. Lunsford,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 98–25002 Filed 9–17–98; 8:45 am]

BILLING CODE 3910–01–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board Meeting

The S&T Panel Chairs Meeting in support of the HQ USAF Scientific Advisory Board will meet at Beckman Center, Irvine, CA on January 12–13, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force S&T Programs.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

**Carolyn A. Lunsford**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 98–25081 Filed 9–17–98; 8:45 am]

BILLING CODE 3910–01–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board Meeting

The S&T Directed Energy Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Kirtland Air Force Base, NM, on December 14–18, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force S&T Programs.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

**Carolyn A. Lunsford,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 98–25082 Filed 9–17–98; 8:45 am]

BILLING CODE 3910–01–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Board of Visitors to the United States Naval Academy

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of meeting.

**SUMMARY:** The United States Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

**DATES:** The meeting will be held on Monday, September 21, 1998 from 8:15 a.m. to 12:30 p.m. The closed Executive Session will be from 10:45 a.m. to 12:30 p.m.

**ADDRESSES:** The meeting will be held in the Bo Coppedge Room of Alumni Hall at the United States Naval Academy, Annapolis, MD.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, Telephone number: (410) 293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in sections 552(b)(2), (5), (6), and (7) of title 5, United States Code.

Dated: September 10, 1998.

**Ralph W. Corey,**

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

[FR Doc. 98–25141 Filed 9–17–98; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–762–000]**

### ANR Pipeline Company; Notice of Request Under Blanket Authorization

September 14, 1998.

Take notice that on September 4, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–762–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA), (18 CFR 157.205 and 157.211) for authorization to operate under the provisions of Section 7(c) of the Natural Gas Act an existing interconnection in Beaver County, Oklahoma, that was constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978. ANR makes such request under its blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act (NGPA), all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that in February 1998, it constructed and placed into service an interconnection, Land O' Lakes Interconnection, with the facilities of Land O' Lakes, Inc., in Beaver County, Oklahoma. It is stated that ANR's interconnection facilities consist of a 2-inch positive displacement meter, a meter building, two 2-inch insulating flanges, a 4-inch tap valve, and an electronic measurement system. ANR avers the cost of the facilities as approximately $71,700.00 which was fully reimbursed by Land O' Lakes. ANR indicates that the Land O' Lakes Interconnection is designed to accommodate flow rates from 0 MMcf daily to 0.4 MMcf daily. ANR further states that the Land O' Lakes Interconnection was constructed pursuant to the authority of NGPA Section 311, and that said construction

will be reported in ANR's 1998 annual report of NGPA Section 311 construction.

ANR states it delivers natural gas at the Land O' Lakes Interconnection under its Rate Schedule ITS, and that the, on behalf of, entity for whom natural gas is transported at that interconnection is Transok, Inc., an intrastate pipeline company located in Tulsa, Oklahoma. It is further stated the pursuant to Section 284.102(d)(3) of the Commission's regulations, ANR received the, on behalf of, certification from its shipper by a letter submitted on November 20, 1997.

ANR indicates that the authorization that it is seeking in this request, will eliminate the current restriction on its usage, i.e., to qualifying transactions under NGPA Section 311, thereby providing greater service flexibility and choices for the market. It is stated that the operation of the Land O' Lakes Interconnection will have no adverse impact on annual entitlement of any of ANR's existing customers. ANR further states that the authorization to operate this existing interconnection, under the provisions of Section 7 of the NGA, will not impact ANR's gas supply situation and that deliveries of natural gas at this point can be made without detriment or disadvantage to any existing customer of ANR.

It is stated that the volumes to be delivered are within the certified entitlement of the customer.

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,**

*Secretary.*

[FR Doc. 98–25015 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–763–000]**

## ANR Pipeline Company; Notice of Request Under Blanket Authorization

September 14, 1998.

Take notice that on September 4, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–763–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a bi-directional interconnection between ANR and Mid Continent Market Center, Inc. (MCMC) in Rice County, Kansas, for the delivery of natural gas to MCMC's system, under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the proposed interconnection would consist of two 30-inch tee assemblies, two 12-inch block valves, a 6-inch blow down assembly, a 12-inch insulating flange, an electronic measurement system, and approximately eight-hundred feet of 12-inch piping.

ANR states further that the estimated cost of the facilities would be approximately $279,000, which would be fully reimbursed by MCMC.

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,**

*Secretary.*

[FR Doc. 98–25019 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–765–000]**

## Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

September 14, 1998.

Take notice that on September 4, 1998, Florida Gas Transmission Company, (FGT) 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–765–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212). FGT filed for authorization to certificate an existing delivery point in Galveston, Texas, under FGT's blanket certificate issued in Docket No. CP82–553, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT constructed the ''Tejas Dickenson'' delivery point under Section 284.3 of the Regulations to provide Section 311 transportation for Tejas Ship Channel, LLC (TEJAS). The ''Tejas Dickenson'' delivery point, located at FGT's 22-inch mainline and Tejas' 12-inch pipeline in Galveston, consists of a 6-inch tap valve and electronic flow measurement instrumentation. TEJAS owns the meter and connecting 6-inch pipeline and appurtenant facilities necessary for FGT to deliver gas to TEJAS.

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,**

*Secretary.*

[FR Doc. 98–25016 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–01–N

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP96–53–000, et al.]**

### NE Hub Partners, L.P.; Notice of Availability of Report of Appraised Value and Insurance Recommendation and Procedures for Filing Comments

September 14, 1998.

The Director of the Office of Pipeline Regulation (Director of OPR) of the Federal Energy Regulatory Commission (Commission) designated Reed Consulting Group (Reed) as the independent appraiser to assist the Commission in determining what amount, if any, of additional insurance NE Hub should be required to obtain in connection with the development and operation of its Tioga Project. As a contract deliverable, Reed prepared a Report of Appraised Value and Insurance Recommendations (Appraisal and Recommendations) dated August 28, 1998.

The Appraisal and Recommendations has been placed in the public files of the FERC. Copies of the Appraisal and Recommendations have been mailed to all parties to this proceeding. Any party wishing to comment on the Appraisal and Recommendations may do so. However, all comments must be filed with the Commission on or before October 5, 1998, and all comments must be limited to no more than 20 pages. In all other respects, the filing of comments must comply with the Commission's formal requirements for filings (18 CFR Subpart T).

Commentors should address any and all matters contained in the Appraisal and Recommendations, including, in addition to the appraised values and recommended amounts, terms, and conditions of insurance coverage, and the subjects of indemnification and the desirability of expedited administrative procedures.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–25018 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER98–3719–000]**

### People's Electric Corporation; Notice of Issuance of Order

September 14, 1998.

People's Electric Corporation (People's) filed an application requesting that the Commission authorize it to engage in the wholesale sale of capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, People's requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by People's. On September 11, 1998, the Commission issued an Order Granting Waiver, Accepting For Filing Proposed Market-based Rates And Granting Waiver Of Notice Requirement (Order), in the above-docketed proceeding.

The Commission's September 11, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by People's should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, People's is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of People's compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of People's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 13, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–25020 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–0–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–748–000]**

### Southern Natural Gas Company; Notice of Request Under Blanket Authorization

September 15, 1998.

Take notice that on August 25, 1998, and supplemented September 10, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Houston, Texas 35202–2563, filed in Docket No. CP98–748–000, a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) wherein Southern proposes to abandon a measurement facility at a delivery point location pursuant to Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it constructed the delivery point facility to sell natural gas to Vulcan Materials Company (Vulcan Materials) on its 20-inch North Main Line in Jefferson County, Alabama, under an agreement dated July 8, 1948. It is stated that the direct sales agreement under which service was provided was abandoned by the terms of Commission Order No. 636 by Order dated September 3, 1993, in Docket No. RS92–20. It is further stated that Southern received a notice from Vulcan Materials that is now being served to Alabama Gas Corporation and that it no longer requires service from Southern at this station. Accordingly, Southern requests authorization to abandon the Vulcan Materials Dolcito Quarry Meter Station.

Any person or the Commission's staff may, within4 5 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 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,**

*Secretary.*

[FR Doc. 98–25047 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC98–61–000, et al.]**

## The Washington Water Power Company, et al. Electric Rate and Corporate Regulation Filings

September 11, 1998.

Take notice that the following filings have been made with the Commission:

### 1. The Washington Water Power Company

[Docket No. EC98–61–000]

Take notice that on September 8, 1998, The Washington Water Power Company (WWP) tendered for filing pursuant to Part 33 of the Commission's regulations an application to assign WWP's interests in an Agreement for Long-Term Purchase and Sale of Firm Capacity between WWP and Portland General Electric, (PGE) to Spokane Energy, LLC., designated as Rate Schedule FERC No. 178 (WWP) and Rate Schedule FERC No. 82 (PGE).

*Comment date:* October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 2. California Independent System Operator Corporation

[Docket Nos. EC96–19–029 and ER96–1663–030]

Take notice that on August 31, 1998, the California Independent System Operator Corporation (ISO) tendered for filing additional information relating to its June 1, 1998 compliance filing required by the December 17, 1997 order in the above-captioned proceeding, 81 FERC ¶ 61,320 (1997).

Copies of the filing were served upon all parties in the captioned proceedings.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 3. Tucson Electric Power Company

[Docket No. ER98–4477–000]

Take notice that on September 8, 1998, Tucson Electric Power Company (TEP) tendered for filing a fully-executed non-firm umbrella transmission service agreement with El Paso Energy Marketing Company dated September 3, 1998, pursuant to Part II of TEP's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

TEP requests waiver of the 60-day prior notice requirement to allow the service agreement to become effective as of August 4, 1998.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 4. Consumers Energy Company

[Docket No. ER98–4482–000]

Take notice that on September 8, 1998, Consumers Energy Company (Consumers) tendered for filing executed Service agreements for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff and Network Operating agreements with: General Motors Corporation—Flint west; General Motors Corporation—Swartz Creek; and Eaton Corporation (collectively, Customers).

Consumers requests an effective date of August 31, 1998.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the Customers.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 5. Central Hudson Gas & Electric Corporation

[Docket No. ER98–4483–000]

Take notice that September 8, 1998, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing pursuant to Section 35.12 of the Commission's regulations, a Service Agreement between CHG&E and Cinergy Capital & Trading, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume 1 (Transmission Tariff) filed in compliance with the Commission's Order 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E has requested waiver of the 60-day notice provision and requests an effective date of August 19, 1998, for the Service Agreement.

A copy of this filing has been served on the Public Service Commission of the State of New York.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 6. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–4484–000]

Take notice that on September 8, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison's Mega Watt Hour Store (Store).

Con Edison states that a copy of this filing has been served by mail upon the Store.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 7. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–4485–000]

Take notice that on September 8, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service, originating from Public Service Gas & Electric and New York Power Authority, pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison respectfully requests that the Commission waive its notice requirements and allow this agreement to go into effect as of August 1, 1998.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 8. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–4486–000]

Take notice that on September 8, 1998, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service, originating from Central Hudson, pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison respectfully requests that the Commission waive its notice requirements and allow this agreement to go into effect as of August 1, 1998.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. Consolidated Edison Company of New York, Inc.**

[Docket No. ER98–4487–000]

Take notice that on September 8, 1998, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Cinergy Capital & Trading, Inc. (Cinergy).

Con Edison states that a copy of this filing has been served by mail upon the Cinergy.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. Consolidated Edison Company Of New York, Inc.**

[Docket No. ER98–4488–000]

Take notice that on September 8, 1998 Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an executed service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Tractebel Electricity & Gas International (Tractebel).

Con Edison states that a copy of this filing has been served by mail upon the Tractebel.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. Consolidated Edison Company Of New York, Inc.**

[Docket No. ER98–4489–000]

Take notice that on September 8, 1998 Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an executed service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Central Hudson Enterprise Corp. (CH).

Con Edison states that a copy of this filing has been served by mail upon the CH.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Consolidated Edison Company of New York, Inc.**

[Docket No. ER98–4490–000]

Take notice that on September 8, 1998 Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an executed service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group (MSCG).

Con Edison states that a copy of this filing has been served by mail upon MSCG.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. PJM Interconnection, L.L.C.**

[Docket No. ER98–4491–000]

Take notice that on September 8, 1998, PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of CSW Energy Services, Inc.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. PJM Interconnection, L.L.C.**

[Docket No. ER98–4492–000]

Take notice that on September 8, 1998, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Air Products & Chemicals, Inc., The Boeing Company-Philadelphia, MG Industries, Sun Company, Inc. (R&M), and Thomson Consumer Electronics.

PJM requests an effective date on the day after this Notice of Filing is received by FERC.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Allegheny Power Service Corp., on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)**

[Docket No. ER98–4493–000]

Take notice that on September 8, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 37 to add AYP Energy, Inc., American Municipal Power-Ohio, Inc., Constellation Power Source, Inc., Duke Energy Trading and Marketing, Electric Clearinghouse, Inc., Enron Power Marketing, Inc., PECO Energy Company, Public Service Electric & Gas Company to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date for each Customer is listed in the appropriate Service Agreement.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. The Washington Water Power Co.**

[Docket No. ER98–4494–000]

Take notice that on September 8, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Merchant Energy Groups of the Americas, Inc., Energy Services, Inc., The Montana Power Trading & Marketing Company, Electric Clearinghouse, Inc., and Cook Inlet Energy Supply, LP.

WWP requests the Service Agreements be given respective effective dates of August 6, 1998, August 7, 1998, August 10, 1998, August 19, 1998 and September 3, 1998.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Central Vermont Public Service Corporation**

[Docket No. ER98–4495–000]

Take notice that on September 8, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Cambridge Electric Light Co., under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on September 11, 1998.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. Central Vermont Public Service Corporation**

[Docket No. ER98–4496–000]

Take notice that on September 8, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with TransCanada Power Marketing Ltd., under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's regulations to permit

the service agreement to become effective on September 10, 1998.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. Consolidated Water Power Company**

[Docket No. ER98–4512–000]

Take notice that on September 8, 1998, Consolidated Water Power Company, 231 First Avenue, North, Wisconsin Rapids, Wisconsin 54495–8050, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for the sale of electricity at market-based rates.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**20. MidAmerican Energy Company**

[Docket No. ES98–48–000]

Take notice that on September 8, 1998, MidAmerican Energy Company of Des Moines, Iowa, filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue and sell up to $500 million principal amount of bonds, notes, debentures or other evidences of indebtedness and requesting an exemption from the Federal Energy Regulatory Commission's competitive bidding and negotiated placement requirements (18 CFR 34.2).

*Comment date:* October 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

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,**

*Secretary.*

[FR Doc. 98–25017 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Amendment of License

September 15, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Type of Application:* Amendment of License.

*b. Project No.:* 2413–035.

*c. Date Filed:* August 19, 1998.

*d. Applicant:* Georgia Power Company.

*e. Name of Project:* Wallace Dam.

*f. Location:* The Wallace Dam Project is located on the Oconee River in Putnam, Hancock, Greene, Morgan, Oconee, and Oglethrope Counties, Georgia.

*g. Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

*h. Applicant Contact:* Larry Wall, Georgia Power Company, 241 Ralph McGill Boulevard NE, Atlanta, GA 30308–3374, (404) 506–2054.

*i. FERC Contact:* John Cofrancesco, (202) 219–0079.

*j. Comment Date:* October 26, 1998.

*k. Description of Project:* Georgia Power Company, licensee for the Wallace Dam Project, filed an application to amend the project's approved shoreline buffer zone management plan. By order issued May 26, 1998, the Commission approved the plan with modification. In doing so, the Commission further restricted the removal of trees or undergrowth vegetation from the buffer zone. The licensee requests the Commission's approval of the plan be modified to allow the removal of obnoxious varieties of undergrowth vegetation. The licensee states this modification would not harmfully affect the environmental benefits of the buffer zone and would create a pleasing aesthetic appearance to the area.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protect, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider the protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–25048 Filed 9–17–98; 8:45 am]

BILLING CODE 6717–1–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6162–8]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1867.01

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1867.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting

comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before November 17, 1998.

**ADDRESSES:** U.S. Environmental Protection Agency, Atmospheric Pollution Prevention Division, 401 M. St. SW (6202J), Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Telephone No. (202) 564–9044, Facsimile No. (202) 565–2083; E-mail: dolin.eric@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Affected entities: Entities potentially affected by this action are those which operate primary aluminum smelters.

Title: Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1867.01.

Abstract: In April 1993, President Clinton issued the Climate Change Action Plan, which establishes the nation's commitment to returning U.S. greenhouse gas emissions to their 1990 levels by the year 2000. EPA's Voluntary Aluminum Industrial Partnership (VAIP) is an important voluntary program contributing to the overall reduction in greenhouse gas emissions. This program focuses on reducing perfluorocarbon (PFC) emissions from aluminum smelting operations. The twelve companies that have joined the VAIP have cumulatively committed to reduce their PFC emissions 45 percent from 1990 levels by the year 2000. PFCs are very potent greenhouse gases that are persistent in the atmosphere and have a high global warming potential. The VAIP, along with ENERGY STAR Buildings and Green Lights, ENERGY STAR Labeling, and other EPA Programs is a voluntary program aimed at preventing pollution rather than controlling it after its creation. All of these programs focus on greenhouse gas emissions.

EPA has developed this ICR to obtain authorization to collect information from compa-nies participating in the VAIP. Companies that join the VAIP voluntarily agree to the following: designating a VAIP liaison; undertaking technically feasible and cost-effective actions to reduce PFC emissions; and reporting to EPA, on an annual basis, the success of such actions. The information contained in the annual reports of the companies that join the VAIP may be considered confidential business information and is maintained as such. EPA uses the data obtained from the companies to assess the success of the program in achieving its goals.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The projected hour burden for this collection of information is as follows:

Average annual reporting burden = 321.13 hours
Average annual recordkeeping burden: 0 hours
Average burden hours/response: 248.5 hours for an MOU (one-time burden); 56.5 hours for the annual Tracking Report; and 16.13 hours associated with additional activities.
Frequency of response = One per respondent per year
Estimated number of respondents = 12
Cost burden to respondents:
Estimated total annualized cost burden: $226,398
Total labor cost: $142,347
Total capital and start-up costs: $0
Estimated total operation and maintenance costs: $0
Purchase of services cost: $84,051

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 4, 1998.

**Jeanne Briskin,**

*Branch Chief, Energy Star Programs.*

[FR Doc. 98–25086 Filed 9–17–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6162–6]**

## Protection of Stratospheric Ozone: Notice of Revocation of Refrigerant Reclamation Organizations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of revocation.

**SUMMARY:** Through this action, EPA is announcing the revocation of certification of American Reclamation (located in Chicopee, MA; Ambridge, PA; and Franklinville, NJ) to reclaim refrigerant in accordance with the regulations promulgated at 40 CFR part 82, subpart F. This refrigerant reclaimer was issued a letter of revocation on August 19, 1998, that included an explanation of the basis for EPA's decision. This action also acknowledges the voluntary withdrawal of five previously certified reclaimers. Reclaimers requesting to be removed from the list of EPA-certified reclaimers include Cryodyne Technologies (located in Chester, CT), Eco-Dyne of Utah (located in Salt Lake City, UT), Golden Refrigerant of Florida (located in Punta Gorda, FL), Pacific Coast Trane Service (located in Sunnyvale, CA), Waldrop Heating and Air-Conditioning (located in Spartanburg, SC).

American Reclamation has not complied with the requirements established for refrigerant reclaimers pursuant to section 608 of the Clean Air Act Amendments (the Act). In accordance with those requirements, all certified refrigerant reclaimers must maintain records regarding the amount of refrigerant processed and submit a report of the reclamation activities to EPA on an annual basis. Failure to comply with any of the requirements of 40 CFR part 82, subpart F, including the recordkeeping and reporting requirements, may result in revocation of certification.

EPA sent American Reclamation an information collection request issued pursuant to section 114(a) of the Act, in which EPA requested that this reclaimer

submit the required annual report regarding reclamation activities. The section 114 request letter sent to American Reclamation Services, Franklinville, NJ was returned to EPA unopened. Subsequent attempts by EPA to contact American Reclamation at all locations by other means were unsuccessful. To date, this reclaimer has not submitted an annual report regarding reclamation activity for calendar year 1997. Therefore, American Reclamation is out of compliance with 40 CFR 82.166(h).

In accordance with 40 CFR 82.154(h), class I or class II substances that consist in whole or in part of used refrigerant and that are reclaimed after August 19, 1998, by these six reclaimers are prohibited from being sold or offered for sale for use as a refrigerant. However, refrigerant reclaimed as defined at 40 CFR 82.152 by these reclaimers during the period the reclaimers were certified may be sold and offered for sale.

**DATES:** American Reclamation had its certification as refrigerant reclaimer revoked, effective August 19, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jake Johns, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, 202–564–9870. The Stratospheric Ozone Information Hotline at 800–296–1996 can also be contacted for further information.

Dated: September 1, 1998.

**Paul M. Stolpman,**

*Director, Office Of Atmospheric Programs.*

[FR Doc. 98–24953 Filed 9–17–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–5495–5]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed September 07, 1998 Through September 11, 1998

Pursuant to 40 CFR 1506.9.

EIS No. 980356, Draft EIS, FHW, NY, Peace Bridge Plaza and Connecting Roadway System, Rehabilitation and Reconstruction, Funding and Approval of Permits, City of Buffalo, Erie County, NY, Due: November 27, 1998, Contact: H.J. Brown (518) 431–4135.

EIS No. 980357, Final EIS, FHW, MO, US 65 Corridor Construction, Carrollton to Marshall, Funding, COE Section 404 Permit and US Coast Guard Permit, Carroll, Lafayette and Saline Counties, MO, Due: October 19, 1998, Contact: Don Neumann (573) 636–7104.

EIS No. 980358, Draft EIS, USA, HI, Schofield Barracks Wastewater Treatment Plant (WWTP), Effluent Treatment and Disposal, NPDES Permit and COE Section 404 Permit, City of County of Honolulu, Oahu, HI, Contact: William Eng (703) 428–7078.

EIS No. 980359, Final EIS, BLM, UT, Dixie Land and Resource Management Plan, Implementation, Cedar City Ranger District, Washington County, UT, Due: October 19, 1998, Contact: Lauren Mermejo (435) 688–3216.

EIS No. 980360, Draft EIS, AFS, WA, Olympic Cross Cascade Pipeline Project, Construct and Operate a Common Carrier Petroleum Pipeline, Mt. Baker-Snoqualmie and Wenatchee National Forests, City of Pasco, Snohomish, King, Kittitas, Adams, Grant and Franklin Counties, WA, Due: December 17, 1998, Contact: Floyd Rogalski (509) 674–4411.

EIS No. 980361, Final EIS, COE, DE, Delaware Coast from Cape Henlopen to Fenwick Island Feasibility Study and Bethany Beach and South Bethany Interim Feasibility Study, Storm Damage Reduction and Construct a Protective Berm and Dune, Sussex County, DE, Due: October 19, 1998, Contact: Steve Allen (215) 656–6555.

EIS No. 980362, Draft EIS, AFS, CO, Uncompahgre National Forest Travel Plans Revision, Implementation, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray and San Juan Counties, CO , Due: December 02, 1998, Contact: Jeff Burch (970) 874–6600.

EIS No. 980363, Final EIS, COE, GA, SC, Savannah Harbor Section 203 Expansion Project, Channel Deepening, Harbor Improvements, Georgia Ports Authority, Federal Navigation Project, Chatham County, GA and Jasper County, SC, Due: October 19, 1998, Contact: William Bailey (912) 652–5781.

EIS No. 980364, Final Supplement, COE, IL, Chicago Area Confined Disposal Facility, Updated Information on Construction and Operation, Maintenance Dredging from Chicago River/Harbor, Calumet River and Harbor, Cook County, IL, Due: October 19, 1998, Contact: Keith Ryder (312) 353–6400.

**Amended Notices**

EIS No. 980341, Final EIS, FHW, FL, East-West Multimodal Corridor Transportation Improvements, Beginning at the Tamiami Campus of Florida International University (FIU) extending the length of FL 836, Port of Miami, Dade County, FL, Due: September 28, 1998, Contact: Robert M. Callan (904) 681–7223.

Published FR—09–11–98—Due Date Correction.

Dated: September 15, 1998.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 98–25090 Filed 9–17–98; 8:45 am]

BILLING CODE: 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30433B; FRL–6027–5]**

## E. I. DuPont de Nemours and Co.; Approval of Pesticide Product Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of applications submitted by E.I. DuPont de Nemours and Company to conditionally register the pesticide products Cymoxanil Technical Herbicide and Curzate 60DF containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Mary Waller, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 247, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–9354; e-mail: waller.mary@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability:** Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of March 26, 1997 (62 FR 14413)(FRL–5596–2), which announced that E.I. DuPont de Nemours and Co., Agricultural Products, Walker's

Mill, Barley Plaza, P.O. Box 80038, Wilmington, DE 19880–0038, had submitted an application to conditionally register the fungicide product Cymoxanil Technical (EPA File Symbol 352–LOR) containing the active ingredient Cymoxanil, 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide at 96.8%, an active ingredient not included in any previously registered pesticide product.

EPA subsequently received an application from E.I. DuPont to register the pesticide product Curzate 60DF (EPA File Symbol 352–LOE), containing the active ingredient cymoxanil at 60 percent. However, since the notice of receipt of this application to register the product as required by section 3(c)(4) of FIFRA, as amended did not publish in the **Federal Register**, interested parties may submit comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov.

The applications were approved on May 6, 1998, for the products listed below:

1. Cymoxanil Technical for formulation into end-use products for potatoes (EPA Registration Number 352–591).

2. Curzate 60DF, as seed treatment to suppress infection of emerging plant tissue by seed borne *Phytophthora infestants* (EPA File Registration Number 352–592).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of cymoxanil, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of cymoxanil during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on cymoxanil.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

## List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 3, 1998.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 98–24951 Filed 9–17–98; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6162–5]**

## Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),—Murray Smelter Site, Murray, UT

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice and request for public comment.

**SUMMARY:** Notice is hereby given of a proposed settlement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) concerning the Murray Smelter Site, Murray, Utah (the ''Site''). Under the Agreement and Covenant Not To Sue (Agreement), Chimney Ridge L.C. and IHC Health Services, Inc. will pay $48,000 to the United States, participate in limited remedial activities at the Site and assist in the implementation of institutional controls at the Site.

**DATES:** Comments must be submitted on or before October 19, 1998.

**ADDRESSES:** The Agreement is available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Matthew Cohn, Legal Enforcement Program, (8ENF–L), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Murray Smelter Site Agreement and Covenant Not To Sue, EPA Docket No. CERCLA–VIII–98–17.

**FOR FURTHER INFORMATION CONTACT:** Matthew Cohn, Legal Enforcement Program, at 303/312–6853.

For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to the Agreement. Copies of the Agreement may be obtained from the Superfund Records Center at the address listed above.

Dated: August 31, 1998.

**Carol Rushin,**

*Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.*

[FR Doc. 98–24954 Filed 9–17–98; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 24, 1998.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 19, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0171.

*Title:* Section 73.1125, Station Main Studio Location.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business and other for-profit entities.

*Number of Respondents:* 165 (155 notifications + 10 waiver requests).

*Estimated Time Per Response:* 0.5–2.0 hours (0.5 hours/notification; 2.0 hours/waiver request).

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 98 hours.

*Cost to Respondents:* $11,900 ($690 filing fee/request; consulting engineer and attorney fees).

*Needs and Uses:* Section 73.1125 requires licensees of AM, FM or TV broadcasting stations to notify the FCC when stations relocate their main studios. These data are used by the FCC to assure that stations are located within the boundaries specified in the rule. The data received as justification for waiver of Section 73.1125 will enable the FCC staff to determine whether the circumstances are sufficient to warrent waiver of the main studio rules.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–25044 Filed 9–17–98; 8:45 am]

BILLING CODE 6712–10–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2296]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

September 14, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed October 5, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Amendment to the Commission's Rules Concerning Maritime Communications (PR Docket No. 92–257, RM–7956, 8031, 8352).

*Number of Petitions Filed:* 1.

*Subject:* Amendment to Part 90 of the Commission's Rules to Adopt Regulation for Automatic Vehicle Monitoring Systems (PR Docket No. 93–61).

*Number of Petitions Filed:* 1.

*Subject:* Petition to Amend Part 15 of the Commission's Rules To Permit Use of Radio Frequency Above 40GHz for New Radio Applications (ET Docket No. 94–124, RM–8308).

*Number of Petitions Filed:* 2.

*Subject:* Accelerated Docket for Complaint Proceedings (CC Docket No. 96–238).

*Number of Petitions Filed:* 1.

*Subject:* Amendment of the Commission's Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHz Frequency Range (ET Docket No. 96–102, RM–8648, 8653).

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–25042 Filed 9–17–98; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, September 15, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Joseph H. Neely (Appointive), Director Julie Williams (Acting Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: September 15, 1998.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 98–25166 Filed 9–16–98; 12:33 pm]

BILLING CODE 6714–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1241–DR]**

### Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida, (FEMA–1241–DR), dated September 4, 1998, and related determinations.

**EFFECTIVE DATE:** September 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4:

Taylor County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Dennis H. Kwiatkowski,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–25075 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1240–DR]**

### North Carolina; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1240–DR), dated August 27, 1998, and related determinations.

**EFFECTIVE DATE:** September 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 27, 1998:

Bladen, Columbus, Craven, Duplin, Jones, Pasquotank, Tyrrell, and Washington Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–25080 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1239–DR]**

### Texas; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1239–DR), dated August 26, 1998, and related determinations.

**EFFECTIVE DATE:** August 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 26, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from Tropical Storm Charley beginning on August 22, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert E. Hendrix of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Val Verde County for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 98–25077 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1239–DR]**

### Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Texas, (FEMA–1239–DR), dated August 26, 1998, and related determinations.

**EFFECTIVE DATE:** September 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Texas, is hereby amended to include Categories C–G under the Public Assistance program in the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1998.

Val Verde County for Categories C–G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–25078 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1239–DR]**

### Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Texas, (FEMA–1239–DR), dated August 26, 1998, and related determinations.

**EFFECTIVE DATE:** September 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1998.

Kinney, Maverick, Real, Uvalde, and Webb Counties for Public Assistance (already designated for Individual Assistance).

Edwards County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Dennis H. Kwiatkowski,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–25079 Filed 9–17–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Logistics International Forwarding, Inc., 755 NW 63rd Street, Miami, FL 33166–3605, Officers: Enrique A. Lopez-Calleja, President; Orestes G. Wrves, Vice President

A & Y Freight Forwarding, 13710 Somersworth, Houston, TX 77041, Delma S. Pallares, Sole Proprietor.

Dated: September 14, 1998.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 98–25034 Filed 9–17–98; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS), as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, FMCS is soliciting comments concerning the proposed extension collection of the National Customer Survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before November 17, 1998.

FMCS is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** David L. Helfert, Director of Communications, FMCS, 2100 K Street, N.W., Washington, D.C. 20427. Telephone: (202) 606–8100; Fax: (202) 606–4251; E-mail: FMCS02@erols.com.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The National Customer Survey is designed to assess general awareness of the activities of the FMCS as well as specific experience and satisfaction with services provided by FMCS. The National Customer Survey is designed to help ensure that government services are more customer-driven, as stated in Presidential Executive Order 12862, entitled ''Setting Customer Service Standards.''

## II. Current Actions

FMCS needs to continue to collect such information in order to measure awareness of the Agency and our services and to identify specific services which our customers and potential customers consider to be critical, desirable, or unnecessary, identify ways the current services can be improved, and explore the feasibility of alternative services or models for FMCS services.

*Type of Review:* Extension.

*Agency:* Federal Mediation and Conciliation Service.

*Title:* National Customer Survey.

*OMB Number:* 3076–0014.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

*Total Respondents:* 1200.

*Frequency:* Bi-annual.

*Total Responses:* 1200.

*Average Time per Response:* 25–30 minutes.

*Estimated Total Burden Hours:* 666.

Dated: September 14, 1998.

**Vella M. Traynham,**

*Deputy Director.*

[FR Doc. 98–25057 Filed 9–17–98; 8:45 am]

BILLING CODE 6372–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on November 16–19, 1998, at the Madison Hotel, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, November 16, Tuesday, November 17, Wednesday, November 18 and Thursday, November 19 from 8:30 a.m. to 5:30 p.m. at the Madison Hotel, Fifteenth and M Streets, NW., Washington, DC 20005. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Discrimination, International, Prevention, Prison, Racial Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW., Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ann Borlo at (301) 986–4870 no later than October 15, 1998.

Date: September 9, 1998.

**Daniel C. Montoya,**

*Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy.*

[FR Doc. 98–25061 Filed 9–17–98; 8:45 am]

BILLING CODE 3195–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[INFO–98–29]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the Assistant CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda M. Perryman, Assistant CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Projects**

*1. Multi-Center Cohort Study To Assess the Risk and Consequences of Hepatitis C Virus Transmission From Mother to Infant (0920–0344)—Extension*

The purpose of the study is to determine the incidence of vertical hepatitis C virus (HCV) transmission, to assess risk factors for vertical HCV transmission, to assess the clinical course of disease among infants with HCV infection, and to assess diagnostic methods for detecting HCV infection in infants. Respondents for the study will be anti-HCV positive mothers.

There is no cost to the respondents. They will be remunerated for travel costs; provided well-child visits and free vaccinations for infants enrolled in the study; and, provided anti-HCV testing to all family members free of charge.

| Respondents | Form name | Number of respondents | Number of responses/ respondent | Average burden/response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Individual Mothers | Form A | 300 | 1 | 0.25 | 75 |
| Mothers | Form B | 1200 | 1 | 0.25 | 300 |
| Mothers | Form C | 300 | 1 | 0.10 | 30 |
| Family members | Form E | 300 | 1 | 0.25 | 75 |
| Mothers | Form G | 300 | 8 | 0.10 | 240 |
| Total | | | | | *720 |

*The annualized response burden is estimated to be 720 hours/4.5 years=160 hours.

AA(Target enrollment in the study is 300; the target population will be drawn from those who complete Form B. Family members will complete Form E.)

*2. Evaluation of Antimicrobial Resistance Testing at National Nosocomial Infections Surveillance System (NNIS) Laboratories—New*

The Hospital Infections Program, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), is proposing to set up an evaluation program to validate the accuracy of the susceptibility data reported to the NNIS system. New and emerging mechanisms of antimicrobial resistant are becoming more common throughout the U.S. hospitals and have resulted in recommended changes in laboratory testing. However, the timing of changes in testing techniques commonly lag behind the recommended changes. Therefore, with antimicrobial resistance becoming more dispersed, validation of testing techniques is essential. The objectives of this project are to detect (1) unacceptable or inefficient methods of susceptibility testing, (2) inaccuracy due to technical difficulties, and (3) ineffective methods of reporting susceptibility data. The results from this project will help guide a campaign to improve antimicrobial testing in all U.S. hospitals. There is no cost to the respondents.

| Forms | Number of respondents | Number of responses/ respondent | Average burden/response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| NNIS Hospital Laboratories | 230 | 1 | 0.30 | 77 |
| Total | | | | 77 |

Dated: September 14, 1998.

**Charles Gollmar,**

*Deputy Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–25033 Filed 9–17–98; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMWENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, NIH; Notice of Meeting

Pursuant to section 10(a) of the Federal; Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Office of AIDS Research Advisory Council.

*Date:* October 14, 1998.

*Time:* 8:45 AM to adjournment.

*Agenda:* The purpose of the meeting will be to review and obtain the Council's advice on the NIH AIDS vaccine program.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

*Contact Person:* Deborah Kraut, Program Analyst, National Institutes of Health, Office of AIDS Research, 9000 Rockville Pike, Bldg. 31, Room 4B62, Bethesda, MD 20892, 301–402–8655.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award, 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 10, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Office, NIH.*

[FR Doc. 98–24995 Filed 9–17–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, NIH; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Minority Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Advisory Committee on Research on Minority Health.

*Date:* October 1, 1998.

*Time:* 9:00 AM to adjournment.

*Agenda:* Agenda items include: (1) a report by the Associate Director, ORMH; (2) a presentation by the Surgeon General; (3) a presentation on trans-NIH minority training; and (4) other business of the Committee.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* JEAN L. FLAGG-NEWTON, PHD, SPECIAL ASSISTANT TO THE ASSOCIATE DIRECTOR, Office of Research on Minority Health, National Institutes of Health, Building 1, Room 256, 9000 Rockville Pike, Bethesda, MD 20892, (301) 402–1367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 14, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–24999 Filed 9–17–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* September 22, 1998.

*Time:* 1:00 PM to 2:00 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institute of Neurological Disorders and Stroke, Federal Building, Rm. 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892–9175 (Telephone Conference Call).

*Contact Person:* Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 9, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–24994 Filed 9–17–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental Research; 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, Novel Human Oral & Craniofacial Genes (RFP–NIH–NHLBI–DR–98–20).

*Date:* September 23, 1998.

*Time:* 2:30 PM to 4:30 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Valeria L. Prenger, PHD, Health Scientist Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Building II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 14, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–25000 Filed 9–17–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of 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.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* October 8–9, 1998.

*Open:* October 8, 1998, 9:00 AM to 10:30 AM.

*Agenda:* Administrative reports and program development.

*Place:* NATIONAL LIBRARY OF MEDICINE, 8600 ROCKVILLE PIKE, BOARD ROOM, BETHESDA, MD 20894.

*Closed:* October 8, 1998, 10:30 AM to 5:00 PM.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* NATIONAL LIBRARY OF MEDICINE, 8600 ROCKVILLE PIKE, BOARD ROOM, BETHESDA, MD 20894.

*Closed:* October 9, 1998, 8:30 AM to 1:00 PM.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* NATIONAL LIBRARY OF MEDICINE, 8600 ROCKVILLE PIKE, BOARD ROOM, BETHESDA, MD 20894.

*Contact Person:* SHELDON KOTZIN, BA, CHIEF, BIBLIOGRAPHIC SERVICES DIVISION/LIBRARY OPERATIONS NLM, NATIONAL LIBRARY OF MEDICINE, 8600 ROCKVILLE PIKE, BLDG 38A/ROOM 4N419, BETHESDA, MD 20894.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 10, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–24996 Filed 9–17–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific counselors, National Center for Biotechnology Information, National Library of Medicine.

*Date:* October 19–20, 1998.

*Time:* October 19, 1998, 7:00 PM to 10:00 PM.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

*Time:* October 20, 1998, 8:30 AM to 2:00 PM.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

*Contact Person:* David J. Lipman, MD, Dirctor, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 14, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–24998 Filed 9–17–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* September 17, 1998.

*time:* 8:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

*Contact Person:* Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7848, Bethesda, MD 20892, 301–435–1258.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893; 93.306, Comparative Medicine, 93.306, National Institutes of Health, HHS)

Dated: September 11, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–24997 Filed 9–17–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

**Proposed Project: Development and Implementation of Methadone/LAAM Treatment Program (MTP) Accreditation Project**

New—OMB approval is sought for information collections related to the development and implementation of the methadone/LAAM accreditation program by the Center for Substance Abuse Treatment (CSAT), SAMHSA. The project implements a limited test of an accreditation-based model which may form the basis for a new Department of Health and Human Services regulatory/accreditation program for MTPs. The project does not supplant FDA regulations and is designed in compliance with current FDA treatment regulations set forth under 21 CFR 291.505. The project will operate under an FDA exemption from certain specific existing regulatory requirements. MTPs participating in this project will be exempt from certain FDA regulatory requirements and paperwork burden and will be required to meet requirements specified for this project.

This project, developed in conjunction with FDA and other Federal agencies, is based on ''Guidelines for the Accreditation of Methadone/LAAM Treatment Programs'' which were developed by experts in the substance abuse treatment field. In this project, two accrediting organizations will incorporate the Guidelines into their own accreditation standards so that the specific accreditation standards used by each accrediting body are built on the accreditation ''Guidelines'' and are crafted to be consonant with each accreditation body's existing philosophy and mode of operation. The project is designed to provide experience with the processes and costs associated with implementing an accreditation-based oversight system in the nation's MTPs. A separate evaluation of the project has been approved by the Office of

Management and Budget under control number 0930–0190.

Approval is sought for the specific record keeping and disclosure language in the Guidelines and for the following separate information collections to be used by each accrediting organization: (1) an Accreditation Application: (2) Site Visit Feedback Questionnaire; (3) Performance Improvement Plan. Most of the record keeping and reporting requirements describe procedures that would be employed in any MTP in conformance with existing state and federal requirements and with standard, quality clinical practice. The estimated annualized burden for this four-year project is summarized below.

| Information collection requirement | No. of respondents | No. of responses/respondent | Average hour burden per response | Total burden hours |
|---|---|---|---|---|
| **Recordkeeping** | | | | |
| II., p. 3: documentation of compliance with all local & state safety & environmental codes. | 300 | [1] 1.33 | 0.08 (5 minutes) | 32 |
| X., p. 17: documentation every 90 days of physician's decision on continuing patient's ''take-home'' medication. | 300 | [2] 150 | 0.05 (3 minutes) | 2,250 |
| XI. D. 4., p. 21: documentation of steps taken to avoid discharge when patient requests discharge. | 300 | [3] 100 | 0.03 (2 minutes) | 900 |
| XIV. F. 2., p. 26: ''on-call'' staff access to roster of patients & medication dosages, for emergency use. | 300 | [4] 52 | 0.33 (20 minutes) | 5,150 |
| XV. B. 1., p. 28: documentation of reason for denial of admission to pregnant applicants. | 300 | [5] 50 | 0.02 (1 minute) | 300 |
| XVI. B. 3, p. 31: obtain written acknowledgment of receipt of program rules, regulations & patient rights & responsibilities. | 300 | [6] 1020 | .02 (1 minute) | 6,120 |
| XVII. A.1., p. 34: medical record must contain patient identifying data & unique identifier. | 300 | [7] 1020 | 0.02 (1 minutes) | 6,120 |
| XVIII. 6., p. 38: requirement to document community relations efforts & community contacts. | 300 | [8] 6 | 1.00 | 1,800 |
| **Disclosure** | | | | |
| III. B.3, p. 5: must post names & phone numbers of individuals to notify in emergency. | 300 | [9] 6 | 0.08 (5 minutes) | 144 |
| X. C. 2, p. 19: requirement to inform patients of rights & responsibilities regarding take-home medications. | 300 | [10] 150 | 0.03 (2 minutes) | 1,350 |
| XVI. F.3., p. 32: program must display policies & patient grievance procedures in patient care areas. | 300 | [11] 3 | 0.2 | 80 |
| MTP Review of Accreditation Standards | 300 | [12] 1.33 | 90.0 | 35,910 |
| Application Form | 300 | [13] 1.33 | 2.0 | 800 |
| Site Visit Questionnaire | 300 | [14] 1.33 | 0.5 | 200 |
| Quality Improvement Plan | 300 | [15] 1.33 | 3.0 | 1,197 |
| 3-Year Total | 300 | | | 62,353 |
| Annualized Burden | 300 | | | 20,784 |

[1] It is anticipated that of the total of 300 MTPs being asked to participate, 222 will receive one site visit, 46 will receive two site visits and 30 will receive three site visits, for a total of about 400 visits. On average, each program will receive 1.33 site visits (400/300 = 1.33).

[2] Based on the assumption that the average program of 140-capacity will require an average of 150 quarterly physician notes regarding ''take home'' medication over a 3-year period.

[3] Based on the assumption that the average program will have 100 discharge requests over a 3-year period.

[4] Based on the assumption that the average program will update the roster weekly.

[5] Based on the assumption that the average program of 140-patient capacity will deny admission to 50 pregnant applicants in a 3-year period.

[6] Based on the assumption that the average program of 140-patient capacity will admit 1020 patients in a 3-year period.

[7] Based on the assumption that the average program of 140-patient capacity will admit 1020 patients in a 3-year period.

[8] Assumes there will be 6 community relations activities (e.g., community advisory board meeting) held every three years and 1 hour to document each with written minutes.

[9] Based on the assumption that the average program will update this information twice per year.

[10] Based on the assumption that the average program will have 150 patients with take-home privileges over a 3 year period.

[11] Assumes each program updates these materials on an annual basis.

[12] It is anticipated that of the total of 300 MTPs being asked to participate, 222 will receive one site visit, 46 will receive two site visits and 30 will receive three site visits, for a total of about 400 visits. On average, each program will receive 1.33 site visits (400/300 = 1.33).

[13] It is anticipated that of the total of 300 MTPs being asked to participate, 222 will receive one site visit, 46 will receive two site visits and 30 will receive three site visits, for a total of about 400 visits. On average, each program will receive 1.33 site visits (400/300 = 1.33).

[14] It is anticipated that of the total of 300 MTPs being asked to participate, 222 will receive one site visit, 46 will receive two site visits and 30 will receive three site visits, for a total of about 400 visits. On average, each program will receive 1.33 site visits (400/300 = 1.33).

[15] It is anticipated that of the total of 300 MTPs being asked to participate, 222 will receive one site visit, 46 will receive two site visits and 30 will receive three site visits, for a total of about 400 visits. On average, each program will receive 1.33 site visits (400/300 = 1.33).

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 14, 1998.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 98–25032 Filed 9–17–98; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4328–N–02]**

### Notice of Proposed Information Collection for Public Comment

**AGENCY:** Office of the Assistant Secretary for Public Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments are due November 17, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Jane Karadbil, Office of University Partnerships—telephone (202) 708–1537. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of collection of information on those who are to respond; including through the use of appropriate technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of the Proposal:* Notice of Funding Availability and Application Kit for the Community Development Work Study Program (CDWSP).

*Description of the need for the information and proposed use:* The information is being collected to select grantees in this statutorily-created competitive grant program. The information is also being used to monitor the performance of grantees to ensure that they meet statutory and program goals and requirements.

*Members of the affected public:* Institutions of higher education offering graduate degrees in community development fields: 60 applicants and 30 grantees.

*Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response:* Information pursuant to submitting applications will be submitted once. Information pursuant to grantee monitoring requirements will be submitted once a year.

The following chart details the respondent burden on an annual basis:

| | Number of respondents | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| Application | 60 | 60 | 40 | 2,400 |
| Annual reports | 30 | 30 | 6 | 180 |
| Final reports | 30 | 30 | 8 | 240 |
| Recordkeeping | 30 | 30 | 5 | 150 |
| Total | | | | 2,970 |

*Status of proposed information collection:* OMB approved an paperwork clearance for this information collection and assigned it OMB Control No. 2528–0175, expiration date March 31, 1999.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 9, 1998.

**Lawrence L. Thompson,**

*General Deputy Assistant Secretary for Policy Development and Research.*

[FR Doc. 98–25011 Filed 9–17–98; 8:45 am]

BILLING CODE 4210–62–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4356–N–16]**

### Notice of Proposed Information Collection: Comment Request

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: November 17, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Lester J. West, Director, Albany Financial Operations Center, telephone number (518) 464–4200, extension 4206 (this is not a toll-free number) for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Reconcilement of Insurance Charges from the Title I Monthly Statement.

*OMB Control Number, if applicable:* 2502–0417.

*Discription of the need for the information and proposed use:* The form is used by HUD to gain information to reconcile differences between the monthly insurance premiums billed to Title I lending institutions and the amount paid by the lending institutions.

*Agency form numbers, if applicable:* HUD–646.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 500, frequency of responses is monthly, and the hours of response are 1.

*Status of the proposed information collection:* Extension of a currently approved collection.

Dated: September 14, 1998.

**Charles Wehrein,**

*Deputy Assistant Secretary for Multifamily Housing Programs.*

[FR Doc. 98–25012 Filed 9–17–98; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4349–N–37]**

## Submission for OMB Review: Comment Request

**AGENCY:** Office of the Assistant Secretary for Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: October 19, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 11, 1998.

**David S. Cristy,**

*Director, IRM Policy and Management Division.*

*Title of Proposal:* ACH Program Application Title I Insurance Change Payments System.

*Office:* Housing.

*OMB Approval Number:* 2502–0512.

*Description of the Need for the Information and its Proposed Use:* HUD is requesting this collection of Information for the extension of the ACH program. This program is used by the Department's Title I Debt Collection Program to improve the efficiency of insurance premium collections.

*Form Number:* HUD–56150.

*Respondents:* Business or Other-For-Profit.

*Frequency of Submission:* One-Time Only.

*Reporting Burden:*

| | Number of respondents | × | Frequency of responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Application | 1500 | | 1 | | 0.25 | | 375 |

*Total Estimated Burden Hours:* 375.

*Status:* Reinstatement with changes.

*Contact:* Debbie Holt, HUD, (202) 755–7570 x149, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–25010 Filed 9–17–98; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4341–N–27]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these

telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 10, 1998.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Economic Development.*

[FR Doc. 98–24729 Filed 9–17–98; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Salt River Pima-Maricopa Indian Community and the State of Arizona Gaming Compact, which was executed on August 18, 1998.

**DATES:** This action is effective September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: September 10, 1998.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 98–25035 Filed 9–17–98; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV 910 0777 30]**

### Notheastern Great Basin Resource Advisory Council, Sierra Front-Northwestern Great Basin Resource Advisory Council, Mojave-Southern Resource Advisory Council Meeting Location and Time

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Resource Advisory Councils' Meeting Location and Time.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACSA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Resource Advisory Councils in Nevada meeting will be held as indicated below. The agenda for October 15 begins at 8 a.m. and includes: A welcome and overview of BLM responsibilities and issues in Nevada; panel presentations and discussion on issues relating to military use of public lands, State of Nevada and county issues regarding public lands; and a panel presentation by other federal land managers in Nevada that will include Forest Service and Fish and Wildlife Service managers and a Native American tribal representative. Other issues concerning public land management in Nevada may also be discussed during the day.

On October 16 the three Resource Advisory Councils will meet separately in concurrent sessions to plan their agendas for the coming year and conduct any unfinished business from previous meetings. They will also receive updates on a variety of land management issues from the Field Managers whose jurisdictions each council covers. The three Councils will reconvene as a combined group at noon for a working lunch, where each Council will report on their morning planning sessions and discuss items of mutual interest

All meetings are open to the public. The public may present written comments to the combined Councils, or to individual Councils. Times given are approximate and may vary depending on the amount of discussion. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Office of Communications at the Nevada State Office, PO Box 12000, Reno, Nevada 89520, telephone (702) 861–6586.

**DATES, TIMES:** The time and location of the combined meeting of the three Nevada Councils is as follows: Northeastern Great Basin Resource Advisory Council, Sierra Front-Northwestern Great Basin Advisory Council, and Mojave-Southern Advisory Council, BLM Nevada State Office, 1340 Financial Boulevard, Reno, Nevada, 89502; October 15, 1998, starting at 8 a.m.; public comments will be at 4:30 p.m.; tentative adjournment 5 p.m.

The breakout meetings of the three individual Councils will begin at 8 a.m. October 16, 1998, at the same location as the previous day's meeting. Public comments will be at 11:45 a.m. in each separate council meeting. The combined Councils will convene at 12 noon at the same location. Public comments will be at 1:30 p.m. Tentative adjournment 2:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jo Simpson, Chief of Communications, Nevada State Office, 1340 Financial Boulevard, Reno, Nevada, 89502, PO Box 12000, Reno, Nevada, 89520, telephone (702) 861–6586.

**SUPPLEMENTARY INFORMATION:** The purpose of the Councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning management issues, associated with the management of the public lands.

Dated: September 11, 1998.

**Jo Simpson,**

*Chief, Office of Communications, BLM Nevada State Office.*

[FR Doc. 98–24897 Filed 9–17–98; 8:45 am]

BILLING CODE 4310–HC–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Boundary Revision, Point Reyes National Seashore

**SUMMARY:** This notice announces a revision of the boundaries of Point Reyes National Seashore to include within the boundaries one unimproved parcel of land and access easement.

**FOR FURTHER INFORMATION CONTACT:** Sondra S. Humphries, Chief, Pacific Land Resources Program Center at (415) 427–1416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby provided that the boundaries of Point Reyes National Seashore are revised, effective as of the date of publication of this notice to include all that certain property, together with an access easement, situated in the County

of Marin, State of California, commonly referred to as Assessors Parcel No. 114–330–10. The parcel and access easement owned by a private landowner cover 1.00 acre, more or less, which is contiguous to Tract 13–109 (owned by the landowner) as shown on Segment Map 13, Drawing No.612/80,036, dated April 1998. Detailed information is on file at the National Park Service, Pacific Land Resources Program Center, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372.

**James R. Shevock,**

*Associate Regional Director for Resources, Stewardship and Partnerships, Pacific West Region.*

[FR Doc. 98–25025 Filed 9–17–98; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Native American Graves Protection and Repatriation Review Committee: Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Review Committee will be held on December 10–12, 1998, in Santa Fe, New Mexico.

The Committee will meet in the Kiva room at the Hotel Santa Fe; telephone: 800/825-9876, fax: 505/984-2211, located at 1501 Paseo de Peralta in Santa Fe, New Mexico. Meetings will begin at 8:30 a.m. and will end at not later than 5:00 p.m. each day.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101-601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act (NAGPRA).

The agenda for this meeting will include a discussion of specific cases which are being considered as possible disputes; a discussion of the disposition of culturally unidentifiable human remains; an update on Federal agency compliance with the statute; and discussion of the status of implementation in the New Mexico, specifically, and the Southwest region of the United States in general.

This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. A block of lodging rooms has been set aside at the Hotel Santa Fe, at a significantly reduced rate. Reservations must be booked by November 9 to guarantee the reduced rate. Please reference the National Park Service and mention that you are attending the NAGPRA Review Committee Meeting.

Any member of the public may file a written statement concerning matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist. Statements must be received no later than November 23, 1998. Any member of the public wishing to be listed on the agenda for public comment may submit a written request to the Review Committee, in care of the office of the Departmental Consulting Archeologist, by December 7, 1998. Please clearly state that you wish to be on the agenda, briefly outline what you would like to discuss, how much time you estimate that you will need, and your contact information.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, National Park Service, 1849 C Street NW, NC340, Washington, DC 20240; telephone: 202/343-8161; fax 202/343-5260. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Departmental Consulting Archeologist, 800 North Capitol St., NW, Suite 340, Washington, DC.

Dated: September 9, 1998.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 98–25097 Filed 9–17–98; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Mackinac County, MI in the Possession of the Michigan State University Museum, Michigan State University, East Lansing, MI

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Mackinac County, MI in the possession of the Michigan State University Museum, Michigan State University, East Lansing, MI.

A detailed assessment of the human remains was made by Michigan State University Museum professional staff in consultation with representatives of Little Traverse Bay Band of Odawa Indians.

During 1966-1967, human remains representing a minimum of 137 individuals were recovered from the Lasanen site during legally authorized excavations conducted by the Michigan State University Museum. During this time, Mrs. Marie Lasanen, owner of the Lasanen site, donated these human remains to the Michigan State University Museum. No known individuals were identified. The 18,622 associated funerary objects include metal and trade items such as; knives, awls, harpoons, scissors, strike-a-lites, projectile points, finger rings, bracelets, a box, a sword pommel, buttons, bells, tinkling cones, saw parts, a trade silver cross, a pail, iron mail, Jesuit rings, and medallions; shell items including beads pendants runtees, effigies, and a gorget; catlinite pendants and beads; antler, bone, and ivory harpoons, points, fakes, containers, a comb, and buttons; chipped stone items including gunflints, scrapers, and projectile points; textiles; glass beads; and wood, charcoal, fabric remnants, ochre, vermillion, and animal bone fragments.

Based on analysis of the associated funerary objects and manner of interment, the Lasanen site has been identified as a late 17th century burial site. Historical documents correlate the presence of an Ottawa (Odawa) settlement on the site during the 17th century. Jesuit documents from the period describe an Ottawa mortuary ceremony in close proximity to the Lasanen site which correspond to the manner of interments found during the Lasanen excavations. Oral tradition presented by representatives of the Little Traverse Bay Band of Odawa Indians states the Ottawa formerly lived at the Straits of Mackinac, where the Lasanen site is located, and the place is referred to as *Geteodawin*, ''the place of our old town.''

Based on the above mentioned information, officials of the Michigan State University Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 137 individuals of Native

American ancestry. Officials of the Michigan State University Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 18,622 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Michigan State University Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Little Traverse Bay Band of Odawa Indians.

This notice has been sent to officials of the Little Traverse Bay Band of Odawa Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. William A. Lovis, Curator and Professor of Anthropology, Michigan State University Museum, Michigan State University, East Lansing, MI 48824-1045; telephone: (517) 355-3485, before October 19, 1998. Repatriation of the human remains and associated funerary objects to the Little Traverse Bay Band of Odawa Indians may begin after that date if no additional claimants come forward.

Dated: September 3, 1998.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 98–25041 Filed 9–17–98; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Tioga County Historical Society, Owego, NY

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Tioga County Historical Society, Owego, NY.

A detailed assessment of the human remains was made by Tioga County Historical Society and Binghamton University professional staff in consultation with representatives of the Caygua Nation of New York.

In 1932, human remains representing two individuals were recovered from the Stakmore Furniture Factory site in Owego, NY during construction activities. No known individuals were identified. The twelve associated funerary objects recovered with these human remains include Sackett corded sherds, a Carpenter Brook rim sherd, a shell-tempered rim sherds with catellation, and two cord-marked body sherds. These associated funerary object have not been located in the collections of the Tioga County Historical Society.

Based on the apparent age of the human remains and presence of associated funerary objects, these individuals have been determined to be Native American. Based on the ceramic styles (Sackett [Farm] corded, Carpenter Brook, & rim sherds with castellations], the burials date to 1100–1450 A.D. Archeological evidence for this geographic area indicates these ceramic styles fit into the material culture continuum for the development of Cayuga ceramics.

Based on the above mentioned information, officials of the Tioga County Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Tioga County Historical Society have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the St. Regis Band of Mohawk Indians of New York, and the Tonawanda Band of Seneca Indians of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Joann Lindstrom, Director of Collections, Tioga County Historical Society, 110 Front Street, Owego, NY 13827; telephone: (607) 687-2460, before October 19, 1998. Repatriation of the human remains and associated funerary objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

Dated: September 8, 1998.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 98–25098 Filed 9–17–98; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* versus *Safety Light Corp., et al.,* Case No. 97–CV–5206, was lodged on August 14, 1998, in the United States District Court for the District of New Jersey.

The Consent Decree resolves the United States' claim, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for response costs incurred and to be incurred by EPA at the U.S. Radium Corp. Superfund Site (''the Site'') in Essex County, New Jersey. Portions of the Site lie in the municipalities of Orange, East Orange, West Orange and South Orange, New Jersey.

Under the Consent Decree, the United States will receive $1,556,065 in reimbursement of response costs. In addition, upon sale of the property owned by Safety Light Corp. at 4150–A Old Berwick Road in Bloomsburg, Pennsylvania, the United States will receive forty-five percent of the sale price of that property.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Safety Light Corp., et al.,* DOJ Ref. #90–11–3–1066.

The proposed Consent Decree may be examined at the Office of the United States Attorney in Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington,

D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $6.00 (25 cents per page reproduction costs).

**Bruce S. Gelber,**

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 98–24990 Filed 9–17–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under CERCLA and the Clean Water Act

Under 28 CFR § 50.7, notice is hereby given that on August 6, 1996, the United States lodged with the United States District Court for the Northern District of Indiana two proposed, related Consent Decrees, the first in *United States* v. *USX Corporation*, Civil Action No. 2:98CV 465JM (the ''CWA Action'') and the second in *United States and The State of Indiana* v. *USX Corporation*, Civil Action No. 2:98CV 464RL (the ''NRD Action'').

In the CWA Action, the United States asserted claims against USX Corporation (''USX'') under the Clean Water Act, 33 U.S.C. 1251 *et seq.*. In the separate NRD Action, the United States and the State of Indiana asserted natural resource damages (''NRD'') claims against USX under the NRD provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Clean Water Act, 42 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.* The claims in both actions relate to USX's Gary Works steel-making facility in Gary, Indiana and are based on National Pollutant Discharge Elimination System (''NPDES'') permit violations, unpermitted pollutant discharges, and releases of oil and hazardous substances from Gary Works to the East Branch of the Grand Calumet River (''EBGCR'').

The proposed CWA Action consent decree, if entered by the Court, will resolve the claims in that action and provide for relief including: (i) sediment remediation through dredging and proper disposal of contaminated sediments currently located in a five-mile stretch of the EBGCR adjacent to and downriver from Gary Works; (ii) the implementation of NPDES compliance programs to identify and stop the sources of permit violations and unpermitted discharges; and (iii) the payment by USX of $1.8 million in civil penalties, plus $1.1 million in stipulated penalties under a prior, 1990 Consent Decree relating to Gary Works.

The proposed NRD Action consent decree, if entered by the Court, will resolve the claims in the NRD action and require USX, in addition to implementing the sediment remediation project described above: (i) to clean up the surface of, and to convey to the United States and the State of Indiana, more than 214 acres, in the aggregate, of undeveloped property, including globally-rare dune and swale habitat, as compensation for lost uses of natural resources; (ii) to restore and protect 32 additional acres as wetlands, as compensation for wetlands that will be lost during dredging; (iii) to pay the United States' and the State's assessment costs (approximately $570,000); and (iv) to pay $1 million into an escrow account to pay for post-dredging monitoring of the EBGCR.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *USX Corporation*, Civil Action No. 2:98CV 465JM and *United States and The State of Indiana* v. *USX Corporation*, Civil Action No. 2:98CV 464RL, D.J. Ref. 90–5–1–1–3111A and 90–5–1–1–3111/1.

The Consent Decrees may be examined at the Office of the United States Attorney for the Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana 46311; at the Environmental Protection Agency Library, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street. N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. Copies of the Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting copies, please enclose a check payable to the Consent Decree Library, for the 25 cent per page reproduction costs, in the amount of: $42.25 for the CWA Action Consent Decree; $24.50 for the NRD Action Consent Decree; or $66.75 for both.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–24989 Filed 9–17–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP (NIJ)–1198]**

**RIN 1121–ZB34**

### Announcement of the Availability of the National Institute of Justice ''Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 4''

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice's ''Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 4.''

**DATES:** The deadline for receipt of proposals is close of business on December 14, 1998.

**ADDRESSES:** National Institute of Justice, 810 7th Street, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard M. Rau, National Institute of Justice, at (202) 307–0648. For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

#### Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

#### Background

The purpose of this solicitation is to provide funding to State and local governments to develop or improve the capability to analyze deoxyribonucleic acid (DNA) in State and local forensic laboratories. This program is authorized by the DNA Identification Act of 1994 (the Act) (Public Law 103–322).

This solicitation is for the fourth year of the 5-year grant program authorized by the Act.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 4'' (refer to document no. SL000307). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 98–25021 Filed 9–17–98; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

New York
NY980003 (Feb. 13, 1998)
NY980004 (Feb. 13, 1998)
NY980005 (Feb. 13, 1998)
NY980010 (Feb. 13, 1998)
NY980013 (Feb. 13, 1998)
NY980016 (Feb. 13, 1998)
NY980018 (Feb. 13, 1998)
NY980025 (Feb. 13, 1998)
NY980034 (Feb. 13, 1998)
NY980036 (Feb. 13, 1998)
NY980039 (Feb. 13, 1998)
NY980041 (Feb. 13, 1998)
NY980043 (Feb. 13, 1998)
NY980046 (Feb. 13, 1998)
NY980047 (Feb. 13, 1998)
NY980048 (Feb. 13, 1998)
NY980072 (Feb. 13, 1998)
NY980077 (Feb. 13, 1998)

*Volume II*

Dist. of Columbia
DC980001 (Feb. 13, 1998)
DC980003 (Feb. 13, 1998)
Pennsylvania
PA980024 (Feb. 13, 1998)
PA980040 (Feb. 13, 1998)
PA980051 (Feb. 13, 1998)
PA980053 (Feb. 13, 1998)
PA980063 (Feb. 13, 1998)
PA980065 (Feb. 13, 1998)

*Volume III*

Georgia
GA980033 (Feb. 13, 1998)
GA980053 (Feb. 13, 1998)
GA980089 (Feb. 13, 1998)
GA980093 (Feb. 13, 1998)
GA980094 (Feb. 13, 1998)

*Volume IV*

Illinois
IL980012 (Feb. 13, 1998)
Indiana
IN980002 (Feb. 13, 1998)
Michigan
MI980003 (Feb. 13, 1998)
MI980005 (Feb. 13, 1998)
MI980012 (Feb. 13, 1998)
MI980030 (Feb. 13, 1998)
MI980031 (Feb. 13, 1998)
MI980034 (Feb. 13, 1998)
MI980047 (Feb. 13, 1998)
MI980049 (Feb. 13, 1998)
MI980062 (Feb. 13, 1998)
MI980063 (Feb. 13, 1998)
MI980066 (Feb. 13, 1998)
MI980071 (Feb. 13, 1998)
Wisconsin
WI980037 (Feb. 13, 1998)

*Volume V*

None

*Volume VI*

Montana
MT980001 (Feb. 13, 1998)
MT980008 (Feb. 13, 1998)
Utah
UT980001 (Feb. 13, 1998)
UT980004 (Feb. 13, 1998)
UT980005 (Feb. 13, 1998)
UT980006 (Feb. 13, 1998)
UT980007 (Feb. 13, 1998)
UT980008 (Feb. 13, 1998)
UT980009 (Feb. 13, 1998)
UT980011 (Feb. 13, 1998)
UT980012 (Feb. 13, 1998)
UT980013 (Feb. 13, 1998)
UT980015 (Feb. 13, 1998)
UT980023 (Feb. 13, 1998)

UT980024 (Feb. 13, 1998)
UT980025 (Feb. 13, 1998)
UT980026 (Feb. 13, 1998)
UT980028 (Feb. 13, 1998)
UT980029 (Feb. 13, 1998)
UT980034 (Feb. 13, 1998)

*Volume VII*

Arizona
AZ980004 (Feb. 13, 1998)
California
CA980009 (Feb. 13, 1998)
CA980029 (Feb. 13, 1998)
CA980030 (Feb. 13, 1998)
Nevada
NV980001 (Feb. 13, 1998)
NV980004 (Feb. 13, 1998)
NV980005 (Feb. 13, 1998)
NV980007 (Feb. 13, 1998)
NV980009 (Feb. 13, 1998)

## General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 10th day of September 1998.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 98–24830 Filed 9–17–98; 8:45 am]

BILLING CODE 4510–27–M

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. 98–2 CARP CD 96]**

## Ascertainment of Controversy for 1996 Cable Royalty Funds

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Copyright Office of the Library of Congress directs all claimants to royalty fees collected for secondary transmission by cable systems in 1996 to submit comments as to whether a Phase I or a Phase II controversy exists as to the distribution of these funds.

**DATES:** Comments are due October 19, 1998.

**ADDRESSES:** If sent by mail, an original and five copies of written comments and a Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. If hand-delivered, an original and five copies of written comments and a Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, LM Room 403, First and Independence Avenue, SE, Washington, DC 20559–6000.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panels, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** Each year, cable systems submit royalties to the U.S. Copyright Office under a statutory license which allows cable systems to retransmit broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a cable system's secondary transmission and who timely filed a claim with the Copyright Office.

These copyright owners may either negotiate a settlement agreement among themselves as to the distribution of the royalty fees, or the Librarian of Congress may convene an ad hoc Copyright Arbitration Royalty Panel (CARP) to determine the final distribution of the royalty fees which remain in controversy. *See* 17 U.S.C. chapter 8. The Copyright Act also allows the copyright owners to receive a partial distribution of the royalty fees prior to the final determination so long as sufficient funds are withheld from distribution ''to satisfy all claims with respect to which a controversy exists.'' 17 U.S.C. 111(d)(4)(C).

Accordingly, on September 3, 1998, the ''representatives of the Phase I claimant categories to which royalties have been allocated in prior distribution proceedings'' filed a motion for partial distribution of 75% of the 1996 cable royalties with the Copyright Office. However, before beginning a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the funds. 17 U.S.C. 803(c).

For these reasons, the Office is requesting comment on the existence of any controversies as to the distribution of the 1996 cable royalties. The Office also requests that those claimants intending to participate in the 1996 distribution proceeding file a Notice of Intent to Participate, noting whether they anticipate participating in a Phase I proceeding, a Phase II proceeding, or both.

In a Phase I proceeding, the arbitrators ascertain the distribution of royalties among the categories of broadcast programming represented in the proceeding, and in a Phase II proceeding, the arbitrators settle disputes between claimants within a particular category concerning the distribution of royalty fees within the group. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest which by the end of the comment period has not yet been satisfied by private agreement.

Participants must advise the Office of the existence of all controversies, Phase I or Phase II, by the end of the comment period. The Office will not consider controversies which come to its attention after the close of the comment period. Failure to file a timely Notice of Intent to Participate shall also preclude a party from participating in this proceeding.

Dated: September 14, 1998.

**Marybeth Peters,**

*Register of Copyrights.*

[FR Doc. 98–24985 Filed 9–17–98; 8:45 am]

BILLING CODE 1410–33–P

## NATIONAL CAPITAL PLANNING COMMISSION

### Notice for Publication of Proposed Freedom of Information Access Procedures

**SUMMARY:** In accordance with the Electronic Freedom of Information Act of 1996 this document sets out procedures for obtaining records and information from the National Capital Planning Commission (Commission). Certain information may also be obtained from the Commission's Web Site (www.ncpc.gov).

**DATES:** These procedures will become effective November 17, 1998.

**SUPPLEMENTARY INFORMATION:** The following are procedures by which information may be obtained from the Commission pursuant to the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. 552, as amended by Public Law 104–231, 110 Stat. 3048 (hereinafter the ''Act''). The Commission is the central planning agency for the Federal Government in the National Capital Region. The Commission is composed of the following members (1) five citizens, three of whom are appointed by the President of the Untied States, and two of whom are appointed by the Mayor of the District of Columbia. Of the three citizens appointed by the President at least one shall be a bona fide resident of Virginia and at least one shall be a bona fide resident of Maryland. Presidential appointments are for six-year terms; Mayoral appointments are for four-year terms. The two mayoral appointees shall be bona fide residents of the District of Columbia. The President designates the Chairman of the Commission, and (2) ex-officio, the Secretary of the Interior, the Secretary of Defense; the Administrator of General Services; the Mayor of the District of Columbia; the Chairman of the Council of the District of Columbia; the Chairman of the Committee on Governmental Affairs, Untied States Senate; and the Chairman of the Committee on Government Reform and Oversight, U.S. House of Representatives; or their alternates.

A staff headed by an Executive Director assists the Commission. The staff is organized functionally as follows:

(a) Office of the Executive Director
(b) Office of the General Counsel
(c) Office of the Secretariat
(d) Office of Administration
(e) Office of Long Range Planning
(f) Office of Plans Review
(g) Technology Development and Applications Team

**a. General Policy**

It is the Commission's general policy to facilitate the broadest possible availability and dissemination of information to the public. The Commission's Freedom of Information Act Officer and the Information Resource Specialist are available to assist the public in obtaining information formally by using the procedures herein or informally by discussions with the staff. The Commission's staff may, therefore, furnish information informally to the public, provided that it is in a manner not inconsistent with these procedures. In addition, the Commission will make available records which it is authorized to withhold under the Act, when it determines that such disclosure is in the public interest.

Some information and documents may be available in an electronic format upon request. In addition some documents, such as the Extending the Legacy, are available on the NCPC website at *www.ncpc.gov.* For information on electronic retrieval, please contact the Freedom of Information Act Officer.

**b. Established Place to Obtain Information**

Information may be obtained from the Commission's offices, located at 801 Pennsylvania Avenue, NW, Suite 301, Washington, D.C. 20576, Monday through Friday, from 8:00 a.m. to 5:30 p.m., excluding legal holidays.

**c. Information Sources Within the Commission**

Requests for publications or informal requests for general information should be directed to the Information Resource Specialist. All formal requests for agency records pursuant to the Act must be directed to the Commission's Freedom of Information Act Officer. The Commission's staff will correctly route any information request directed initially to the wrong information source and the requesting party will be notified. The 20-day time period within which the Commission is required to determine whether to comply with a request shall not begin to run until the request reaches, or with the exercise of due diligence should have reached, the appropriate information source.

**d. Information Routinely Available**

The following types of information shall be routinely available for public dissemination, unless such information falls within one of the exemptions to agency disclosure listed in 5 U.S.C. 552(b):

(1) Publications
(2) Correspondence between the Commission and the Congress, other Federal and local agencies, and the public
(3) Commission actions, including decisions, and official correspondence
(4) Executive Director's Recommendations
(5) Committee Reports
(6) Commission Memoranda of Actions
(7) Transcripts of Commission Proceedings
(8) Maps (record drawings)
(9) Comprehensive Plan for the National Capital
(10) Master Plan Submission Requirements
(11) Project Plans Submissions Requirements
(12) Environmental Policies and Procedures;
(13) Procedures for Intergovernmental Cooperation
(14) Guidelines and Submission Requirements for Antennas on Federal Property in the National Capital Region
(15) Policies relating to the Recognition of Private Contributions to Memorials, Museums, and other Cultural Facilities on Pubic Lands in the National Capital
(16) Federal Capital improvements Programs for the National Capital Region
(17) Development Controls for the Chancery Section of the International Center in the District of Columbia
(18) Extending the Legacy, Planning America's Capital for the 21 Century

Requests for any of the above information, with the exception of publications and maps, which do not require formal requests, should be directed to the Commission's Freedom of Information Act Officer. Requests for publications should be directed to the Information Resource Specialist, and map requests should be directed to the Technology Development and Applications Team.

**e. Formal Requests for Information**

All formal requests for information pursuant to the Act should be made in writing to the Commission's Freedom of Information Act Officer. To expedite internal handling of such requests, the words ''Freedom of Information Act Request'' should appear on the face of the correspondence bearing such request. The request should state that it is being made pursuant to the Act, and should reasonably describe the information sought, including the date the Commission received or produced

the requested information, if known. The request should also state, pursuant to the fee schedule set forth infra, the maximum fee the party making the request would be willing to pay for the duplication of the requested records, and shall, if possible, provide a telephone number at which the requesting party can be contacted to facilitate the handling of the request.

**f. Commission Response to Formal Requests**

The Commission's Freedom of Information Act Officer, upon request for information made in compliance with these regulations, shall determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor and of the rights of such person to appeal to the head of the agency any adverse determination. In unusual circumstances as specified, infra, the 20-day time limit may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No extension shall be for more than 20 working days. As used in this paragraph, ''unusual circumstances'' means, but only to the extent reasonably necessary for the proper processing of the particular request:

(1) The need to search for and collect the requested records from establishments that may be separate from the Commission's offices;

(2) The need to search for, collect, and appropriately examine a voluminous number of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

**g. Determination to Grant Request**

If the Commission's Freedom of Information Act Officer makes a determination to grant a request in whole or in part, the person making such request will be so notified in writing. If the information cannot be included with the above notification, the response shall also include a description of the information to be made available, a statement of the time when and the place where such information may be inspected or, alternatively, the procedure for duplication and delivery (by mail or other means) of the information to the requesting party, and a statement of the total fees chargeable to the requesting person pursuant to the free schedule, infra.

**h. Determination to Deny Requests—Appeal Procedure**

If the Commission's Freedom of Information Act Officer makes a determination to deny, in whole or in part, a request for information; he/she shall so notify the party making the request in writing. Any appeal of such determination shall be made in writing to the Executive Director of the Commission and shall include a brief statement of the legal, factual, or other basis for the party's objection to the initial decision. The Executive Director shall, within twenty (20) days (excepting Saturdays, Sundays, and legal holidays) of the receipt of any such appeal determine whether to grant or deny the appeal and shall, immediately upon making his decision, give written notice of the decision to the party, including a brief statement of the reasons.

**i. Waiver**

Whenever a waiver of any of the procedures set forth herein would further the purpose of the Act by causing the public disclosure of non-confidential information within the time period required by the Act, the Commission's Freedom of Information Act Officer may, in the context of individual requests for information, waive any of the procedural requirements herein.

**j. Schedule of Fees**

(1) The Commission may charge the following fees for the production of information pursuant to the Act:

(i) Publications offered for sale—as marked
(ii) Commission reports—$0.25/page
(iii) Committee reports—$0.25/page
(iv) Commission Memoranda of Actions—$0.25/page
(v) Transcripts of Commission/Committee Proceedings—$0.25/page
(vi) Other records—$0.25/page
(vii) Projects Maps—$5.00 each

Manual Record Research: $5.00 per quarter hour

Fees for information and products processed through the Washington Geographic Information System (WGIS) are set out in NCPC's WGIS distribution policy.

(2) The Commission keeps on file a limited quantity of copies of Executive Director's Recommendations and other documents. The Commission will first attempt to fill specific requests for these documents from its supply at no charge until the supply is exhausted. Once the supply is exhausted, the requested documents will be provided in accordance with the fee schedule.

(3) The first 100 pages of information are provided at no cost to the requestor. All requests in excess of the allowable 100 pages will be chargeable in accordance with the above fee schedule. The Commission's Freedom of Information Act Officer may waive fees when it is deemed to be in the public interest to do so. Such a waiver will be in the public interest, for example, when that officer determines that the request will not impose an undue burden or expense and the request is: (i) from another government organization, Federal, state or local; (ii) for the purpose of obtaining information primarily for the benefit of the general public rather than for the primary benefit of the requester, as will be the case with certain requests from the news media and from organizations engaged in a non-profit activity designed for public safety, health, welfare, or education; (iii) from employees and former employees seeking information from their own personnel records; (iv) from or on behalf of the defending party in connection with a proceeding against such party by the Federal government; and (v) from a low-income individual upon whom the fee would impose a financial hardship.

**NCPC Publications**

Extending the Legacy, Planning America's Capital for the 21st Century (final)
Extending the Legacy, Planning America's Capital for the 21st Century (draft)
Extending the Legacy, Fact Sheets
NCPC Quarterly
Winter 1998
Spring 1998
Changing in Place, Smithsonian Brochure
Streetscape Manual
Federal Capital Improvements Programs
Fiscal Years 1999–2003
Fiscal Years 1998–2002
Fiscal Years 1997–2001
Fiscal Years 1996–2000
Fiscal Years 1995–1999
Fiscal Years 1994–1998
Fiscal Years 1993–1997
A Vision for Monumental Washington
Worthy of the Nation
Federal Elements of the Comprehensive Plan for the National Capital
Foreign Missions Manual
Special Streets Plan
Boundary Markers of the Nation's Capital

The Pennsylvania Avenue Plan
The Urban River
Federal Employment in the National Capital Region, Report #4

**FOR FURTHER INFORMATION PLEASE CONTACT:** Sandra H. Shapiro, National Capital Planning Commission, 801 Pennsylvania Ave., NW., Suite 301, Washington, D.C. 20576, Phone: (202) 482–7200.

**Sandra H. Shapiro,**

*General Counsel.*

[FR Doc. 98–25067 Filed 9–17–98; 8:45 am]

BILLING CODE 7520–01–M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U. S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 61—Licensing Requirements for Land Disposal of Radioactive Waste.

2. *Current OMB approval number:* 3150–0135.

3. *How often the collection is required:* Applications for licenses are submitted once. Applications for renewals or amendments are submitted as needed. Other reports are submitted annually and as other events require.

4. *Who is required or asked to report:* Applicants for and holders of an NRC license for land disposal of low-level radioactive waste, and all generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility.

5. *The number of annual responses:* 111

6. *The number of hours needed annually to complete the requirement or request:* 374 hours for reporting (approximately 3.4 hours per response) plus 4513 hours for recordkeeping (approximately 645 hours per recordkeeper). The industry total burden is 4887 hours annually.

7. *Abstract:* 10 CFR Part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. Reporting and recordkeeping requirements are mandatory or, in the case of application submittals, are required to obtain a benefit. The information collected in the applications, reports, and records is evaluated by the NRC to ensure that the licensee's or applicant's physical plant, equipment, organization, training, experience, procedures and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

Submit, by November 17, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 11th day of September 1998.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98–25066 Filed 9–17–98; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–4]**

### Duke Power Company; Notice of Docketing of the Materials License SNM–2503 Amendment; Application for the Oconee Nuclear Station Independent Spent Fuel Storage Installation

By letter dated January 19, 1998, Duke Power Company submitted an application to the Nuclear Regulatory Commission (the Commission) in accordance with 10 CFR Part 72 requesting the amendment of the Oconee Nuclear Station independent spent fuel storage installation (ISFSI) license (SNM–2503) and the Technical Specifications for the ISFSI located in Seneca, South Carolina. Duke Power Company is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to reflect its corporate name change from Duke Power Company to Duke Energy Corporation. The name change is the result of a recent merger of Duke Power Company and PanEnergy Corporation.

This application was docketed under 10 CFR Part 72; the ISFSI Docket No. is 72–4 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission will determine if the amendment presents a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2).

For further details with respect to this application, see the application dated January 19, 1998, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 4th day of September 1998.

For the Nuclear Regulatory Commission.

**William F. Kane,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 98–25063 Filed 9–17–98; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket 70–7002]**

## Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant Portsmouth, Ohio

The Director, Office of Nuclear Material Safety and Safeguards (NMSS), has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The Nuclear Regulatory Commission (NRC) staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, NMSS, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

United States Enrichment Corporation (USEC) or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

*Date of amendment request:* March 16, 1998.

*Brief description of amendment:* On March 16, 1998, USEC submitted a certification amendment request to revise the Technical Safety Requirement (TSR) surveillances for the two freon degraders in TSR 2.7.3.9, Freon Degrader Fluorine Flow. The new (Cell Floor) Freon Degrader surveillance for calibration of the capillary tubes controlling fluorine flow was changed to reflect the as-built configuration of the freon degrader. Initial design had four tubes calibrated at a fluorine flow rate of 100 standard cubic feet per day (scfd) for each tube for a total of 400 scfd. The final design and as-built had four tubes, one for 25 scfd, one for 50 scfd, one for 100 scfd, and one for 200 scfd for a combined flow rate of 375 scfd. The surveillance was also amended to have the fluorine fore pressure set at 5 pounds per square inch gauge (psig) from the previous 9.5 psig. The other surveillance change for the new (Cell Floor) Freon Degrader was lowering the setpoint for the high high pressure fluorine trip from 20 psig to 5 psig. Two surveillances were added for the old (Operating Floor) Freon Degrader for calibrating and testing the high fluorine pressure trip.

### Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment does not propose any new or unanalyzed activity for the facility. The amendment would lower the fluorine flow rate possible in the new (Cell Floor) Freon Degrader and lower the safety system trip point. The lowering of the flow rate and trip point decreases the possibility of an accident which could result in toxic releases of any effluents offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

For the reasons provided in number 1 above, the proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure. In fact, the proposed amendment will likely decrease the risk of releases thereby decreasing the risk of individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment does not propose any new or unanalyzed activity for the facility. The amendment would lower the fluorine flow rate possible in the new (Cell Floor) Freon Degrader and lower the safety system trip point. The lowering of the flow rate and trip point decreases the possibility of an accident. Therefore, the amendment would not result in a significant increase in the potential for, or radiological or chemical consequences from previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment does not propose any new or unanalyzed activity for the facility. Therefore, the amendment does not raise the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The amendment would lower the fluorine flow rate possible in the new (Cell Floor) Freon Degrader and lower the safety system trip point. The lowering of the flow rate and trip point decreases the possibility of an accident and would increase any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed amendment would lower the fluorine flow rate possible in the new (Cell Floor) Freon Degrader and lower the safety system trip point and does not change the frequency of surveillances. Therefore, it does not decrease the effectiveness of the plant's safety program. The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

*Effective date:* The amendment to GDP–2 will become effective 60 days after issuance by NRC.

*Certificate of Compliance No. GDP–2:* Amendment will revise TSR 2.7.3.9.

*Local Public Document Room location:* Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 9th day of September 1998.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 98–25064 Filed 9–17–98; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket 70–7001]**

## Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

*Date of amendment request:* May 27, 1998.

*Brief description of amendment:* The amendment proposes to revise Technical Safety Requirement (TSR) 2.6.4.1 to reflect the addition of new, permanent criticality accident alarm system (CAAS) clusters in Building C–710. The amendment will also remove four buildings from the facility listing requiring CAAS coverage because the buildings do not contain fissile material.

### Basis for Finding of no Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed changes to the TSR will have no effect on the generation or disposition of effluents. Therefore, the proposed TSR modifications will not result in a change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes to the TSR to reflect CAAS coverage for C–710 and to remove buildings that do not contain fissile material from the listing requiring

CAAS coverage will not increase any exposure to radiation. Therefore, the changes will not result in a significant increase in individual or cumulative radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any building construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed changes to TSR 2.6.4.1 will add the newly installed CAAS clusters in C–710 to the TSR so that the TSR will reflect the modified plant configuration. The changes also reflect the removal of four buildings from the listing of buildings required to have CAAS. These four buildings do not contain fissile material; therefore, a criticality accident cannot occur in the facilities and CAAS coverage is not required. CAAS is utilized to mitigate the consequences of criticality accidents by alerting personnel of the need to evacuate. The addition/deletion of CAAS has no impact on the potential for or occurrence of an accident. These changes will not increase the potential for, or radiological or chemical consequences from, previously identified accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed TSR modifications add CAAS clusters and remove buildings from the list of buildings requiring CAAS coverage. The new CAAS in C–710 uses the same components and operational methodology as the existing system components. The new clusters improve detection coverage of the system. The proposed changes will not create the possibility of a new or different type of equipment malfunction or a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes to the TSR reflect an upgrade in the CAAS system for C–710 and reflect the buildings that are required to have CAAS coverage. The removal of the four buildings that do not contain fissile material from the list will not alter the margin of safety. Therefore, these changes do not decrease the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

*Effective date:* The amendment to Certificate of Compliance GDP–1 becomes effective 15 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

*Certificate of Compliance No. GDP–1:* Amendment will revise TSR 2.6.4.1 to reflect the newly installed CAAS clusters in C–710. Four buildings that do not contain fissile material will also be removed from the listing of areas required to have CAAS detection ability.

*Local Public Document Room location:* Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 9th day of September 1998.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 98–25065 Filed 9–17–98; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 30–October 2, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

**Wednesday, September 30, 1998**

*8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

*8:45 A.M.–10:00 A.M.: Preparation of ACRS Report* (Open)—The Committee will discuss the proposed ACRS report on Impact of PRA Results and Insights on the Regulatory System.

*10:15 A.M.–11:45 A.M.: NEI Petition To Modify 10 CFR 50.54(a) Related to Quality Assurance Programs* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding the NEI petition to modify 10 CFR 50.54(a) to negate the requirement for licensees to obtain NRC approval prior to making changes to their quality assurance programs.

*12:45 P.M.–2:15 P.M.: Risk-Informed Pilot Application for Hydrogen Monitoring at Arkansas Nuclear One* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the nuclear industry regarding a pilot application of a risk-informed approach for post-accident hydrogen monitoring at Arkansas Nuclear One.

*2:30 P.M.–3:30 P.M.: Performance Technology Views on Criteria for Safety Decisions* (Open)—The Committee will hear a presentation by and hold discussions with a representative of Performance Technology, Inc., on criteria for safety decisions and comments on Regulatory Guide 1.174 (previously DG–1061).

*3:30 P.M.–4:30 P.M.: Industry Initiatives To Certify Probabilistic Risk Assessments* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Owners' Groups, as appropriate, regarding industry initiatives to certify probabilistic risk assessments (PRAs).

*4:45 P.M.–7:00 P.M.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss proposed ACRS reports on: lessons learned from the review of the AP600 passive plant design; proposed resolution of Generic Safety Issue-171, ''Engineered Safety Features Failure From Loss of Offsite Power Subsequent to a Loss-of-Coolant Accident''; and prioritization of Generic Safety Issues.

**Thursday, October 1, 1998**

*8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

*8:35 A.M.–10:00 A.M.: Lessons Learned From the Independent Safety Assessment of the Maine Yankee Atomic Power Station and Associated Generic Safety Implications* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding lessons learned from the independent safety assessment of the Maine Yankee Atomic Power Station and associated generic safety implications.

*10:15 A.M.–12:00 Noon: ACRS Reports to the Congress and the Commission* (Open)—The Committee

will discuss the format and content of the 1999 ACRS reports to the Congress and the Commission on the NRC Safety Research Program.

*1:00 P.M.–1:45 P.M. Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS, including qualifications of candidates for ACRS membership.

[**Note:** A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

*1:45 P.M.–2:30 P.M.: Future ACRS Activities* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

*2:45 P.M.–7:00 P.M.: Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

**Friday, October 2, 1998**

*8:30 A.M.–10:00 A.M.: Integrated Review of Assessment Processes and Proposed Improvements to the Senior Management Meeting Process* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of activities associated with integrated review of assessment processes and proposed improvements to the Senior Management Meeting Process.

*10:00 A.M.–10:15 A.M.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. The EDO's responses are expected prior to the meeting.

*10:30 A.M.–12:00 Noon: Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

*12:00 Noon–12:15 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: September 14, 1998.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 98–25062 Filed 9–17–98; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Draft Report to Congress on the Costs and Benefits of Federal Regulations

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** On August 17, 1998, OMB published for comment the draft report to Congress on the costs and benefits of Federal regulation. The comment period was scheduled to end on September 16, 1998. This notice extends the public comment period on the draft report to October 16, 1998.

**DATES:** *Comment Due Date:* October 16, 1998.

**ADDRESSES:** Comments on this draft report should be addressed to John F. Morrall III, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

Comments may also be submitted by facsimile to (202) 395–6974, or by electronic mail to MORRALL__J@A1.EOP.GOV (please note that the ''1'' in ''A1'' is the number one and not the letter ''l''). Be sure to include your name and complete postal mailing address in the comments sent by electronic mail. If you submit comments by facsimile or electronic, please do not submit them by regular mail.

*Electronic availability and addresses:* The August 17, 1998 **Federal Register** Notice is available electronically from the OMB homepage on the World Wide Web: ''http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg.html.''

**FOR FURTHER INFORMATION CONTACT:** John F. Morrall III, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, N.W., Washington, D.C. 10503. Telephone (202) 395–7316.

**SUPPLEMENTARY INFORMATION:** On August 17, 1998 (63 FR 44034), OMB published the draft report to Congress on costs and benefits of Federal regulations. The comment period on the draft report was scheduled to end September 16, 1998. Members of the public and Congress have asked for additional time to allow the public a better opportunity to participate in the comment process. Accordingly, OMB has decided to

extend the public comment period on the draft report to October 16, 1998.

**Donald R. Arbuckle,**

*Acting Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 98–25060 Filed 9–17–98; 8:45 am]

BILLING CODE 3110–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: Form RI 20–80

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. RI 20–80, Alternative Annuity Election, is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

Approximately 200 RI 20–80 forms are completed annually. We estimate it takes approximately 20 minutes to complete the form. The annual burden is 67 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

**DATES:** Comments on this proposal should be received on or before October 19, 1998.

**ADDRESSES:** Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Donna G. Lease, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 98–25040 Filed 9–17–98; 8:45 am]

BILLING CODE 6325–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Salary Council

**AGENCY:** Office of Personnel Management.

**ACTION:** Correction to Notice of Meeting.

**SUMMARY:** The Federal Salary Council is correcting the notice published in Volume 63, Number 175, on September 10, 1998.

The fifty-fifth meeting of the Federal Salary Council scheduled for Monday, September 28, 1998, will begin at 12 noon.

**ADDRESSES:** Office of Personnel Management, 1900 E Street NW., Room 1350 (OPM Conference Center), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ruth O'Donnell, Chief, Salary and Wage Systems Division, Office Of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200. Telephone number: (202) 606–2838.

For the President's Pay Agent.

**Janice R. Lachance,**

*Director.*

[FR Doc. 98–25054 Filed 9–17–98; 8:45 am]

BILLING CODE 6325–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Municipal Mortgage and Equity, LLC, Growth Shares, No Par Value) File No. 1–11981

September 14, 1998.

Municipal Mortgage and Equity, LLC (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company is listed for trading on the Amex and the New York Stock Exchange, Inc. (''NYSE''). Trading in the Company's Security on the NYSE commenced at the opening of business on June 25, 1998, and concurrently, the Security was suspended form trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal. In making the decision to withdraw its Security from listing on the Amex, the Company considered its plan for financing future funding requirements and expanding awareness of the Company in the investment community.

The Exchange informed the Company that it has no objection to the withdrawal of the Security form listing on the Amex.

The application relates solely to the withdrawal of the Security from the Amex and has no effect upon the continued listing of the Security on the NYSE.

By reason of Section 12 of the Act, the Company continues to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before October 5, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–25055 Filed 9–17–98; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40434; File No. SR–NASD–98–62]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for NASD Members

September 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 20, 1998, as amended on September 10, 1998,[3] the National Association of Securities Dealers, Inc. (''NASD'') through is wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010(h)(2) relating to Nasdaq Workstation II (''NWII'') and network fees. The proposed rule change amends the current fee schedule for NWII service for NASD members. The NASD has filed a parallel proposal to effect the similar amendments to the NWII fee structure to apply to non-NASD members.[4] Nasdaq also is eliminating Digital Interface Service fees as Nasdaq no longer provides this service. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

NASD Rule 7010. System Services

(a)–(g) No Change.

(h) Nasdaq Workstation Service.

(1) No Change.

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

| | |
|---|---|
| Service Charge | [$100] *$1,500*/month per [server] *service delivery platform (''SDP'').* |
| Display Charge | [$500] *$525*/month per presentation device (*''PD''*). |
| Additional Circuit/*SDP Charge* | [$1,150 per] *$2,700*/month.* |

*A subscriber that accesses Nasdaq Workstation II Service via an application programming interface (''API'') shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.*

(3) No Change.

[(j)] Digital Interface Service.

The following charges shall apply to the receipt of Level 3 Nasdaq service via the Digital Interface Service:

| | |
|---|---|
| Service Charge | $1,300/month per server. |
| Display Charge | $345/month per terminal display. |
| Additional Circuit | $500/month. |
| Equipment Charge | $290/month per server]. |

(k)–(n) Re-designated as subparagraphs (j)–(m)

* *A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the Service Charge) for each ''underutilized'' SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its existing T1 circuit(s) by placing six SDPs on a T1 circuit and obtains an additional T1 circuit(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the Service Charge) for each ''unutilized'' slot on the existing T1 circuit(s). Regardless of SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this filing is to amend the subscriber fees applicable to NASD members that use the Nasdaq Workstation II (''NWII''). In 1994, Nasdaq rolled out the NWII service, which provided many enhancements to the then-existing Nasdaq Workstation service.[5] As part of the NWII rollout, Nasdaq installed a network, known as the Enterprise Wide Network (''EWN I''), to deliver NWII functionality. To access NWII service, each subscriber location has at least one service delivery platform (''SDP''), or server, that resides on the network and connects to Nasdaq by a dedicated circuit. The SDP functions as the subscriber's gateway from the NWII to the enterprise-wide network.[6] Each SDP currently is permitted to support up to eight presentation devices (''PD''), or Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 10, 1998, Nasdaq filed Amendment No. 1 with the Commission. *See* Letter from Robert Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 10, 1998. Amendment No. 1 clarified the circumstances under which Nasdaq would apply the Additional Circuit/SDP Charge to subscribers, and clarified the way that Nasdaq would adjust the size of the deposits required from subscribers who ordered NWII service in July and August 1998.

[4] *See* File No. SR–NASD–98–63.

[5] NWII provides a widows-based environment and several data management facilities not previously available in Nasdaq's former (pre-1994) workstation service.

[6] Under EWN I, each dedicated circuit supported one SDP. Under Nasdaq's proposed new network—known as ''EWN II''—each dedicated circuit (''T1 circuit'') will be capable of supporting up to six SDPs.

Workstation IIs,[7] although a firm may elect to have fewer than eight PDs on a single SDP. In addition, a subscriber may obtain NWII service through an application programming interface (''API''), which essentially allows a firm to obtain NWII Service using the firm's own hardware (*e.g.*, personal computer) and software systems to access, display, interface with, and operate NWII service.[8]

Due to the ongoing growth in the Nasdaq market and unprecedented increases in daily share volume since EWN I was installed, Nasdaq became concerned that its existing enterprise-wide network capacity was rapidly approaching maximization. Specifically, the network's bandwidth—the amount of data that can be transmitted through a given communications circuit in a fixed amount of time—currently can handle one and one-half billion shares per day. The 1998 average daily share volume to date is 750 million, with a high single-day volume of 1.250 billion shares. In addition, on October 28, 1997, Nasdaq experienced its largest daily share volume ever with 1,354,164,600 shares traded. In Nasdaq's view, these dramatic increases in average and peak share volumes clearly mandate the creation of a new network with increased capacity.

Moreover, based on the average rate of circuit additions for both new and existing subscribers, EWN I is expected to reach maximum circuit capacity during the second quarter of 1999.[9] To respond to these concerns and to avoid the potential for any disruption to the Nasdaq market, Nasdaq contracted in late 1997 with MCI Communications Corporation (''MCI'') to build a new network—EWN II—to accommodate increased usage and provide increased circuit capacity.

Nasdaq notes that concerns about present and future system capacity have been repeatedly expressed by the Commission as part of its releases recommending that self-regulatory organizations voluntarily establish automation review policies to comprehensively plan, test, and assess the trading capacity of their systems.[10] This emphasis on sufficient trading-system capacity reflects the Commission's recognition of the significant negative impact system failures can have on public investors, broker-dealer risk exposure, and market efficiency. Moreover, Congress has specifically found that ''the maintenance of stable and orderly markets *with maximum capacity* for absorbing trading imbalances without undue price movements'' is a paramount objective of a national market system.[11] EWN II is Nasdaq's response to these mandates.

EWN II will be a significant improvement over EWN I. First EWN II will have a four billion share per day capacity by the year 2001, with the additional capability to be expanded to a daily eight billion share capacity. EWN II's design contains certain features that are aimed at significantly reducing the likelihood of a network failure. These features are designed to ensure that Nasdaq, and the market professionals and individual investors who rely on its facilities, are provided with the most robust and flexible system available, thereby ensuring the smooth functioning of the public securities markets both now and in the future.

Nasdaq shortly will begin converting existing subscribers to EWN II. Specifically, on or about September 1, 1998, Nasdaq will begin replacing subscribers' existing dedicated circuits to accommodate the new network. The installation process should be completed by May 1999. As with previous technology roll-outs (*e.g.*, EWN I and NWII), the EWN II conversion will be implemented regionally and each firm will be pre-scheduled for a particular conversion date.[12]

In light of the increased costs and value-added benefits of EWN II, Nasdaq is proposing to revise the current NWII fee structure. Under the proposal, the fee charged to a subscriber for a SDP would change from $100 per month for each server, to $1,500 per month for each server. The display charge would change from $500 per month for each PD, to $525 per month for each PD. The charge associated with an unutilized or underutilized circuit or SDP would change from $1,150 per month to $2,700 per month.[13] Thus, under the new fee

[7] This also will be true of EWN II.

[8] API provides an electronic interface between a subscriber's systems and the NWII system. Through the use of the API, a subscriber may build its own workstation presentation software to integrate the NWII service into the subscriber's existing presentation facilities. The API allows a subscriber to emulate the NWII presentation software with equivalent functionality, capacity utilization and through-put capability, in addition to providing enhanced capability to develop customized internal presentations for use in support of a subscriber's activities. API also allows a subscriber to operate a quote-update facility to assist solely in complying with the SEC's Order Handling Rules. Generally, a subscriber establishes an API ''linkage'' such as an NWII substitute or quote-update facility, which in turn connects to an SDP via an API server.

[9] Similar to any other private network, EWN I was designed to have a maximum circuit capacity (*i.e.*, 2,100 circuits). In 1995, the projected average circuit growth between 1995 and 1999 was estimated to be seven circuits per month, so that by 1,999 there would be a total of 1,400 circuits. In 1996, however, there was an average growth of 35 circuits per month. For 1998, Nasdaq is averaging 10 circuits per month. Nasdaq projects that by 1999, there will be 2,100 circuits, and that Nasdaq will exhaust circuit capacity without the EWN II upgrade.

[10] Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (Automation Review Policy); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (Second Automation Review Policy).

[11] *See* S. Rep. No. 94–75, at 7, *reprinted in* 1975 U.S.C.C.A.N. 179, 185 (report accompanying bill enacted as Securities Acts Amendments of 1975) (emphasis added).

[12] *See* Securities Exchange Act Release No. 35,189 (January 3, 1995), 60 FR 3014 (January 12, 1995) (EWN I rollout). Thus, while the rollout proceeds, some subscribers will continue to utilize EWN I and pay the fees for that service, until they are upgraded to EWN II.

[13] As noted above, a T1 circuit supports up to six SDPs, and an SDP supports up to eight PDs. A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s). In such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in view of the Service Charge) for each ''underutilized'' SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its existing T1 circuits by placing six SDPs on a T1 circuit and obtains an additional T1 circuit(s). In such case, the subscriber shall be charged the Additional Circuit/SDP Charge for each ''unutilized'' slot on the existing T1 circuit(s). Regardless of SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio.

For example, if a subscriber has four SDPs (each with eight PDs) on an existing T1 circuit, and the subscriber orders a second T1 on which the Subscriber places one SDP (with eight PDs), the subscriber would pay on a monthly basis: (1) $1,500 for each of the four fully utilized SDPs on the first T1 circuit, plus $525 for each of the PDs on the circuit; (2) 2,700 for each of the two unutilized SDP slots on the first circuit; and (3) $1,500 for the SDP on the second T1 circuit, plus $525 for each of the PDs on that circuit.

As a second example, if a subscriber has five SDPs, (each with eight PDs) on an existing T1 circuit, and the subscriber orders a second T1 circuit on which the subscriber places two SDP (with eight PDs), the subscriber would pay on a monthly basis 1,500 for each SDPs on the first and second T1 circuit, plus $525 for each of the PDs on the SDPs. The firm would not be subject to the Additional Circuit/SDP Charge because it has seven SDPs and needs two T1 circuits to support this number of SDPs.

As a third example, if a subscriber has on a T1 circuit four SDPs each with four PDs, the subscriber would pay on a monthly basis (1) $525 for each of the 16 PDs; and (2) $1,500 for two of the SDPs and $2,700 for two SDPs because two SDPs are fully utilized while two SDPs are not. This is, to support the firm's 16 PDs, the firm only needs two SDPs. Thus there are two ''underutilized'' or ''nonessential'' SDPs, for which the firm must pay the Additional Circuit/SDP Charge.

This pricing structure encourages subscribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of such capacity. Furthermore, Nasdaq notes that under

structure, a firm with one SDP ($1,500) and eight PDs (8 × $525 = $4,200) would be charged a monthly fee of $5,700, while a firm with one SDP ($1,500) and two PDs (2 × $525 = $1,050) would be charged a monthly fee of $2,550.

The proposed rule change also clarifies that the fees in NASD Rule 7010(h)(2) likewise apply to NWII service obtained via API. Specifically, if a subscriber chooses to access NWII through API, the subscriber would be assessed the service charge for each SDP, the display charge for each of the subscriber's linkages (*e.g.*, NWII substitute, quote-update facility), as well as the additional circuit charge.[14]

Although NASD Rule 7010(h)(2) generally applies to both members and non-member subscribers to NWII service, this filing will only effect a change to the fees charged to NASD members. The NASD has filed a separate but virtually identical proposed rule change to impose the proposed new fees on non-member subscribers. Lastly, the proposed rule filing reserves the fee schedule for ''Digital Interface Service,'' as Nasdaq no longer offers this service.

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[15] which requires that the rules of a registered securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq notes that the proposed fees, which will only apply to those that utilize NWII service, are reasonable and proportionate to the projected costs of operating and maintaining EWN II.

Although the proposed fees are higher than those associated with EWN I, Nasdaq believes that these fees are both reasonable and necessary. Specifically, Nasdaq notes that EWN II will be faster, more secure, and provide greater capacity, all of which are essential to protecting the integrity of the Nasdaq market and maintaining the confidence of the investing public. In addition, the new fees will more fairly allocate system costs among Nasdaq market participants.[16]

*B. Self-regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge on NASD members, it has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[17] and subparagraph (e)(2) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[19] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 25049. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–62 and should be submitted by October 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Maragret H. McFarland,**

*Deputy Secretary.*

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EWN II, each T1 will be a dual circuit, and that there will be a virtually seamless switch-over from one circuit to the next if one of the circuits fails. Thus, it is anticipated that, due to the new features of EWN II, subscribers will be less likely to order additional circuits without first optimizing capacity on existing circuits(s).

[14] Since July and August 1998, new subscribers to NWII service have placed work order for EWN II technology (instead of EWN I technology). During this period, Nasdaq charged new subscribers the required security deposit using the EWN I pricing structure, as the new EWN II pricing structure had not yet been filed (NASD Rule 7070 provides that new subscribers to Nasdaq Workstation service shall be subject to a deposit in the amount of: estimated telecommunications provider charges for network infrastructure, connection and testing; two months circuit charges; and estimated telecommunications provider disconnect charges.) Nasdaq processed new work orders for EWN II (instead of EWN I) to avoid these subscribers having to pay for the installation and subsequent deinstallation of soon-to-be obsolete EWN I technology, and the installation of EWN II technology in September 1998 (when the upgrade is set to begin).

With this filing, new subscribers that are members and that have placed work orders during July and August 1998, will be billed for the security deposit for an amount equal to the differential under the EWN I and the EWN II fee structures. Nasdaq believes that this is a fair approach in that all subscribers should be required to pay the same fees for the EWN II technology, regardless of the timing of their order.

[15] 15 U.S.C. 78o–3(b)(5).

[16] According to Nasdaq, the proposed fee schedule's Service Charge, like the prior fee schedule, does not pass on all of the SDP/server costs that MCI charges the NASD. The proposed fee schedule's Display Charge, like the prior fee schedule, in part helps the NASD recoup its subsidy of the SDP/server costs, and permits the NASD to recoup other expenses associated with the development and the maintenance of NWII. *See* Conversation between John Malitzis, Senior Attorney, Nasdaq, and Joshua Kans, Attorney, Division, Commission, September 10, 1998.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(e)(2).

[19] In reviewing the proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[20] *See* 17 CFR 200.30–3(a)(12).

# DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–1998–4399]**

## Public Meeting for Automatic Identification System Carriage Requirement; Vessel Traffic Service Lower Mississippi River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting; request for comments.

**SUMMARY:** The Coast Guard is holding a public meeting to solicit comments on the establishment of a new Vessel Traffic Service (VTS) in the Lower Mississippi River area and a potential Automatic Identification System (AIS) carriage requirement for certain vessels operating in the new VTS area. The primary purpose of the meeting is to discuss which vessels should carry

Automatic Identification Systems and what performance, technical, testing, and certification standards the systems should meet. The Coast Guard will also share preliminary results of AIS tests conducted in the Lower Mississippi River area. In addition, the Coast Guard seeks written comments from any party who is unable to attend the meeting or who wishes to submit comments on this topic.

**DATES:** The meeting will be held on October 28, 1998, from 9 a.m. to 3 p.m. We will begin the meeting at the scheduled time; however, it may be concluded early if all business is finished. Comments must reach the Docket Management Facility on or before October 28, 1998.

**ADDRESSES:** The meeting will be held at the Port of New Orleans, Port of New Orleans Way, New Orleans, LA 70160. You may mail comments to the Docket Management Facility, [USCG–1998–4399], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the address in this section between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice or to make an oral presentation at the meeting, please contact Diane Schneider, Office of Vessel Traffic Management, telephone 202–267–0352, fax 202–267–4826, or e-mail *Dschneider@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

Additional information on AIS can be obtained on the Internet at *http://www.uscg.mil/vtm*.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

The Coast Guard encourages interested persons to respond to this request by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice [USCG–1998–4399] and the specific section of this document to which each comment or question apples, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no large than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. 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.

## Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Ms. Diane Schneider at the phone numbers listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

## Background Information

### *The Need for Vessel Traffic Services*

Continuing trends in vessel transit statistics show that America's commercial waterways are becoming increasingly congested. Growing numbers of vessels, especially oil and chemical carriers and vessels with large passenger counts, create a growing threat of high consequence accidents. As a result, the public has demanded more effective safety measures and the maritime community wants improved safety and more efficient traffic movement through major ports. Vessel Traffic Services (VTS) have been specifically identified as one potential solution to the problems of vessel traffic safety and port efficiency. At the same time, Congress and the industry have serious concerns about the adequacy and cost-effectiveness of traditional VTS technology and operation procedures.

### *Congressional Direction and Stakeholder Involvement*

Congress has directed the Coast Guard to re-examine the manner in which it performs the VTS mission and to work with VTS users and stakeholders in identifying the technologies to be used in performing the VTS mission. Congress has also specifically commented on the need to rapidly solve safety problems in the Port of New Orleans.

The Coast Guard complied with congressional direction through two public processes, as well as through numerous less formal public presentation and discussion sessions around the country. The first of the two public processes was a National Dialog conducted through the Marine Board of the National Academy of Sciences and its Committee on Maritime Advanced Information Systems. The National Dialog drew input from representatives of the maritime industry and stakeholders. The second public process was an ad hoc VTS committee formed under the auspices of the Lower Mississippi River Safety Advisory Committee (LMRSAC), a formally chartered advisory committee under the Federal Advisory Committee Act. The ad hoc VTS committee included representatives from 28 different stakeholder groups.

The National Dialog resulted in the identification of AIS technology as a basis for future VTS installations. The LMRSAC ad hoc group, in its ''Baseline VTS Recommendations from The Ports and Waterways Safety Systems Committee,'' also recommended AIS as the basis for future technology for any VTS in the Lower Mississippi River area. Copies of documents from both processes are available for inspection in the docket at the address listed under **ADDRESSES**. You may also obtain copies on the Internet at *http://dms.dot.gov*, or by calling the project manager at the number listed in **FOR FURTHER INFORMATION CONTACT**.

### *AIS Technology*

The AIS integrates a number of different technologies including Differential Global Positioning Systems (DGPS), electronic chart systems, communications, and open information system architecture. The AIS transponders transmit and receive specific navigational information in real time (vessel's name, position, course, speed, dimensions, cargo, etc.) and operate in both ship-to-ship and ship-to-shore-to-ship modes. The ship-to-ship mode allows independent exchange between participating vessels without a shore-based component. The ship-to-shore-to-ship mode allows exchange of information between participating vessels and a shore-based component such as a vessel traffic service. In both modes, AIS will provide mariners with highly accurate information on the navigational situation of their own vessels as well as that of surrounding AIS equipped vessels.

There are systems similar to AIS already in use in ports around the world. These systems have proven that AIS transponder surveillance can be effective by providing mariners with improved access to pertinent navigation

and vessel traffic information. For example, since July 1994, certain tank vessels operating in the Prince William Sound VTS area are required to carry transponders. This transponder system works in a ship-to-shore mode only and does not support onboard information displays or voiceless delivery of information to the mariner. The Prince William Sound VTS remains heavily dependent on radar and VHF–FM voice radio communications. Despite the lesser capability of these more primitive transponders, the devices have proven extremely valuable.

The automatic ship identification system used in Prince William Sound does not have an onboard display capability. An onboard display, especially one providing an electronic navigation capability, significantly increases the benefits of AIS. For example, Portable Piloting Units (PPU), consisting of a DGPS receiver and a laptop computer running an electronic chart system, have been used in a number of places, including the Delaware and Chesapeake Bays, with very positive results. The PPUs lack vessel traffic information (there is no transponder), but they do provide a level of precision navigation not previously available.

*Setting Standards for AIS*

Standards for AIS must be set for the technology to operate as most mariners desire. Standards will ensure that AIS devices, offered by various manufacturers, will be interoperable. Many of the systems that are already in use are based on incompatible designs and are proprietary. These systems might be an acceptable way to implement the AIS concept, if the benefits of AIS were limited to piloted vessels navigating between the pilot station and the dock. However, AIS needs to be on board vessels that are not carrying pilots, whether at sea or in internal waters. There is also a need to avoid a proliferation of AIS-related devices to be carried on board a given vessel. Most mariners want one device that meets the requirements.

Setting standards for AIS is a high priority for the Coast Guard. The preferred approach is to have a single set of universal AIS performance, technical, testing, and certification standards adopted by the appropriate international standard setting bodies. To avoid royalty payments and unavailability of technology, a further requirement is that these standards be unencumbered by intellectual property rights. Following this approach and working with concerned governments and appropriate standards bodies, the Coast Guard has made significant progress in obtaining the necessary standards. The International Maritime Organization (IMO) has adopted a performance standard for a Universal Shipborne Automatic Identification System. Based on this performance standard, the International Telecommunications Union (ITU) has prepared a draft technical standard which is in the final stages of review and approval. Work has started on a test and certification standard to be promulgated by the International Electro-technical Commission (IEC).

Work on installing a new VTS in the Lower Mississippi River area has begun; the VTS is scheduled to be operational in January of the year 2000. The new VTS will cover an area 32 kilometers (20 miles) north of Baton Rouge (mile marker 255) to the seabuoy at Southwest Pass. Consistent with the results of the National Dialog and the LMRSAC ad hoc VTS committee, this VTS may be AIS-based, using transponder technology to perform the majority of both surveillance and information exchange. The Coast Guard is currently conducting comprehensive vessel testing of AIS transponders on a variety of platforms. These tests are addressing technical issues such as charting and transponder reliability, and will highlight any technical problems. The Coast Guard will provide preliminary test results during the public meeting.

**Comment Issues**

The Coast Guard seeks information that may be useful when it considers the feasibility of and alternatives in implementing a potential AIS carriage requirement for certain vessels operating in the Lower Mississippi River VTS area. The Coast Guard will review and consider all comments submitted, and input from the comments may be used in the development of a notice of proposed rulemaking.

The Coast Guard needs feedback from you on the following issues and recommendations:

*1. AIS Carriage Requirement*

An AIS carriage requirement must be in place if the new VTS is AIS-based. Many of the discussions regarding AIS to date have focused on using the Bridge-To-Bridge Radiotelephone Act applicability requirements in 33 CFR 26.03 as the basis for an AIS display and transponder carriage requirement. The following vessels must carry a radiotelephone under 33 CFR 26.03.

- Every power-driven vessel of 20 meters (66 feet) or more in length while navigating.
- Every vessel of 100 gross tons or more carrying one or more passengers for hire while navigating.
- Every towing vessel of 8 meters (26 feet) or more in length while navigating.
- Every dredge and floating plant engaged in or near a channel or fairway in operations likely to restrict or affect navigation of other vessels except for an unmanned or intermittently manned floating plant under control of a dredge.

Some stakeholders have recommended modifying these applicability requirements for AIS carriage to apply to power-driven vessels of 40 meters (131 feet) or more while navigating. In addition to the possible applications for AIS display and transponder requirements, stakeholders have also recommended that all vessels licensed or documented for commercial use, with the exception of fishing vessels, be required to carry an AIS transponder only (display capability not required). Stakeholders have also recommended that certain vessels be prohibited from carrying AIS transponders which operate in the transmit mode. The Coast Guard is interested in feedback on these issues and recommendations.

*2. AIS Standards*

As discussed earlier in this notice, setting standards for AIS is a high priority for the Coast Guard because standardization is an absolute requirement for AIS to operate as desired. We must consider the following issues:

- Which set of standards to use in implementing an AIS carriage requirement on the Lower Mississippi River.
- The effective date that should be established for implementing an AIS carriage requirement.

If a technical standard implementing the IMO Universal AIS performance standard is not approved in a timely manner, the Coast Guard may have to consider alternative courses of action. For example, an existing ITU AIS technical standard, called ITU–R825.3, is already in place, with a corresponding IEC test/certification standard. This standard, while not providing all of the capabilities of the IMO Universal AIS standard and not providing as robust a ship-to-ship capability as desired, could be used in implementing AIS on the Lower Mississippi River. Transition to the new international standard could be accomplished at a later date, and backwards compatibility from the new standard to the existing standard could eliminate or sharply reduce the cost of any retrofit.

• If standards fully implementing the IMO Universal AIS standard are still not in place by the beginning of the year 2000, should the Coast Guard implement a carriage requirement based on existing standards?

• Should the Coast Guard delay the opening of VTS Lower Mississippi River until a technical standard implementing the IMO Universal AIS performance standard is available? If so, how long can VTS Lower Mississippi River be delayed?

**Public Meeting**

The meeting is open to the public. It will include short presentations on the following topics, followed by open discussion:

• Introduction of Coast Guard personnel.

• Concept of AIS and VTS.

• AIS performance, technical, and test/certification standards.

• Automatic Identification Systems test results from the Lower Mississippi River.

• The size and type of vessels that should be required to carry Automatic Identification System transponders.

Members of the public can make oral presentations with advance notice, and as time permits. If you wish to make an oral presentation, you should notify Diane Schneider at the numbers listed under **FOR FURTHER INFORMATION CONTACT** no later than October 26, 1998. Please provide your name, your affiliation, and the issue you would like to discuss.

Dated: September 11, 1998.

**Joseph J. Angelo,**

*Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 98–25038 Filed 9–17–98; 8:45 am]

**BILLING CODE 4910–15–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Noise Exposure Map Notice; Receipt of Noise Compatibility Program Revision and Request for Review Naples Municipal Airport Naples, Florida

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the revised current and future noise exposure maps submitted by the City of Naples, Florida for Naples Municipal Airport under the provisions of Title 1 of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program revision that was submitted for Naples Municipal Airport under Part 150 in conjunction with the noise exposure maps, and that this program revision will be approved or disapproved on or before March 2, 1999.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the revised noise exposure maps and of the start of its review of the associated noise compatibility program revision is September 3, 1998. The public comment period ends November 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Comments on the proposed noise compatibility program revision should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the revised noise exposure maps submitted for Naples Municipal Airport are in compliance with applicable requirements of part 150, effective September 3, 1998. Further, FAA is reviewing a proposed noise compatibility program revision for that airport which will be approved or disapproved on or before March 2, 1999. This notice also announces the availability of this program revision for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Notice Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Naples, Florida, submitted to the FAA on March 6, 1998, revised noise exposure maps, descriptions and other documentation which were produced during the Naples Municipal Airport FAR Part 150 Update Amendment of Noise Exposure Maps and Noise Compatibility Program to Extend Nightime Stage 1 Use Restrictions to 24 Hours study conducted between October 23, 1997 and February 27, 1998. Subsequent supporting documentation was also provided by the City of Naples and their consultant. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measure revisions, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program revision under Section 104(a) of the Act. The proposed noise compatibility program revision would revise one of the noise abatement measures in the noise compatibility program previously approved on September 29, 1997.

The FAA has completed its review of the revised noise exposure maps and related descriptions submitted by the City of Naples, Florida. The specific maps under consideration are ''1998 Noise Exposure Map'' and ''2003 Noise Exposure Map'' in the noise compatibility program revision submission. The FAA has determined that these maps for Naples Municipal Airport are in compliance with applicable requirements. This determination is effective on September 3, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from

the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program revision for Naples Municipal Airport, also effective on September 3, 1998. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program revision. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 2, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program revision with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the revised noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program revision are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024 and Naples Airport Authority, 160 Aviation Drive North, Naples, Florida 34104.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida September 3, 1998.

**Charles E. Blair,**

*Manager, Orlando Airport District Office.*

[FR Doc. 98–24967 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues, New Tasks

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of new task assignments for the Aviation Rulemaking Advisory Committee (ARAC).

**SUMMARY:** Notice is given of new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

**FOR FURTHER INFORMATION CONTACT:** Stewart R. Miller, Transport Standards Staff (ANM–110), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; phone (425) 227–1255; fax (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

#### Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

#### The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization tasks.

*Task 8: Casting Factors*

Review the current standards of § 25.621 and those proposed for the corresponding JAR 25.621 in NPA 25C–272 (circulated for public consultation by JAA on 16 November 1997) as they pertain to the strength of structural castings. Review also any available FAA and JAA advisory material. In the light of this review, recommend changes to harmonize this section and the corresponding JAR paragraph, recommend new harmonized standards, and develop related advisory material as necessary.

The FAA expects ARAC to submit its recommendation(s) resulting from this task by July 31, 2001.

*Task 9: Fuel Tank Access Doors*

Review the current standards of FAR 25.963(e) and JAR 25.963(g) as they pertain to the requirements for fuel tank access doors impact and fire resistance. Review also the related FAA and JAA advisory material. In the light of this review, recommend changes to harmonize these sections and the corresponding JAR paragraphs, recommend new harmonized standards, and develop related advisory material as necessary.

The FAA expects ARAC to submit its recommendation(s) resulting from this task by July 31, 2001.

*Task 10: Strength of Windshields and Windows*

Review the current standards of § 25.775 and those for corresponding JAR 25.775 as they pertain to the strength of windshields and windows. Review also any related FAA and JAA advisory material. In the light of this review, recommend changes to harmonize this section and the corresponding JAR paragraph, recommend new harmonized standards, and develop related advisory material as necessary.

The FAA expects ARAC to submit its recommendation(s) resulting from this task by March 31, 2001.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the resulting recommendation(s) are one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

#### Working Group Activity

The General Structures Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the General Structures Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on September 14, 1998.

**Joseph A. Hawkins,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 98–25070 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

**DATES:** The meeting will be held on October 20, 1998, at 12:00 noon.

**ADDRESSES:** The meeting will be held at the Regional Airlines Association, Second floor, 1200 19th St. NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Regina L. Jones, (202) 267–9822, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW, Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues. This meeting will be held October 20, 1998, at 12:00 noon, at the Regional Airlines Association. The agenda for this meeting will include a progress report from the Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group, the presentation of the Licensing Harmonization Working Group work plan, and the ARAC's review, comment and approval of the Licensing Harmonization Working Group work plan. Copies of the Licensing Harmonziation Working Group work plan is available for public review and may be obtained by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on September 14, 1998.

**Jean Casciano,**

*Acting Assistant Executive Director for Training and Qualifications Aviation Rulemaking Advisory Committee.*

[FR Doc. 98–25068 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

**SUMMARY:** Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

**FOR FURTHER INFORMATION CONTACT:** Stewart R. Miller, Transport Standards Staff (ANM–110), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; phone (415) 227–1255; fax (415) 227–1320.

**SUPPLEMENTARY INFORMATION:**

#### Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

#### The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task

*Task 3: Harmonization of Airworthiness Standards; Flight Rules*

The following differences between Part 25 and JAR 25 and their associated guidance material have been identified as having a potentially significant impact on airplane design:

1. Section 25.107(e)(1)(iv) requires a greater margin between $V_{LOF}$ and $V_{MU}$ than JAR 25.107(e)(1)(iv) for airplanes where liftoff attitude is limited either by geometry or elevator power. The FAA permits a reduction in the margin for

the geometry-limited case with all-engines-operating via a finding of equivalent safety, as noted in Advisory Circular 25–7A, but does not permit a reduction in the margin for the engine-inoperative case.

2. JAR 25.147(c) includes an additional requirement regarding roll rate with one-engine inoperative relative to § 25.147(c).

3. JAR 25.253(a)(3) contains in additional requirement relative to § 25.253(a)(3); namely, that adequate roll capability must be available to assure a prompt recovery from a lateral upset condition.

4. JAR 25.253(a) (5), which has no Part 25 equivalent, specifies that extension of airbrakes at speeds above the maximum operating speed/Mach number ($V_{MO}/M_{MO}$) must not result in an excessive positive load factor with the stick free and any nose-down pitching moment must be small.

For each of the above four issues the working group is to review airworthiness, safety, cost, and other relevant factors related to the specified differences, and reach consensus on harmonized Part 25/JAR 25 regulations and guidance material.

The FAA expects ARAC to submit its recommendation by December 31, 2000.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the resulting recommendations(s) are one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

**Working Group Activity**

The Flight Test Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Flight Test Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on September 14, 1998.

**Joseph A. Hawkins,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 98–25069 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In August 1998, there were six applications approved. This notice also includes information on one application, approved in June 1998, inadvertently left off the June 1998 notice. Additionally, 11 approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph (d) of § 158.29.

*PFC Applications Approved*

*Public Agency:* City of Elko, Nevada.

*Application Number:* 98–01–C–00–EKO.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue in this Decision:* $774,635.

*Earliest Charge Effective Date:* September 1, 1998.

*Estimated Charge Expiration Date:* October 1, 2000.

*Class of Air Carriers not Required to Collect PFC'S: None.*

*Brief Description of Projects Approved for Collection and Use:*

Aircraft rescue and fire fighting building and vehicle.

Security/perimeter fencing.

Master plan and terminal area study.

Airfield safety improvements.

Terminal building expansion, phase I.

North general aviation apron improvements.

Snow removal equipment.

PFC application/administration fees.

*Decision Date:* June 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

*Public Agency:* Meridian Airport Authority, Meridian, Mississippi.

*Application Number:* 98–05–C–00–MEI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $121,650.

*Earliest Charge Effective Date:* March 1, 2001.

*Estimated Charge Expiration Date:* September 1, 2002.

*Class of Air Carriers Not Required to Collect PFC'S: None.*

*Brief Description of Projects Approved for Collection and Use:*

Airfield lighting rehabilitation.

Taxiway A rehabilitation.

Terminal canopy/rehabilitation design.

Terminal canopy/rehabilitation.

Construct equipment building.

*Decision Date:* August 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** David Shumate, Jackson Airports District Office, (601) 965–4628.

*Public Agency:* City of Chicago—Department of Aviation, Chicago Illinois.

*Application Number:* 98–08–C–00–ORD.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in this Decision:* $546,526,300.

*Earliest Charge Effective Date:* November 1, 2011.

*Estimated Charge Expiration Date:* September 1, 2017.

*Class of Air Carriers Not Required to Collect PFC'S: Air taxis.*

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hara International Airport (ORD).

*Brief Description of Projects Approved for Collection at ORD and Use at ORD:*

Interactive computer training system.

Concourse F extension.

Terminal 1 airside connection and concession infill.

Terminal 3 airport transit system (ATS) bridge.

Explosive blast mitigation—glass coating.

Terminal 1 elevator expansion.

Upper level roadway deck rehabilitation.

ATS vehicles acquisition (three cars).

ATS remote station escalator.

ATS MIRA computer replacement.

Bessie Coleman Drive rehabilitation—phase II.

Small basin stormwater quality.

Runway 14R/32L rehabilitation.

Taxiway T extension rehabilitation.

Taxiway W rehabilitation.

Equipment service platforms as heating and refrigeration (H&R) plant.

H&R formulation.

General aviation apron pavement rehabilitation.

Military site airside fencing.

Acquisition of 1998 security and fire equipment.

Soil erosion and sedimentation control.

*Brief Description of Project Approved for Collection at ORD and Use at Chicago Midway Airport:* Home soundproofing.

*Brief Description of Projects Approved in Part for Collection at ORD and Use at ORD:* Concession area public space build out.

*Determination:* Partially approved. The FAA has determined that a portion of this project is for the benefit of the food court and other revenue producing vendors. Therefore, even though the public agency identifies these areas as public seating and for public use, the FAA has concluded that the seating areas proposed for the E/F apex, H/K apex, and Rotunda are not Airport Improvement Program or PFC eligible. The FAA has determined that approximately 49 percent of the total area (in the E/F apex, H/K apex, and Rotunda) will provide public circulation improvements and is eligible. Furthermore, the FAA's analysis concluded that the Concourse B food court does not provide additional public circulation and is primarily for the benefit of the vendor area. Thus, the Concourse B food court is completely ineligible. In addition, since the public agency listed the Concourse H and K food courts separately from the H/K apex, the FAA assumed those are separate areas. However, because the public agency did not provide any plans, sketches, or additional information regarding these food courts, the FAA was unable to determine if any portion of those areas was eligible. Therefore, PFC funds cannot be used to fund any improvements in the H and K food courts.

Security checkpoint equipment.

*Determination:* Partially approved. Explosive trace detection (ETD) equipment has already been deployed to each checkpoint in sufficient number to meet current FAA regulations and operating procedures. Therefore, the ETD element of this project is not approved. The approved amount represents the total project cost and includes the projected cost of acquisition and deployment of ETD equipment. Therefore, if the eligible cost of the project, without the ETD equipment, is less than the approved amount, the public agency must take steps to reduce the approved amount by amendment.

Airport maintenance complex addition.

*Determination:* Partially approved. The eligible cost of utilities for the building must be a prorated share of the total cost based on the ratio of eligible to ineligible equipment housed in the building. The approved amount represents the total project cost however, if a portion of the utility cost is determined to be ineligible, the public agency must take steps to reduce the approved amount by amendment.

Landside formulation.

*Determination:* Partially approved. Elements not specifically identified in the public agency's application Attachment B for this project are not included in this approval. Furthermore, to the extent that any of the elements listed involve ineligible (off-airport) work, the costs of planning, study, assessment, and design attributable to the off-airport portion of the project are not PFC eligible and the cost for that element must be adjusted or prorated accordingly. The approved amount is the total project cost because the public agency did not provide cost breakdowns for each component or study element. However, the public agency must take appropriate steps to decrease the approved amount if the eligible costs are less than the approved amount.

Wetlands relocation.

*Determination:* Partially approved. The environmental assessment in support of this project included only detailed analysis for filling 6.3 acres of wetlands in a portion of the runway protection zone and for remediating 24.08 acres of wetlands located in the southwest portion of the airport by the Post Office. The remaining wetlands have not been environmentally evaluated and, thus, the public agency cannot meet the requirement of § 158.25(c)(1)(ii)(B) for the remaining wetlands and that portion of the project is not approved. In adding, at the time the FAA reviewed the PFC application, it was not known what acreage the U.S. Army Corps of Engineers would require in the Section 404 permitting process for the filling of wetlands on the airport. Thus, the necessary size of the wetland bank cannot be positively identified at this time. The approved amount represents the total amount requested and, thus, includes costs for those portions of the project not being approved in this decision. The public agency must take steps to adjust the approved PFC amount to cover only the cost of those elements approved in this decision.

*Brief Description of Projects Approved for Collection (at ORD) Only:*

Relocated Northwest Tollway connection.

Blast mitigation—phase II.

Concourse L extension.

Balmoral Drive extension.

I–190 collector/distributor.

ATS vehicles acquisition (12 cars).

Bessie Coleman bridge rehabilitation.

ATS station at rental car campus.

Lake O'Hare capacity enhancement.

Snow dump improvements.

Runway 9L/27R rehabilitation.

Runway 18/36 rehabilitation.

Runway 14L/32R rehabilitation.

Taxiway B rehabilitation at C3/C4.

Airside perimeter road rehabilitation and new construction.

National Pollutant Discharge Elimination System permit compliance.

Brief Description of Projects Partially Approved for Collection (at ORD) only:

Concourse C upgrade.

Concourse B upgrade.

Concourse L upgrade.

Concourse K upgrade.

Concourse H upgrade.

*Determination:* Partially approved. The FAA has determined that the public agency did not provide a sufficient description or justification for the majority of the proposed elements in each project to allow a determination of nominal eligibility for those elements. The FAA was able to conclude that the restroom work, insofar as this work is

needed to comply with Americans with Disabilities Act requirements, is eligible. The information provided on the remaining tasks in these projects did not allow the FAA to conclude that the remainder of these projects involved eligible reconstruction/repair rather than ineligible maintenance work. At the time the public agency submits its use application(s) for these projects, the public agency must provide adequate descriptions and justifications for each component of each of the concourse upgrade projects it wishes to finance with PFC revenue.

The public agency must also provide a cost breakdown for each project in the applicable use application that would permit the FAA to limit the approved amount to only those elements determined eligible.

New police facility.

*Determination:* Partially approved. The FAA has determined that not all activities at the Police Facility support part 107 functions. The Federal Security Manager for ORD has determined that approximately 80 percent of the facility will support part 107 functions. Therefore, the approved amount was limited to 80 percent of the total project cost.

Perimeter intrusion detection system.

*Determination:* Partially approved. FAA analysis has concluded that a majority of the airport perimeter is currently adequately fenced to meet part 107 requirements. Therefore, this PFC approval is limited to that portion of the system located between St. John's Cemetery and Post One, or approximately 42 percent of the entire perimeter. In addition to 42 percent of the cost of the system as proposed by the public agency, the approved amount includes funds to cover additional computer costs for connecting the modified detection system to a computer monitoring station.

High temperature water piping: Elimination of ball joints.

*Determination:* Partially approved. The eligible cost of utilities for the airport must be a prorated share of the total project cost based on the extent to which the high temperature water piping serves both eligible and ineligible buildings and/or spaces. The approved amount represents the total amount requested and, thus, includes costs for those portions of the project which may be found to be ineligible. The public agency must take steps to adjust the approved PFC amount to cover only the cost of the eligible share of the project once that share has been determined.

*Brief Description of Withdrawn Projects:* Chilled water central plant/piping network study implementation.

*Determination:* This project was withdrawn for the PFC application by the public agency by letter dated June 5, 1998. Therefore, the FAA will not rule on this project in this decision.

Replace four 2,000 ton chillers with three 4,000 ton chillers.

*Determination:* This project was withdrawn for the PFC application by the pubic agency by letter dated June 1, 1998. Therefore, the FAA will not rule on this project in this decision.

Two Explosive Detection System (EDS) units.

*Determination:* This project was withdrawn for the PFC application by the public agency by letter dated July 17, 1998. Therefore, the FAA will not rule on this project in this decision.

Five EDS units.

*Determination:* This project was withdrawn for the PFC application by the public agency by letter dated July 17, 1998. Therefore, the FAA will not rule on this project in this decision.

Global Positioning System antenna.

*Determination:* This project was withdrawn for the PFC application by the public agency by letter dated August 5, 1998. Therefore, the FAA will not rule on this project in this decision.

360 degree tower simulator.

*Determination:* This project was withdrawn for the PFC application by the public agency by letter dated August 5, 1998. Therefore, the FAA will not rule on this project in this decision.

H&R plant A&B 4160V. switchgear and feeder replacement.

*Determination:* This project was withdrawn for the PFC application by the public agency by letter dated August 5, 1998. Therefore, the FAA will not rule on this project in this decision.

*Decision Date:* August 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

*Public Agency:* City of Phoenix, Arizona.

*Application Number:* 98–05–C–00–PHX.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $193,445,920.

*Earliest Charge Effective Date:* November 1, 1998.

*Estimate Charge Expiration Date:* April 1, 2002.

*Class of Air Carriers not Required to Collect PFC's:* (1) Air taxi/commercial operators filing FAA Form 1800–31; (2) commuters or small certificated air carriers filing Department of Transportation Form 298–C Schedule T–1 OR E–1 with less than 7,500 enplanements annually at Phoenix Sky Harbor International Airport (PHX); and (3) large certificated route carriers filing Research and Special Programs Administration Form T–100 and providing non-scheduled service with less than 7,500 enplanements annually at PHX.

*Determination:* Approved. Based on the information submitted in the public agency's application, the FAA has determined that each class being approved accounts for less than 1 percent of the total annual enplanements at PHX.

*Brief Description of Projects Approved for Collection and Use:*

New fire station.

Rebuild north and south runways.

Terminal 4 expansion.

Taxiway to south side.

Reconstruct taxiway C.

Upgrade fire station 19.

Replace aviation fire truck.

Terminal 2 concrete ramp replacement.

Taxiway T.

Airfield guidance signs.

Reconstruct taxiway S.

Holding apron terminal 4.

Safety and security improvements.

*Decision Date:* August 7, 1998.

**FOR FURTHER INFORMATION CONTACT:** John P. Milligan, Western Pacific Region Airports Division, (310) 725–3621.

*Public Agency:* City of North Bend, Oregon.

*Application Number:* 98–03–I–00–OTH.

*Application Type:* Impose a FPC.

*PCF Level:* $3.00.

*Total PCF Revenue Approved in This Decision:* $136,800.

*Earliest Charge Effective Date:* April 1, 1999.

*Estimated Charge Expiration Date:* November 1, 2001.

*Class of Air Carriers not Required to Collect PFC's:* Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

*Determination:* Approved. Based on the information submitted in the public's agency's application, the FAA has determined that the class being approved accounts for less than 1 percent of the total annual enplanements at North Bend Municipal Airport.

*Brief Description of Projects Approved for Collection Only:*

East side terminal area site preparation.

East airport roadway alignment and runway 13/31 safety area.

*Decision Date:* August 21, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mary Vargas, Seattle Airports District Office, (425) 227–2660.

*Public Agency:* City of Manchester, New Hampshire.

*Application Number:* 98–07–C–00–MHT.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $84,643,000.

*Earliest Charge Effective Date:* October 1, 1998.

*Estimated Charge Expiration Date:* October 1, 2016.

*Class of Air Carriers Not Required to Collect PFC'S:* Air taxi/commercial operators.

*Determination:* Approved. Based on the information submitted in the public agency's application, the FAA has determined that the class being approved accounts for less than 1 percent of the total annual enplanements at Manchester Airport.

*Brief Description of Projects Approved for Collection and Use:*

Runway 6/24 system.

Construct two remote aircraft parking aprons.

Acquire Stead Aviation.

*Decision Date:* August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Priscilla Scott, New England Region Airports Division, (781) 238–7614.

*Public Agency:* Grand Forks Regional Airport Authority, Grand Forks, North Dakota.

*Application Number:* 98–05–C–00–GFK.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $1,398,163.

*Earliest Charge Effective Date:* September 1, 1998.

*Estimated Charge Expiration Date:* September 1, 2004.

*Class of Air Carriers Not Required to Collect PFC'S:* Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on the information submitted in the public agency's application, the FAA has determined that the class being approved accounts for less than 1 percent of the total annual enplanements at Grand Forks International Airport.

*Brief Description of Projects Approved for Collection and Use:* Air cargo apron expansion and service road.

*Decision Date:* August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Irene R. Porter, Bismarck Airports District Office, (701) 250–4385.

AMENDMENTS TO PFC APPROVALS

| Amendment No. city, state | Amendment approved date | Original approved net PFC revenue | Amended approve net PFC revenue | Original estimated charge expiration date | Amended estimated charge expiration date |
|---|---|---|---|---|---|
| 95–01–C–01–LYH, Lynchburg, VA | 07/28/98 | $752,416 | $515,216 | 12/01/98 | 07/01/98 |
| 97–01–C–01–MOB, Mobile, AL | 08/14/98 | 1,300,000 | 1,300,000 | 06/01/99 | 06/01/99 |
| 93–01–C–05–MSY, New Orleans, LA | 08/14/98 | 185,823,498 | 194,691,574 | 08/01/09 | 11/01/09 |
| 93–02–U–01–MSY, New Orleans, LA | 08/14/98 | 5,802,615 | 16,523,148 | 08/01/09 | 11/01/09 |
| 96–03–C–01–MSY, New Orleans, LA | 08/14/98 | 11,963,536 | 11,963,536 | 08/01/09 | 11/01/09 |
| 92–01–C–03–DTW, Detroit, MI | 08/14/98 | 1,639,576,000 | 1,802,657,000 | 10/01/30 | 10/01/31 |
| 97–03–C–01–DTW, Detroit, MI | 08/14/98 | 60,000,000 | 60,000,000 | 10/01/30 | 10/01/31 |
| 93–01–C–02–GEG, Spokane, WA | 08/18/98 | 16,265,100 | 12,676,598 | 06/01/05 | 10/01/07 |
| 94–02–C–01–GEG, Spokane, WA | 08/18/98 | 8,200,000 | 4,922,228 | 06/01/05 | 10/01/07 |
| 97–03–C–01–GEG, Spokane, WA | 08/18/98 | 17,606,000 | 32,029,282 | 06/01/05 | 10/01/07 |
| 95–03–C–01–MFR, Medford, OR | 08/27/98 | 1,810,000 | 2,082,935 | 11/01/00 | 06/01/03 |

Issued in Washington, DC, on September 10, 1998.

**Eric Gabler,**

*Manager, Passenger Facility Charge Branch.*

[FR Doc. 98–24966 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Transportation Equity Act for the 21st Century; Implementation of Guidance for Discretionary Program Funds for National Scenic Byways

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** This document publishes implementation guidance on the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998, for eligible candidate projects in Fiscal Year 1999 concerned with the scenic byways program. Implementation guidance materials on these topics were issued to FHWA region and division offices on July 7, 1998. This material describes activities eligible for discretionary funding, the application proccess, and criteria used to evaluate candidate projects.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eugene Johnson, HEP–10, (202)366–2071; or Mr. Bob Black, HCC–32, Office of the Chief Counsel, (202)366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

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### Background

The TEA–21 (Pub. L. 105–178, 112 Stat. 107) implementation guidance published in this **Federal Register** notice is provided for informational purposes. Specific questions on any of the material published in this notice should be directed to the appropriate contact person named in the caption **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on: September 10, 1998.

**Kenneth R. Wykle,**

*Federal Highway Administration Administrator.*

The text of the FHWA guidance memorandum follows:

*Action:* Request for Projects for Fiscal Year (FY) 1999 Scenic Byways Discretionary

Funds (Reply due: September 1, 1998) Date: July 7, 1998.

Associate Administrator for Program Development, Regional Administrators, Division Administrators, Federal Lands Highway Program Administrator Reply to Attn. of: HEP–10.

The Transportation Equity Act for the 21st Century (TEA–21) makes scenic byways discretionary funds available to undertake eligible projects along highways designated as National Scenic Byways, All-American Roads, or State scenic byways. Attached is the application information for these funds. All applications must be submitted to the division offices by August 21, 1998, and forwarded to the Headquarters office (HEP–10) by September 1, 1998.

We recently allocated $7 million of the $23.5 million available for FY 1998. As a result, there is approximately $16.5 million of FY 1998 funds remaining. We had originally intended to allocate these additional FY 1998 funds to projects selected from the previously submitted FY 1998 candidates. Because we are in the last quarter of FY 1998, we have instead decided to combine the available FY 1998 and FY 1999 funds in one solicitation. Those projects submitted for FY 98 grants that were not funded from the $7 million do not need to be resubmitted by the States. They will be considered for funding under this FY 1999 action.

With this memorandum, we are requesting submission of eligible candidate projects for FY 1999 scenic byways discretionary funds. A total of $23.5 million is provided in TEA–21 for FY 1999 grants and technical assistance activities. The full amount of these funds along with the carryover funds from FY 1998 are being combined to make approximately $40 million available for the FY 1999 grant program.

Priority consideration will be given to those roads that have been designated as National Scenic Byways or All-American Roads. However, roads designated as State Scenic Byways before August 21, 1998, through legislation or some other official declaration for their scenic, historic, recreational, cultural, archaeological, or natural qualities are eligible for funding consideration.

While the States have until August 21, grant applications should be submitted as soon as possible. Early submissions will allow for the expeditious completion of the review process and an opportunity for the States to resolve any issues discovered during the review that would otherwise affect approval of the requested funds.

If you have any questions, please contact Mr. Eugene Johnson at (202) 366–2071.

Signed:

Henry H. Rentz for Thomas J. Ptak

## Attachment—National Scenic Byways Program Discretionary Grant Application Procedures

### Eligibility

The information contained in this section serves as guidance in identifying the specific work activities that are recognized as eligible projects under the Scenic Byways Program in accordance with Section 1219 of the Transportation Equity Act for the 21st Century (TEA–21).

*(1) Planning, design, and development of a State scenic byway program*

This applies to those States that are about to establish or that may be in the early development of their scenic byways programs. All related project activities must yield information and/or provide related work that would impact upon the statewide scenic byways program.

Eligible projects may focus on an individual scenic byway, only if the information obtained from the work activity could be used in determining the makeup and design of the overall State program.

Program activities associated with planning, design, and development include:

- Research or studies leading to the development of designation criteria, the structure of the State's scenic byways program and designation process, and the development of themes for byways on a statewide basis.
- Technical assistance (workshops, conferences, seminars, program coordination) to specifically provide awareness and education about the management, operation, and development of the scenic byways program to people involved in the program process.
- Activities associated with identifying and planning tourist amenities on scenic byways on a statewide basis.
- Activities associated with assessing the economic impacts of an individual byway or a statewide program of byways.

*(2) Develop and Implement a Corridor Management Plan to Maintain the Scenic, Historical, Recreational, Cultural, Natural, and Archaeological Characteristics of a Byway Corridor While Providing for Accommodation of Increased Tourism and Development of Related Amenities*

Corridor management plans provide a comprehensive understanding of the route and the community's plans to preserve and enhance it. Eligible activities under this category include; inventory, public meetings, maps, and preparation and printing of the report.

Applicants must address the 14 points of corridor management planning as published in the **Federal Register** in the May 1995 Interim Policy.

*(3) Safety Improvements to a State Scenic Byway, National Scenic Byway, or All-American Road to the Extent That the Improvements are Necessary to Accommodate Increased Traffic and Changes in the Types of Vehicles Using the Highway as a Result of the Designation.*

These improvements are construction features necessary to correct safety problems. They are restricted to designated scenic byways and must be the direct result of increased traffic and/or changes in the types of vehicles using the highway. The safety improvements are only considered eligible when they arise as a result of the highway's designation as a scenic byway.

*(4) Construction Along a Scenic Byway of Facilities for the use of Pedestrians and Bicyclists, Rest Areas, Turnouts, Highway Shoulder Improvements, Passing Lanes, Overlooks, and Interpretive Facilities*

All the related facilities identified under this category must be constructed within or immediately adjacent to the right-of-way of the scenic byway. The facilities must be directly related to the scenic byway. Interpretive facilities must relate to the scenic, historic, cultural, archeological, recreational, or natural qualities which contributed to the highway's designation as a scenic byway. They may not be established as general tourist information centers.

*(5) Improvements to the Scenic Byway That Will Enhance Access to a Recreation Area, Including Water-Related Recreation*

All eligible project improvements are focused on construction and related work activities that provide access from the scenic byway. In this instance, all improvements must be related construction modifications that are made to the highway to enhance existing access to recreational areas. Improvements are confined to the right-of-way of the scenic byway. However, the acquisition of additional right-of-way along the byway is permitted, when warranted, to accommodate access improvements to the byway.

*(6) Protection of Scenic, Historical, Recreational, Cultural, Natural, and Archaeological Resources in an Area Adjacent to a Scenic Byway*

Resource protection applies only to those properties that contribute to the qualities for which the highway has been designated as a scenic byway. The properties must be located directly adjacent to the scenic byway. Resource protection involves use-restrictions that are in the form of easements. However, the purchase of the resource could be considered only after it has been determined that all other protection measures are unsuccessful. Protection of a resource encompasses neither rehabilitation nor renovation of a property.

*(7) Developing and Providing Tourist Information to the Public, Including Interpretive Information About the Scenic Byway*

All information must be associated with the State's scenic byways. It could provide information relating to the State's total network of scenic byways or it could address a specific byway's intrinsic qualities and/or related user amenities. All interpretive information should familiarize the tourists with the qualities that are important to the highway's designation as a scenic byway. Tourist information can be in the form of signs, brochures, pamphlets, tapes, and maps. Product and business advertising are not permitted on tourist information that has been developed with grant funds received under the scenic byways program. The National Scenic Byways Program logo should be used on all printed material, audio and video tapes, interpretive exhibits, and kiosks. FHWA should be recognized as a funding source on all interpretive and information products.

*(8) Development and Implementation of a Scenic Byway Marketing Program*

Development and implementation of a marketing program includes: byway marketing plans (if not previously developed in corridor management plan), advertising, trade show exhibits and registration, press kits, marketing research, hospitality training, and development of videos. For funding purposes, lists of trade shows with associated costs for each must be provided with the application. The National Scenic Byways Program logo should be used on all printed material, videos, exhibits, and other collateral products. FHWA should be recognized as a funding source on all marketing products.

All projects must be specific to the byway(s) and FHWA encourages those projects that include multiple byways either within a state system or within a region (multi-state). Implementation projects will not be funded without the completion of a marketing plan and projects must be consistent with the plan. Target markets should be identified prior to application and the project narrative should clearly demonstrate how that market will be reached through implementation of the proposed project. Include evaluation and/or tracking methods to be implemented for the proposed project, where applicable.

**II. Selection Criteria**

To evaluate the submitted candidate project for selection, we will be considering several criteria. The following statutory criteria are found in Section 1219 of TEA–21:

1. The funds shall be allocated among the States to:

''(A) implement projects on highways designated as National Scenic Byways, All-American Roads, or as State scenic byways; and

(B) plan, design, and develop a State scenic byway program.''

2. We are required to give priority to:

''(A) Each eligible project that is associated with a highway that has been designated as a National Scenic Byway or All-American Road and that is consistent with the corridor management plan for the byway;

(B) Each eligible project along a State-designated scenic byway that is consistent with the corridor management plan for the byway, or is intended to foster the development of such a plan, and is carried out to make the byway eligible for designation as a National Scenic Byway or All-American Road; and

(C) Each eligible project that is associated with the development of a State scenic byway program.''

Although there are no regulatory criteria for selection of Scenic Byway discretionary projects, the following criteria are also considered in the evaluation of candidates for this program:

1. *Project Type:* In selecting projects for funding, preference is given to project types in the following order:

a. State program development and safety improvements

b. Byway interpretation

c. Highway improvements

2. *Funding Expenditures:* The timely use of scenic byways funds generally indicates how successful a State has been in meeting its project work plan. States showing greater progress toward the completion of prior approved projects are better positioned to initiate new projects and show a greater need for additional funding.

3. *Leveraging of Private or other public funding:* Because the annual request for funding far exceed the available scenic byways discretionary funds, commitment of other funding sources to complement the requested discretionary funding is an important factor.

**III. Submission Requirements**

In order for each funding request to be properly evaluated, a standard format is used for the Scenic Byways grant applications.

*Project Information*

The information identified in these sections must be prepared for each project submitted by the State. Information is provided below on each of the sections for clarity.

Section A: Program Requirements

This section provides verification of the State Scenic Byways Program and identifies the scenic byways coordinator, agency, and address.

Section B: Project Name & Location

This section identifies the State project and the byway.

- *Project Name:* A brief descriptor of the project (e.g., Rocky Top Scenic Byway: Bicycle and Pedestrian Facility).
- *Project Number: The priority number assigned by the State (01, 02, etc.).*
- *Project Location:* The place within the State where project activities will occur (statewide, Orange County, or Town of Paloma to Bridgeport city limits).
- *Date of State Byway Designation:* Must be given for each byway on which project activities occur (e.g., the *State* designation occurred March 2, 1990 while another organization designated earlier: USFS designation October 18, 1989).
- *Scenic Byways Associated with the Project* names *and* route numbers must be provided.
- *U.S. Congressional Districts:* Names and corresponding districts are required. For statewide projects say ''All.''
- Identify the appropriate quality(s) for which your route was designated.

Section C: Project Description

The information provided here is a narrative description of the work to be performed and the location of the project. It must be self-explanatory.

Section D: Work Plan & Time Table

Provide a detailed work plan for each project describing the chronological steps that will be taken.

Section E: Project Priority

This should describe how the project meets the project priorities.

Section F: Project Type

Identify which of the eight (8) eligible project types the project represents.

Section G: Project Funding

This represents the total costs for each project and must be prepared as indicated in the following Project Budget Summary Table:

| Project breakdown | | | | Third Party Donations—To be completed when State share includes third party donations | | |
|---|---|---|---|---|---|---|
| Project number & name 04: Flat Rock Scenic Byway: Shining Rock Falls Overlook | Total project cost (100%) | Federal share (80% max.) | State share (20% min.) | Third party match source(s) | Match type | Match value |
| Kiosk | $4,000 | $3,200 | $800 | Redwing Lumber Company. | Construction Materials, lumber. | $300 |
| Interpretive Panels (3) | 5,625 | 4,500 | 1,125 | Sight Design Co | Design Services 12hrs @$50/hr. | 600 |
| Right-of-Way purchase | 6,000 | 4,800 | 1,200 | | | |
| Parking lot construction and paving. | 30,000 | 24,000 | 6,000 | ABC Construction | Labor & Materials for site preparation & drainage systems installation. | 6,000 |
| Project Total | $45,625 | $36,500 | $9,125 | Third Party Donation Total | | $6,900 |

Section H: Intrinsic Quality Protection

Provide an explanation of how the project will protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of the highway and adjacent areas.

Section I: Matching Funds Certification

The State Scenic Byway Agency must substantiate that the matching funds are

available for the project and sign in this section after confirmation is made.

Section J: Project Coordinator

This should be either the State Scenic Byways Coordinator or the local person or agency in charge of the project.

[FR Doc. 98–24914 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Guidance for Fiscal Year 1999 Interstate Discretionary (ID) Funds

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** This document publishes guidance for distribution of Fiscal Year 1999 Interstate Discretionary (ID) Funds. Materials on this topic were issued to FHWA region and division offices on July 16, 1998. This material describes activities eligible for Interstate discretionary funding, the application process, and criteria used to evaluate candidate projects.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cecilio Leonin, HNG–12, (202)366–4651; or Mr. Wil Baccus, HCC–32, Office of the Chief Counsel, (202)366–1396, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

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

### Background

Guidance published in this **Federal Register** notice is provided for informational purposes. Specific questions on any of the material published in this notice should be directed to the appropriate contact person named in the caption **FOR FURTHER INFORMATION CONTACT.**

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on: September 10, 1998.

**Kenneth R. Wykle,**

*Federal Highway Administration Administrator.*

The text of the FHWA guidance memorandum follows:

*ACTION:* Request for Projects for Fiscal Year 1999 Interstate Discretionary (ID) Funds (Reply Due: September 15, 1998), July 16, 1998

Associate Administrator for Program Development, Regional Administrators, Division Administrators, HNG–12

The final set-aside of ID funds occurred with the FY 1996 IC apportionment. However, there is presently available a balance in ID funds of about $63.4 million which have been carried over from prior years. These ID funds were held in reserve by FHWA to pay for its operating expenses in accordance with the provisions of Section 4(a)(1)(A) of the Surface Transportation Extension Act of 1997 (STEA). With the enactment of the Transportation Equity Act for the 21st Century (TEA–21) these ID funds are now available for distribution.

On June 11, 1997 (before the enactment of the STEA), FHWA issued a solicitation memorandum seeking applications from the States for these ID funds. No action was taken on these applications, however, as a result of the above legislation. Because the funding needs for previously received applications may have changed and other potential applications could be possible at this time, we are now again soliciting applications for these ID funds.

Please work with the States to identify viable projects to assure high quality candidates following the revised procedures outlined below. Also, any candidates submitted in response to our June 11, 1997, solicitation memorandum should be resubmitted if the State desires the project to continue to be considered.

### Interstate Discretionary (ID) Funds

*Eligibility*

As in past years, only work eligible under the provisions of the Federal-Aid Highway Act of 1981 and included in the 1981 Interstate Cost Estimate is eligible for ID funding.

The ID funding request must be for ready-to-go projects in States which have obligated or will obligate during FY 1999 all available IC and ID funds. Applications should be submitted only for projects which will be ready for authorization by September 1, 1999; and in the case of construction projects, construction must begin within 90 days of obligation. Requests may include conversion of projects previously authorized as advance construction Interstate projects pursuant to Section 115 of 23 U.S.C.

*Selection Criteria*

To evaluate the submitted candidates for selection, we will be considering several criteria. Although there are no statutory or regulatory criteria for selection of ID projects, the following criteria are so considered in the evaluation of candidates for this program:

1. Segments not open-to-traffic—Consideration will be given to eligible projects that will close gaps in the Interstate System.
2. State priorities—For States that submit more than one project, we give consideration to the individual State's priorities if specified.
3. Leveraging of private or other public funding—Because the requests for funding usually far exceed the available ID funds, commitment of other funding sources to complement the requested ID funds is an important factor.

In addition to the above criteria, project selection will also consider national geographic distribution among all of the discretionary programs as well as congressional direction or guidance provided on specific projects or programs.

*Submission Requirements*

Although there is no prescribed format for a project submission, the following information must be included in the application to properly evaluate the candidate projects. Those applications that do not include these items will be considered incomplete and returned.

1. State.
2. Federal-Aid Project Number.
3. Description of Project—Describe the project work to be completed under this request.
4. Project Location—Describe the specific location of the project, including route number and mileposts, if applicable.
5. County or Counties in which the project is located.
6. U.S. Congressional District No.(s) in which the project is located.
7. U.S. Congressional District Member's Name(s).
8. On Gap or Open to Traffic Segment.
9. Project Plan Status—PS & E status.
10. Estimated Authorization Date (month/year).
11. Estimated Construction Startup Date (month/year).
12. Total Project Cost.
13. Amount of ID funds requested—Indicate amount of ID funds being requested. If a State is willing to accept partial funding of this amount, that should be indicated.
14. An Obligation Schedule—Demonstrate how the State will obligate in FY 1999 all available IC and ID funds.
15.. Commitment of Other Funds—Indicate the amounts and sources of any

private or other public funding being provided as part of this project. Only indicate those amounts of funding that are firm with documented commitments. The submission must include written confirmation of these commitments from the entity controlling the funds.

16. Previous Interstate Discretionary (ID) Funding—Indicate the amount and fiscal year of any previous ID funds received for the project.

17. Future Funding Needs—Indicate the estimated future funding needs for the project, the items of work to be completed and projected scheduling.

18. Talking Points Briefing—A one-page talking points paper covering basic project information for each candidate project submitted for ID funding is needed for use by the Office of the Secretary for the congressional notification process in the event a project is selected for funding. For your guidance a sample paper is attached to this memorandum.

*Division Office Responsibilities*

In order to ensure that the submitted candidate projects are complete and properly prepared, the division office must:

1. Provide the information regarding project eligibility, selection criteria and submission requirements to the State transportation agency, and

2. Review all candidate project applications submitted by the State prior to sending them to this office to ensure that they are complete and meet the above requirements.

We are requesting that candidate project submissions be forwarded to the Chief, Federal-Aid and Design Division, HNG–12, not later than September 15, 1998. *Projects received after this date may not receive full consideration.*

When sending in candidate projects, the States must understand that any qualified project may or may not be selected and it may be necessary to supplement allocated ID funds with other Federal-aid and/or State funds to construct a section of highway which will be usable to the traveling public in as short a period of time as possible.

Allocations of ID funds shall remain available until expended. Obligation limitation will be distributed with each allocation of funds.

As a reminder, any requests to adjust the amount of ID funds allocated to a previously approved project must be forwarded in writing to the Chief, Federal-Aid and Design Division, HNG–12, for approval. Furthermore, funds from unobligated allocations or project underruns cannot be used for another ID project without the written approval of the Chief, Federal-Aid and Design Division.

Questions concerning preparation of applications and other matters may be directed to Mr. Cecilio Leonin of the Federal-Aid and Design Division, HNG–12, telephone (202) 366–4651.

Signed by Thomas J. Ptak.

## Attachment—Sample Talking Points Briefing for Secretary Slater

**Note:** These talking points will be used by the Office of the Secretary in making congressional notification contacts. Since some of the recipients of the calls may not be closely familiar with the highway program, layman's language should be used to the extent possible. Information contained in the talking points may be used by a member of Congress in issuing a press release announcing the discretionary allocation.

**Interstate Discretionary (ID) Funds**

Grantee: <List full name of State Highway Agency>
Project No: ID–xxx–x(xxx)
<List each project number in this format>
FHWA Funds: $xx,xxx,xxx. <If more than one project, also show cost for each>

- These two projects, in conjunction with a currently active contract, complete the reconstruction and widening of the existing four-lane I–xx through Any town, Your State. Project ID–xxx–x(xxx) extends along I–xx from U.S. 25 (Augusta Road) to the Reedy River, a distance of 2.2 miles. Project ID–xxx–y(yyy) extends along I–xx from Highway 20 to U.S. 25, a distance of 1.8 miles.
- Project ID–xxx–x(xxx) is in Congressional district <add number and member's name>. Project ID–xxx–y(yyy) is in Congressional district <add number and member's name>.
- These two projects, along with a new interchange on I–ZZZ in Richland County will complete the Interstate System in <Your State>.
- Both projects provide for the addition of a general purpose lane in each direction and resurfacing of the entire roadway. Also included are upgraded traffic signs and roadside safety features. The completed facility will provide for three lanes of traffic in each direction.
- These projects will be advertised for construction in <month/year> and are scheduled for completion in <month/year>.

<Try to add a bullet or two which indicates an interesting facet of the project, such as the two bullets which follow.>

- Project ID–xxx–y(yyy) also includes the creation of zz acres of replacement wetlands as an environmental mitigation.
- Project ID–xxx–x(xxx) will be the second project in the State to incorporate the formal ''Partnering'' process in an effort to foster an environment of cooperation between the State and the contractor.

[FR Doc. 98–24915 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Research and Development Programs Meeting Agenda

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

**DATES AND TIMES:** As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on September 17, 1998, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

**ADDRESSES:** The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

**SUPPLEMENTARY INFORMATION:** This notice provides the agenda for the twenty-first in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on September 17, 1998. The meeting was announced on August 14, 1998 (63 FR 43740). For additional information about the meeting, consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

EDR Briefing by General Motors
Crash Test Procedures Analysis
Injury Criteria Development,
Status of Special Crash Investigations.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received in response to the announcement published August 14, 1998.

As announced on August 14, 1998, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

**FOR FURTHER INFORMATION CONTACT:** Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC

20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: September 14, 1998.

**Raymond P. Owings,**

*Associate Administrator for Research and Development.*

[FR Doc. 98–25014 Filed 9–17–98; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

| | Railroad freight index | |
|---|---|---|
| | Index | Deflator percent |
| 1991 | 409.5 | [1] 100.00 |
| 1992 | 411.8 | 99.45 |
| 1993 | 415.5 | 98.55 |
| 1994 | 418.8 | 97.70 |
| 1995 | 418.17 | 97.85 |
| 1996 | 417.46 | 98.02 |
| 1997 | 419.67 | 97.50 |

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201*, 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Scott Decker (202)–565–1531. (TDD for the hearing impaired: (202) 565–1695)

By the Board, Vernon A. Williams, Secretary.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–25094 Filed 9–17–98; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–57 (Sub–No. 47X)]**

### Soo Line Railroad Company—Abandonment Exemption—in Hennepin County, MN

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately .10-mile line of its railroad known as the Minneapolis Terminal Line between milepost 4.09+/-near the western edge of Colfax Avenue North to milepost 4.19+/-near the western edge of Aldrich Avenue North, in Minneapolis, Hennepin County, MN. The line traverses United States Postal Service Zip Code 55405.

Soo has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 18, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 28, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 8, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Larry D. Starns, Esq., Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Soo has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 23, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Soo shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Soo's filing of a notice of consummation by September 18, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 11, 1998.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–25095 Filed 9–17–98; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Proposed Agency Information Collection Activities; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the information collection entitled ''Privacy and Accuracy of Customer Account Information.''

**DATES:** Submit written comments on or before November 17, 1998.

**ADDRESSES:** Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0098. Hand deliver comments to 1700 G Street, NW. from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). E-mail to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

**FOR FURTHER INFORMATION CONTACT:** Paul Reymann, Policy, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5645.

**SUPPLEMENTARY INFORMATION:**

*Title:* Privacy and Accuracy of Customer Account Information.

*OMB Number:* 1550–0098.

*Form Number:* Not Applicable.

*Abstract:* This policy statement reminds institutions that they have an obligation to protect and maintain confidential customer information. It provides guidance on how institutions should accomplish this protection.

*Current Actions:* OTS proposes to renew this information collection without revision.

*Type of Review:* Extension of an already approved collection.

*Affected Public:* Business or For Profit.

*Estimated Number of Respondents:* 1200.

*Estimated Time Per Respondent:* 41 average hours.

*Estimated Total Annual Burden Hours:* 49,200 hours.

**Request for Comments**

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: September 14, 1998.

**Catherine C.M. Teti,**

*Director, Records Management and Information Policy.*

[FR Doc. 98–25036 Filed 9–17–98; 8:45 am]

BILLING CODE 6720–01–P

# Corrections

**Federal Register**

Vol. 63, No. 181

Friday, September 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.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

### Orders Eligible for Post-execution Allocation

*Correction*

In rule document 98–22933 beginning on page 45699, in the issue of Thursday, August 27, 1998, make the following corrections:

**§ 1.35 [Corrected]**

1. On page 45710, in the second column, in paragraph (a-1)(5)(i)(D), in the 13th line, ''provided'' should read ''*provided*''.

2. On page 45710, in the third column, in paragraph (a-1)(5)(ii)(H), in the first line, ''government'' should read ''governmental''.

3. On page 45710, in the third column, in paragraph (a-1)(5)(ii)(H), in the fifth line, ''suparnational'' should read ''supranational''.

4. On page 45710, in the third column, in paragraph (a-1)(5)(ii)(I), in the 7th line, ''behalf:'' should read ''behalf;''.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA-018-08-1040-00]**

### Correction to Red Hills Area of Critical Environmental Concern (ACEC), Tuolumne County

*Correction*

In notice document 98–11582 appearing on page 24189 in the issue of Friday, May 1, 1998, make the following correction:

On page 24189, in the second column, in the sixth line of the land description, ''N¼SW¼'' should read ''NE¼SW¼''.

BILLING CODE 1505-01-D

federal register

Friday
September 18, 1998

# Part II

# Department of Transportation

## National Highway Traffic Safety Administration

## 49 CFR Parts 571, 585, 587, and 595

## Federal Motor Vehicle Safety Standards: Occupant Crash Protection; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 571, 585, 587, and 595**

**[Docket No. NHTSA 98–4405; Notice 1]**

**RIN 2127–AG70**

# Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The agency is proposing to upgrade the agency's occupant protection standard to require advanced air bags. While current air bags have been shown to be highly effective in reducing overall fatalities, they sometimes cause fatalities to out-of-position occupants, especially children. The agency's proposal would require that improvements be made in the ability of air bags to cushion and protect occupants of different sizes, belted and unbelted, and would require air bags to be redesigned to minimize risks to infants, children, and other occupants. The advanced air bags would be required in some new passenger cars and light trucks beginning September 1, 2002, and in all new cars and light trucks beginning September 1, 2005. The agency's proposal is consistent with provisions included in the NHTSA Reauthorization Act of 1998 which mandate the issuance of a final rule for advanced air bags.

An appendix to this document responds to several petitions concerning requirements for air bag performance.

**DATES:** Comments must be received by December 17, 1998.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m.)

**FOR FURTHER INFORMATION CONTACT:**

*For information about air bags and related rulemakings.* Visit the NHTSA web site at http://www.nhtsa.dot.gov and select ''Air Bags'' under ''Popular Information.''

*For non-legal issues.* Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

*For legal issues.* Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

**SUPPLEMENTARY INFORMATION:**

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## I. Overview of Proposed Requirements

The agency is proposing to upgrade Standard No. 208, *Occupant Crash Protection*, to require advanced air bags. The advanced air bags would be required in some new passenger cars and light trucks beginning September 1, 2002, and in all new cars and light trucks beginning September 1, 2005.

The agency is proposing to add a new set of requirements to prevent air bags from causing injuries and to expand the existing set of requirements intended to ensure that air bags cushion and protect occupants in frontal crashes. There would be several new performance requirements to ensure that the advanced air bags do not pose unreasonable risks to out-of-position occupants. The proposal gives alternative options for complying with those requirements so that vehicle manufacturers would be free to choose from a variety of effective technological solutions and to develop new ones if they so desire. With this flexibility, they could use technologies that modulate or otherwise control air bag deployment so deploying air bags do not cause serious injuries or that prevent air bag deployment if children or out-of-position occupants are present. To ensure that the new air bags are designed to avoid causing injury to a broad array of occupants, the agency would test the air bags using test dummies representing 12-month-old, 3-year-old, and 6-year-old children and 5th percentile adult females.

The agency is also proposing to ensure that the new air bags are designed to cushion and protect a broader array of belted and unbelted occupants, including teenagers and small women. The standard's current dynamic crash test requirements specify the use of 50th percentile adult male dummies only. Under the proposal, the agency would also use 5th percentile adult female dummies in the future. The weight and size of these dummies are representative of not only small women, but also many teenagers.

In addition to the existing rigid barrier test, representing a relatively ''stiff'' or ''hard'' pulse crash in perpendicular tests and a more moderate pulse crash in angled tests, the agency is proposing to add a deformable barrier crash test, representing a relatively ''soft'' pulse crash.[1] In relatively ''soft'' pulse

[1] ''Crash pulse'' means the acceleration-time history of the occupant compartment of a vehicle during a crash. This is represented typically in terms of g's of acceleration plotted against time in milliseconds (1/1000 second). The crash pulse for a given test is a major determinant of the stringency of the test, and how representative the test is of how a particular vehicle will perform in particular kinds

crashes, some current air bags do not deploy until after the occupants have moved so far forward that they are near the air bag cover when deployment begins. Such ''late deployments'' lead to high risks of injury. This proposed new crash test requirement is intended to ensure that air bag systems are designed so that the air bag deploys earlier, before normally seated occupants, including small-statured ones, move too close to the air bag. The agency is proposing to use 5th percentile adult female dummies in this test. If an air bag opens in time for small-statured occupants, who generally sit relatively far forward, it will open in time for taller occupants, who sit farther back.

The agency is proposing to phase out the unbelted sled test option as requirements for advanced air bags are phased in. Finally, NHTSA is proposing new and/or upgraded injury criteria for all of the standard's test requirements.

## II. Executive Summary

Air bags have been shown to be highly effective in saving lives. They reduce fatalities in frontal crashes by about 30 percent. As of June 1, 1998, air bags had saved an estimated 3,148 drivers and passengers since their introduction in 1986. However, as of that same date, the agency had confirmed a total of 105 crashes in this country in which an air bag deployment had resulted in fatal injuries.

These deaths did not occur at random; they typically involved certain common factors. The persons who have been killed or seriously injured by an air bag were extremely close to the air bag at the time of deployment. The persons shown to be at greatest risk have been (1) unrestrained young children, who can easily be propelled close to or against the passenger air bag before the crash as a result of pre-crash braking, (2) infants in rear facing child seats, who ride with their heads extremely close to the passenger air bag, and (3) drivers (especially unrestrained ones) who sit extremely close to the steering wheel. These drivers are most likely to be small-statured women.

Since the problem of air bag deaths first emerged, NHTSA has taken a number of steps to address the problem. In late November 1996, the agency announced that it would be implementing a comprehensive plan of rulemaking and other actions (e.g., consumer education and encouragement of State seat belt use laws providing for primary enforcement of their requirements) addressing the adverse effects of air bags.

Recognizing that a relatively long period of lead time is required to make some types of significant design changes to air bags, the agency's comprehensive plan called for both interim and longer-term solutions. The interim solutions included temporary adjustments in Standard No. 208's performance requirements to ensure that the vehicle manufacturers had maximum flexibility to address quickly the problem of risks from air bags. One temporary change was to permit manufacturers to certify their vehicles to an unbelted sled test option, in which a vehicle is essentially stopped quickly, but not actually crashed, instead of to the standard's full scale unbelted crash test, in which a vehicle is actually crashed into a barrier. This made it much easier for the manufacturers to make quick design changes to their air bags. Another temporary change was to permit the vehicle manufacturers to install manual on-off switches for passenger air bags in vehicles without rear seats or with rear seats that are too small to accommodate a rear facing child restraint.

Another interim measure taken by NHTSA was to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children. Also, to address the problems faced by persons who are in groups at special risk from air bags, the agency issued a final rule exempting motor vehicle dealers and repair businesses from the statutory prohibition against making federally required safety equipment inoperative so that they may install retrofit manual on-off switches for air bags in vehicles owned or used by such persons and whose requests for switches have been approved by the agency.

In today's notice, NHTSA is proposing a longer-term solution. The proposed amendments contemplate implementation of advanced air bag system technology that would minimize or eliminate risks to out-of-position occupants and enhance the benefits provided by air bags to occupants of different sizes, belted and unbelted. The proposed amendments are consistent with the NHTSA Reauthorization Act of 1998, which requires advanced air bags.

In developing this proposal, the agency recognized that, to minimize or eliminate air bag risks, either (1) air bag deployment must be suppressed in situations that are risky to occupants, or (2) the air bag must be designed to deploy in such a manner that it does not present a significant risk of serious injury to out-of-position occupants.

The agency has used a number of methods to obtain up-to-date information regarding the technology needed for accomplishing these purposes. These methods included meetings with individual manufacturers, a public meeting and written information requests to vehicle and air bag manufacturers for specified types of information.

In numerous meetings with vehicle manufacturers and air bag suppliers, the agency discussed the steps that they were taking to address adverse effects of air bags. The agency found that these companies were working on a wide variety of technologies, involving one or both of the approaches (i.e., modulation of deployment or suppression of deployment) discussed above, to minimize or eliminate air bag risks. Vehicle manufacturers and suppliers are working on systems that would prevent an air bag from deploying in situations where it might have an adverse effect, using, for example, sensors that determine the weight, size, and/or location of the occupant. The vehicle manufacturers and suppliers are also working on systems that would modulate the speed and force of the air bag, using multiple level inflators. The activation of those different levels is keyed to sensors that determine such factors as crash severity, seat-track position, occupant weight and/or size, and whether an occupant is belted or not. They are also working on a variety of approaches that make air bags less aggressive to out-of-position occupants, e.g., by changing fold patterns, deployment paths, and venting systems.

NHTSA conducted a public meeting in February 1997 to obtain information about available technologies, and separately asked the National Aeronautics and Space Administration's Jet Propulsion Laboratory (JPL) for help in obtaining information. JPL surveyed the automotive industry and conducted

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of real world crashes. Generally speaking, the occupant undergoes greater forces due to secondary collisions with the vehicle interior and restraint systems if the crash pulse g's are higher at the peak, or the duration of the crash pulse is shorter, which would lead to higher overall average g levels.

In a relatively ''hard'' pulse crash, a vehicle's occupant compartment decelerates relatively abruptly, creating a high risk of death or serious injury. In a relatively ''soft'' pulse crash, there is a lower rate of deceleration and proportionately lower risk of death or serious injury. The nature of the crash pulse for a vehicle in a given frontal crash is affected by a number of factors, including vehicle speed, the extent to which the vehicle structure forward of the occupant compartment collapses in a controlled manner so that some of the crash energy is absorbed, whether the struck object is fixed in place, the extent to which the struck object collapses and absorbs energy, and, in the case of non-fixed struck objects, the relative mass of the vehicle and the struck object. Large cars typically have relatively mild crash pulses, while small cars and utility vehicles typically have more severe crash pulses.

an analysis of the readiness of advanced air bag technologies.

Also, in April 1998, the agency sent an information request concerning advanced air bag technology to nine air bag suppliers. This effort supplemented NHTSA's other efforts to obtain information in this area and was intended to ensure that the agency had the most up-to-date information possible for this rulemaking.

The agency considered the information obtained in these various endeavors, as well as other available information, in developing this proposal.

To minimize air bag risks, the proposed amendments specify alternative options that would allow use of the differing kinds of technological solutions being developed or considered by the manufacturers to effectively address this problem. For example, the agency is proposing options that would test the performance of air bags designed to inflate in a manner so they do not cause injuries. These options, which are based on an approach recommended by the American Automobile Manufacturers Association (AAMA), specify static out-of-position tests. The agency is proposing use of several child dummies (representing an infant, a 3-year-old, and a 6-year-old) and the Hybrid III 5th percentile adult female dummy in these tests. Injury criteria would be specified for each of the new dummies. The agency is also proposing options that would test the performance of systems designed to suppress air bag deployment in the presence of children and/or out-of-position occupants.

NHTSA believes the proposed amendments would permit the vehicle manufacturers to use any technology or design which can effectively address the problem of adverse effects of air bags to out-of-position occupants, without detracting from the ability of the vehicle to meet Standard No. 208's other occupant protection requirements. The design changes that can be used to meet the proposed requirements range from relatively simple changes in the way air bags deploy to advanced systems incorporating sensors which vary air bag deployment depending on the size, weight and dynamic position of an occupant and crash severity.

In addition to proposing requirements to address air bag risks to out-of-position occupants, NHTSA is proposing to add to the standard's dynamic frontal crash test requirements to ensure that improved protection is provided to teenagers and adults of different sizes, belted and unbelted, especially ones of smaller stature. Under Standard No. 208's longstanding dynamic crash requirements, vehicles must meet specified injury criteria, including ones for the head and chest, measured on 50th percentile adult male test dummies (both belted and unbelted) during rigid barrier crashes at any speed up to and including 48 km/h (30 mph) and at any angle up to ± 30 degrees.[2] Thus, manufacturers are required to assure compliance with occupant protection requirements in full scale vehicle crashes representing a wide range of severities and crash pulses that could potentially cause fatal injuries.

However, despite their compliance with requirements specifying the use of 50th percentile adult male dummies, some current air bags may not provide appropriate protection to small adult occupants. Most significantly, some designs do not take account of the special needs of occupants who must sit relatively close to the air bag, such as small-statured women drivers. In order to provide protection to someone who sits close to the air bag, an air bag must deploy early in a crash event. However, the air bags of some vehicles deploy late in certain kinds of crashes (such as ones with soft pulses), after a small-statured driver, even though belted, has struck the steering wheel. In such a situation, the air bag cannot provide protection and may cause harm. This same problem is faced by persons who sit close to the passenger-side air bag.

To address this problem, NHTSA is proposing to add new dynamic crash test requirements using 5th percentile adult female dummies. Protection would be required to be demonstrated in a new ''offset deformable barrier crash test,'' a test which replicates a kind of real world crash likely to result in late deployment of many current air bags. This test measures the performance of the sensor system as well as the air bag in a 25-mph crash with a ''soft'' pulse, and would use restrained dummies only. In addition, 5th percentile adult female dummies would be added to the standard's existing 30-mph dynamic crash test requirements, using both restrained and unrestrained dummies.

The agency has developed injury criteria and seat positioning procedures that it believes are appropriate for small females. Among other things, the agency is including neck injury criteria, since persons close to the air bag at deployment are at greater risk of neck injury. NHTSA notes that it is also proposing to upgrade the current injury criteria specified for 50th percentile adult male dummies, and to add neck injury criteria, to make them consistent with what the agency is proposing for 5th percentile adult female dummies.

NHTSA recognizes that adding additional sizes of dummies would increase testing costs, but believes that their addition is needed to ensure that air bag performance is appropriate for occupants of different sizes. NHTSA notes that upgrading Standard No. 208 by adding a greater array of dummy sizes would parallel the agency's recent upgrading of Standard No. 213, *Child Restraint Systems*, through the addition of a greater array of sizes and weights of child test dummies.[3] Just as that final rule improved the safety of child restraint systems by providing for evaluation of performance in a more thorough manner, the addition of different size test dummies to Standard No. 208 would improve protection for all occupants by requiring more thorough evaluation of a vehicle's occupant protection system.

The agency notes that it may issue a separate document proposing to add the Hybrid III 95th percentile adult male dummy to Standard No. 208. With the addition of that dummy, occupant protection would be measured for adult occupant sizes ranging from small-statured females to large-statured males. The agency is not proposing to add the Hybrid III 95th percentile adult male dummy in this notice because development of that dummy has not yet reached the stage where it is appropriate for incorporation into a Federal motor vehicle safety standard.

NHTSA also notes that during calendar year 1999 it expects to propose a higher speed frontal offset requirement than that specified for the current barrier test. The agency is still conducting research regarding such a requirement. In addition, as more advanced technology is developed, the agency may develop proposals to require further enhancements in occupant protection under Standard No. 208.

To provide vehicle manufacturers sufficient time to complete development of advanced air bag designs meeting the new requirements proposed in today's notice, and implement them into their cars and light trucks, NHTSA is proposing a phase-in of the upgraded requirements beginning September 1, 2002, with full implementation required effective September 1, 2005. The agency is proposing to provide credits for early compliance with the rule. To address

[2] As discussed elsewhere in this notice, Standard No. 208 currently includes an option for manufacturers to certify their vehicles to an unbelted sled test as an alternative to the unbelted barrier test requirement.

[3] 60 FR 35126, July 6, 1995.

the special problems faced by limited line manufacturers in complying with phase-ins, the agency is proposing to permit manufacturers which produce two or fewer carlines[4] the option of omitting the first year of the phase-in if they achieve full compliance effective September 1, 2003.

NHTSA notes that Standard No. 208 contains several provisions, noted above, that were added as temporary measures to address air bag risks. One is the provision permitting manufacturers to provide manual on-off switches for passenger air bags in vehicles without rear seats or with rear seats too small to accommodate a rear facing infant seat. It expires on September 1, 2000.

The other is the provision permitting certification based on the unbelted sled test alternative to the unbelted barrier test requirements. It was scheduled to expire on September 1, 2001. However, notwithstanding the expiration date currently specified in the standard for the unbelted sled test option, the NHTSA Reauthorization Act of 1998 provides that the sled test option ''shall remain in effect unless and until changed by [the final rule for advanced air bags].'' The Conference Report states that the current sled test certification option remains in effect ''unless and until phased out according to the schedule in the final rule.''

In this notice, the agency is proposing to amend Standard No. 208 so that both the sled test option and the manual on-off switch provision are phased out as the new requirements for advanced air bags are phased in. During the phase-in, the sled test option and manual cutoff provision would not apply to any vehicles certified to the upgraded requirements, but would be available for vehicles not so certified under the same conditions as they are currently available. Thus, as manufacturers develop advanced air bags, they would need to ensure that vehicles equipped with these devices meet all of Standard No. 208's longstanding performance requirements as well as the new ones being proposed today.

The agency is similarly proposing to amend its regulation permitting the installation of retrofit on-off switches to specify that these devices cannot be installed in vehicles that have been certified to the new requirements for advanced air bags.

NHTSA notes that, as discussed later in this notice, the auto industry and other commenters have raised a number of objections to the existing unbelted barrier test requirements.[5] While the agency is not proposing alternatives to those requirements in this notice, it is requesting comments on whether it should develop alternative unbelted crash test requirements.

This notice also provides the agency's response to all outstanding petitions concerning air bag performance.

## III. Statutory Requirements

As part of the NHTSA Reauthorization Act of 1998,[6] Congress required the agency to conduct rulemaking to improve air bags. The Act directed NHTSA to issue, not later than September 1, 1998, ''a notice of proposed rulemaking to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.''

The Act directs the agency to issue the final rule not later than September 1, 1999. However, if it determines that the final rule cannot be completed by that date, the final rule must be issued no later than March 1, 2000. The final rule must be consistent both with the provisions of the NHTSA Reauthorization Act of 1998 and with 49 U.S.C. § 30111, which specifies the requirements for Federal motor vehicle safety standards.

The final rule must become effective in phases as rapidly as practicable, beginning not earlier than September 1, 2002, and no sooner than 30 months after the issuance of the final rule, but not later than September 1, 2003. The final rule must become fully effective by September 1, 2005. However, if the phase-in of the final rule does not begin until September 1, 2003, NHTSA is authorized to delay making the final rule fully effective until September 1, 2006.

To encourage early compliance, NHTSA is directed to include in the NPRM means by which manufacturers may earn credits toward future compliance. Credits, on a one-vehicle for one-vehicle basis, may be earned for vehicles which are certified as being in full compliance with the final rule and which are so certified before the beginning of the phase-in period. They may also be earned during the phase-in if a manufacturer's production of complying vehicles for a model year exceeds the percentage of vehicles required to comply in that year.

In a paragraph titled ''Coordination of Effective Dates,'' the Act provides that the unbelted sled test option ''shall remain in effect unless and until changed by [the final rule for advanced air bags].'' The Conference Report states that the current sled test certification option remains in effect ''unless and until phased out according to the schedule in the final rule.''

## IV. Safety Problem and the Agency's Remedial Actions

### *A. Introduction*

While air bags are providing significant overall safety benefits, NHTSA is concerned that current air bags have adverse effects on certain groups of people in limited situations. Of particular concern, NHTSA has confirmed 105 primarily low speed crashes in which the deployment of an air bag resulted in fatal injuries to an occupant, as of June 1, 1998. NHTSA believes that none of these occupants would have died if the air bag had not deployed.[7]

The primary factor linking these deaths is the proximity of occupants to the air bag when it deployed. These deaths occurred under circumstances in which the occupant's upper body was very near the air bag when it deployed.

There were two other factors common to many of the deaths. First, apart from 13 infants fatally injured while riding in rear-facing infant seats, most of the fatally injured people were not using any type of child seat or seat belt. This allowed the people to move forward more readily than properly restrained occupants under conditions of pre-impact braking or low level crashes. Second, the air bags involved in those deaths were, like all current air bags, so-called ''one-size-fits-all'' air bags that

[4] The term ''carline'' refers to a group of vehicles which has a degree of commonality in construction (e.g., body, chassis). The term is used in NHTSA's automobile parts content labeling program and is defined at 49 CFR § 583.4.

[5] The most significant objection is the argument that air bags designed to enable vehicles to meet the unbelted barrier test at 30 mph will be too powerful for occupants, especially children, who are extremely close to the air bag at time of deployment. The agency notes, however, that this objection has been made primarily in the context of the continued use of current, single inflation level air bags, instead of the advanced ones that are the subject of this proposal. Another significant objection concerns how representative the barrier test is of real world crashes. As discussed later in this notice, NHTSA is placing in the docket a technical paper which analyzes the representativeness of those requirements with respect to real-world crashes which have a potential to cause serious injury or fatality.

[6] The NHTSA Reauthorization Act of 1998 is part of P.L. 105–178.

[7] The vast majority of the deaths appear to have occurred in crashes in which the vehicle had a change in velocity of less than 15 mph. Almost all occurred in crashes with a change of velocity less than 20 mph.

have a single inflation level.[8] These air bags deploy with the same force in very low speed crashes as they do in higher speed crashes.

The most direct behavioral solution to the problem of child fatalities from air bags is for children to be properly belted in the back seat whenever possible, while the most direct behavioral solution for the adult fatalities is to use seat belts and move the driver seat as far back as practicable. Implementing these solutions necessitates increasing the percentage of children who are seated in the back and properly restrained in child safety seats. It also necessitates improving the current 69 percent rate of seat belt usage by a combination of methods, including the enactment of State primary seat belt use laws.[9]

The most direct technical solution to the problem of fatalities from air bags is to require that motor vehicle manufacturers install advanced air bags that protect occupants from the adverse effects that can occur from being too close to a deploying air bag.

All of these solutions are being pursued by the agency. However, until advanced air bags are incorporated into the vehicle fleet, behavioral changes based on better information and communication about potential hazards and simple, non-automatic technology are the best means of addressing fatalities from air bags, especially those involving children.

To partially implement these solutions, and preserve the benefits of air bags, while reducing the risk of injury to certain people, NHTSA issued several final rules in the past year-and-a-half.

One rule requires new passenger cars and light trucks to bear new, enhanced air bag warning labels. (61 FR 60206; November 27, 1996)

Another rule provided vehicle manufacturers with the temporary option of certifying compliance based on a sled test using an unbelted dummy, instead of conducting a vehicle-to-barrier crash test using an unbelted dummy. (62 FR 12960; March 19, 1997) While vehicle manufacturers could have depowered many or most of their vehicles' air bags without changes to Standard No. 208, the final rule expedited this process. In view of concerns that the gentler crash pulse of the sled test would enable many vehicles to meet Standard No. 208's existing injury criteria without an air bag deploying, the agency added neck injury criteria to help ensure that air bags deploy and are not depowered so much as to be ineffective. Unless the air bags deployed, a vehicle would be very unlikely to be able to pass the neck injury criteria limits. The agency concluded that depowering current single-inflation level air bags would most likely reduce the adverse effects of these air bags, although it also expressed concern that depowering could result in less protection being provided to occupants in higher speed crashes, especially for those who are unbelted and/or heavier than average.

NHTSA has also issued two final rules related to manual on-off switches. One extends the temporary time period during which vehicle manufacturers are permitted to offer manual on-off switches for the passenger air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. (62 FR 798; January 6, 1997) The other final rule exempts motor vehicle dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that they may install retrofit manual on-off switches for driver and passenger air bags in vehicles owned by or used by persons who are in groups at special risk from air bags and whose requests for switches have been authorized by the agency. (62 FR 62406; November 21, 1997)

On the behavioral side, the agency has initiated a national campaign to increase usage of seat belts through the enactment of primary seat belt use laws, more public education, and more effective enforcement of existing belt use and child safety seat use laws.

In conjunction with the National Aeronautical and Space Administration, as well as Transport Canada, and in cooperation with domestic and foreign vehicle manufacturers, restraint system suppliers and others through the Motor Vehicle Safety Research Advisory Committee (MVSRAC), NHTSA has undertaken data analysis and research to address remaining questions concerning the development and introduction of advanced air bags.

In today's notice, the agency is proposing to require advanced air bags.

*B. Background*

1. Air Bags: Safety Issues

*a. Lives saved and lost.* Air bags have proven to be highly effective in reducing fatalities from frontal crashes, the most prevalent fatality and injury-causing type of crash. Frontal crashes cause 64 percent of all driver and right-front passenger fatalities.

NHTSA estimates that, between 1986 and June 1, 1998, air bags have saved about 3,148 drivers and passengers (2,725 drivers (87 percent) and 423 passengers (13 percent)).[10] Of the 3,148, 2,267 (72 percent) were unbelted and 881 (28 percent) were belted. These agency estimates are based on comparisons of the frequency of front seat occupant deaths in vehicles without air bags and in vehicles with air bags. Approximately half of those lives were saved in the last two years. These savings occurred primarily in moderate and high speed crashes.

Pursuant to the mandate in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for the installation of air bags in all passenger cars and light trucks, the number of air bags in vehicles on the road will increase each year. As a result, the annual number of lives saved by air bags will continue to increase each year. Based on current levels of effectiveness, air bags will save more than 3,200 lives each year in passenger cars and light trucks when all light vehicles on the road are equipped with dual air bags. This estimate is based on current seat belt use rates (about 69 percent, according to State-reported surveys).

While air bags are saving large numbers of people in moderate and high speed crashes, they sometimes cause fatalities, especially to children, in lower speed crashes. As of June 1, 1998, NHTSA's Special Crash Investigation program had confirmed a total of 105 crashes in which the deployment of an air bag resulted in fatal injuries. Sixty-one of those fatalities involved children. Four adult passengers have also been fatally injured. Forty drivers are known to have been fatally injured.

Just as the number of lives saved per year will rise as more vehicles are

[8] The Federal safety standards do not require a ''one-size-fits-all'' approach to designing air bags. They permit a wide variety of technologies that would enable air bags to deploy with less force in lower speed crashes or when occupants are out of position or suppress deployment altogether in appropriate circumstances.

[9] In States with ''secondary'' seat belt use laws, a motorist may be ticketed for failure to wear a seat belt only if there is a separate basis for stopping the motorist, such as the violation of a separate traffic law. This hampers enforcement of the law. In States with primary laws, a citation can be issued solely because of failure to wear seat belts.

[10] Studies published in the November 5, 1997 issue of the *Journal of the American Medical Association* by the Insurance Institute for Highway Safety (IIHS) and by the Center for Risk Analysis at the Harvard School of Public Health confirm the overall value of passenger air bags, while urging action be taken quickly to address the loss of children's lives due to those air bags. IIHS found that passenger air bags were associated with a substantial reduction in crash deaths. The Center evaluated the cost-effectiveness of passenger air bags and concluded that they produce savings at costs comparable to many well-accepted medical and public health practices.

equipped with air bags, so will the number of fatalities caused by air bags, absent either advanced air bags or changes in occupant behavior. Using the year 2000 as a point of reference, if all passenger vehicles on the road were equipped with air bags, air bags would save 3,215 lives annually. However, there would be 214 fatalities annually—33 infants in rear facing child seats, 129 other children, 41 drivers, and 11 adult passengers.

It is important to note that these estimates are based on pre-model year 1998 air bags and on the assumption that there are no changes in occupant demographics, driver/passenger behavior, belt use, child restraint use, or the percent of children sitting in the front seat. However, as noted above, changes have already occurred that have reduced the potential number of fatalities. Manufacturers redesigned most air bags for model year 1998 to reduce the adverse effects of air bags. Moreover, additional changes are anticipated. As public education programs succeed in creating better awareness of occupant safety issues, and as auto manufacturers voluntarily continue to improve their air bags, the potential adverse effects of air bags will be further reduced. Nonetheless, the agency believes that the air bag fatalities that have occurred to date, and the potentially much larger number of air bag fatalities that could occur when all light vehicles are equipped with air bags, demonstrate the need for regulatory action in this area.

*b. Causes of air bag fatalities.* Air bag fatalities are caused by a combination of proximity to deploying air bags and the current designs of those air bags. The one fact that is common to all persons who died is *not* their height, weight, gender, or age. Instead, it is the fact that they were too close to the air bag when it started to deploy. For some, this occurred because they were initially sitting too close to the air bag. More often, this occurred because they were not restrained by seat belts or child safety seats and were thrown forward during pre-crash braking.

Air bags are designed to save lives and prevent injuries by cushioning occupants as they move forward in a frontal crash. They keep an occupant's head, neck, and chest from hitting the steering wheel or instrument panel. To accomplish this, an air bag must move into place quickly. The force of a deploying air bag is greatest as the air bag begins to inflate. The force decreases as the air bag inflates further.

Occupants who are very close to or in contact with the cover of a stored air bag when the air bag begins to inflate can be hit with enough force to suffer serious injury or death. In general, a driver can avoid this risk by sitting at least 10 inches away from the air bag (measured from the breastbone to the center of the air bag cover) and wearing safety belts. Teenage and adult passengers can avoid this risk by moving their seat back and wearing their safety belts. Children should ride in the rear seat whenever possible.

The confirmed fatalities involving children have a number of fairly consistent characteristics. First, 13 infants were in rear-facing infant seats that were installed in front of a passenger side air bag. Second, the vast majority of the older children were not using any type of restraint.[11] Third, as noted above, the crashes occurred at relatively low speeds. If the passenger air bag had not deployed in those crashes, the children would probably not have been killed or seriously injured. Fourth, the infants and older children were very close to the instrument panel when the air bag deployed. A rear-facing infant seat which is installed in the front seat of a vehicle with a passenger side air bag will always position the infant's head very close to the air bag. For essentially all of the older children, the non-use or improper use of occupant restraints or the failure to use the restraints most appropriate to the child's weight and age, in conjunction with pre-impact braking, resulted in the forward movement of the children prior to the actual crash. As a result, they were very close to the air bag when it deployed. Because of their proximity, the children sustained fatal head or neck injuries from the deploying passenger air bag.

As in the case of the children fatally injured by air bags, the key factor regarding the confirmed adult deaths has been their proximity to the air bag when it deployed. The most common reason for their proximity was failure to use seat belts. Only 11 of the 40 drivers were known to be properly restrained by lap and shoulder belts at the time of the crash. As in the case of children, the deaths of drivers have occurred primarily in low speed crashes.

The other cause of air bag fatalities is the design of current air bags. Air bag fatalities are not a problem inherent in the concept of air bags or in the agency's occupant restraint standard. That standard has always permitted, but not required, vehicle manufacturers to use a variety of design features that would reduce or eliminate the fatalities that have been occurring, e.g., higher deployment thresholds that will prevent deployment in low speed crashes, sensors that adjust the deployment threshold depending on whether the occupant is belted,[12] different folding patterns and aspiration designs, dual stage inflators,[13] new air bag designs like the Autoliv ''Gentle Bag'' that deploys first radially and then toward the occupant, and advanced air bags that either adjust deployment force or suppress deployment altogether in appropriate circumstances. While some of these features are new or are still under development, others have been around (at least conceptually) for more than a decade. The agency identified a number of these features in conjunction with its 1984 decision concerning automatic occupant protection and noted that vehicle manufacturers could choose among those features to address the problems reported by those manufacturers concerning out-of-position occupants.

Although Standard No. 208 permits vehicle manufacturers to install air bags incorporating those advanced features, very few current air bags do so. Instead, vehicle manufacturers have thus far used designs that inflate with the same force under all circumstances. Although the vehicle manufacturers are now working to incorporate advanced features in their air bags, the introduction of air bags with those features is only just beginning.

Partly in view of the lead time needed to incorporate those advanced features, vehicle manufacturers first took the quicker step of depowering their air bags. Under a recent temporary amendment to Standard No. 208, vehicle manufacturers have expedited their introduction of depowered or otherwise redesigned air bags. While these modified air bags will reduce, but not eliminate, the incidence of air bag-

[11] 39 of the 48 forward-facing children who were fatally injured by air bags were not using any type of belt or other restraint. The remaining children included some who were riding with their shoulder belts behind them and some who were wearing lap and shoulder belts but who also should have been in booster seats because of their small size and weight. Booster seat use could have improved shoulder belt fit and performance. These various factors and pre-crash braking allowed the children to get too close to the air bag when it began to inflate.

[12] For example, Mercedes-Benz offers passenger air bags whose deployment threshold is 12 mph if the passenger is unbelted and 18 mph if the passenger is belted.

[13] The passenger-side air bags installed in approximately 10,000 GM cars in the 1970's were equipped with dual stage inflators. Today, for example, Autoliv, a Swedish manufacturer of air bags, has a ''gas generator that inflates in two steps, giving the bag time to unfold and the vent holes to be freed before the second inflation starts. Should the bag then encounter an occupant, any excessive gas—and indeed bag pressure—will exit through the vent holes.''

caused deaths, they still deploy with the same force in all crashes, regardless of severity, and regardless of occupant weight or location. Many manufacturers introduced substantial numbers of these less powerful air bags in model year 1998.

2. Air Bag Requirements

Today's air bag requirements evolved over a 25-year period. NHTSA issued its first public notice concerning air bags in the late 1960's. Although vehicle manufacturers began installing air bags in 1986, it was not until the fall of 1996 that manufacturers were first required to install air bags in any motor vehicles.[14]

When the requirements for automatic protection (i.e., protection by means that require no action by the occupant) were adopted in 1984 for passenger cars, they were expressed in broad performance terms that provided vehicle manufacturers with choices of a variety of methods of providing automatic protection, including automatic belts and air bags. Further, the requirements gave vehicle manufacturers broad flexibility in selecting the performance characteristics of air bags. Later, those requirements were extended to light trucks. While vehicle manufacturers initially installed automatic belts in many of their vehicles, ultimately, strong market preference for air bags led manufacturers to move toward installing them in all of their passenger cars and light trucks.

In 1991, Congress included a provision in ISTEA directing NHTSA to amend Standard No. 208 to require that all passenger cars and light trucks provide automatic protection by means of air bags. ISTEA required at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996, and before September 1, 1997, to be equipped with an air bag and a manual lap/shoulder belt at both the driver and right front passenger seating positions. Every passenger car manufactured on or after September 1, 1997, must be so equipped. The same basic requirements were phased in for light trucks one year later.[15] The final rule implementing this provision of ISTEA was published in the Federal Register (58 FR 46551) on September 2, 1993.

Standard No. 208's automatic protection requirements are performance requirements. The standard does not specify the design of an air bag. Instead, when tested under specified test conditions, vehicles must meet specified limits for injury criteria, including criteria for the head, chest and thighs, measured on 50th percentile male test dummies. Until recently, these criteria limits had to be met for air bag-equipped vehicles in barrier crashes at speeds up to 48 km/h (30 mph), both with the dummies belted and with them unbelted.

However, on March 19, 1997, the agency published a final rule temporarily amending Standard No. 208 to provide the option of testing air bag performance with an unbelted dummy in a sled test incorporating a 125 millisecond standardized crash pulse instead of in a vehicle-to-barrier crash test. This amendment was made primarily to expedite manufacturer efforts to reduce the force of air bags as they deploy.

Standard No. 208's current automatic protection requirements, like those established 14 years ago in 1984, apply to the performance of the vehicle as a whole, and not to the air bag as a separate item of motor vehicle equipment. The broad vehicle performance requirements permit vehicle manufacturers to ''tune'' the performance of the air bag to the specific attributes of each of their vehicles.

The Standard's requirements also permit manufacturers to design seat belts and air bags to work together. Before air bags, seat belts had to do all the work of restraining an occupant and reducing the likelihood that the occupant will strike the interior of the vehicle in a frontal crash. Another consequence of not having air bags was that vehicle manufacturers had to use relatively rigid and unyielding seat belts that can concentrate a lot of force along a narrow portion of the belted occupant's body in a serious crash. This concentration of force created a risk of bone fractures and injury to underlying organs. The presence of an air bag increases the vehicle manufacturer's ability to protect belted occupants. Through using force management devices, such as load limiters, a manufacturer can design seat belts to extend or release additional belt webbing before the belts concentrate too much force on the belted occupant's body. When these new belts stretch or extend, the deployed air bag is there to prevent the belted occupant from striking the vehicle interior.

Further, as noted above, Standard No. 208 permits, but does not require, vehicle manufacturers to design their air bags to minimize the risk of serious injury to unbelted, out-of-position occupants, including children and small drivers. The standard gives the manufacturers significant freedom to select specific attributes to protect all occupants, including attributes such as (1) the crash speeds at which the air bags deploy, (2) the force with which they deploy, (3) air bag tethering and venting to reduce inflation force when a deploying air bag encounters an occupant close to the steering wheel or the instrument panel, (4) the use of sensors to both detect the presence of rear-facing child restraints and the presence of small children and prevent air bag inflation, (5) the use of sensors to detect occupant position and prevent air bag inflation if appropriate, and (6) the use of multi-stage versus single stage inflators. Multi-stage inflators enable air bags to deploy with lower force in low speed crashes, the type of crashes in which children and drivers have been fatally injured, and with more force in higher speed crashes.

*C. Comprehensive Agency Plan To Address Air Bag Fatalities*

In late November 1996, NHTSA announced that it would be implementing a comprehensive plan of rulemaking and other actions (e.g., consumer education and encouragement of State seat belt use laws providing for primary enforcement of their requirements) addressing the adverse

[14] *Air bag firsts*—In view of the confusion evident in some public comments in recent rulemakings and even in some media accounts about when air bags were first required, and by whom, the agency has set forth a brief chronology below:

- 1972 *First year* in which vehicle manufacturers had the *option of installing air bags* in passenger cars as a means of complying with Standard No. 208. Prior to that year, vehicle manufacturers had to comply means of installing manual lap and shoulder belts. GM installed driver and passenger air bags in approximately 10,000 passenger cars in the mid-1970's.
- 1986 *First year* in which vehicle manufacturers no longer had the option of installing manual belts and were *required instead to install some type of automatic protection* (either automatic belts or air bags) in some passenger cars. This requirement was issued by Secretary Dole in 1984. At the time of that issuance, the agency expressly noted that vehicle manufacturers had expressed concerns about air bags and out-of-position occupants. In response to those concerns, NHTSA identified a variety of technological remedies whose use was permissible under the Standard. Between 1986 and 1996, vehicle manufacturers chose to comply with the automatic protection requirements by installing over 35 million driver air bags and over 18 million passenger air bags in passenger cars. Another 12 million driver air bags and almost 3 million passenger air bags were installed in light trucks in that same time period.
- 1996 *First year* in which vehicle manufacturers were *required to install air bags* in some passenger cars. This requirement was mandated by the 1991 Intermodal Surface Transportation Efficiency Act of 1991.

[15] At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. Every light truck manufactured on or after September 1, 1998 must be so equipped.

effects of air bags.[16] While there is a general consensus that the best approach to preserving the benefits of air bags while preventing air bag fatalities will ultimately be the introduction of advanced air bag systems, those air bags are not immediately available. Accordingly, the agency has focused on rulemaking and other actions to help reduce the adverse effects of air bags in existing vehicles as well as in vehicles produced during the next several model years. The actions which have been taken, or are being taken, include the following:

1. Interim Rulemaking Solutions

*a. Existing and future vehicles-in-use.* On November 11, 1997, NHTSA published in the **Federal Register** (62 FR 62406) a final rule exempting, under certain conditions, motor vehicle dealers and repair businesses from the ''make inoperative'' prohibition in 49 U.S.C. § 30122 by allowing them to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is authorized by NHTSA. The purpose of the exemption is to preserve the benefits of air bags while reducing the risk that some people have of being seriously or fatally injured by current air bags. The exemption also allows consumers to have new vehicles retrofitted with on-off switches after the purchase of those vehicles. It does not, however, allow consumers to purchase new vehicles already equipped with on-off switches. (Another rule, discussed below, allows manufacturers to ''factory install'' manual on-off switches for vehicles with no, or small, rear seats.)

*b. New vehicles.* On November 27, 1996, the agency published in the **Federal Register** (61 FR 60206) a final rule amending Standards No. 208 and No. 213 to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children, particularly to children in rear-facing infant restraints in vehicles with operational passenger air bags. The improved labels were required on new vehicles beginning February 25, 1997, and were required on child restraints beginning May 27, 1997.

On January 6, 1997, the agency published in the **Federal Register** (62 FR 798) a final rule extending until September 1, 2000, an existing provision in Standard No. 208 permitting vehicle manufacturers to offer manual on-off switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints.

On March 19, 1997, NHTSA published in the **Federal Register** (62 FR 12960) a final rule temporarily amending Standard No. 208 to facilitate efforts of vehicle manufacturers to depower their air bags quickly so that they inflate less aggressively. This change, coupled with the broad flexibility already provided by the standard's existing performance requirements, provided the vehicle manufacturers maximum flexibility to quickly reduce the adverse effects of current air bags. Vehicle manufacturers provided air bags that were depowered or otherwise redesigned for a large number of model year 1998 vehicles.

2. Longer-Term Rulemaking Solution

In today's notice, NHTSA is proposing to require advanced air bags. The agency is proposing new performance requirements to improve occupant protection for occupants of different sizes, belted and unbelted, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags.

3. Educational Efforts; Child Restraint and Seat Belt Use Laws

In addition to taking these actions, and conducting extensive public education efforts, the Department of Transportation announced in the spring of 1997 a national strategy to increase seat belt and child seat use. Higher use rates would decrease air bag fatalities and the chance of adverse safety tradeoffs occurring as a result of turning off air bags. The plan to increase seat belt and child seat use has four elements: stronger public-private partnerships; stronger State seat belt and child seat use laws (e.g., laws providing for primary enforcement of seat belt use requirements); active, high-visibility enforcement of these laws; and effective public education. Substantial benefits could be obtained from achieving higher seat belt use rates. For example, if observed belt use increased from 69 percent to 90 percent, an estimated additional 5,400 lives would be saved annually over the estimated 10,414 lives currently being saved by seat belts. In addition, an estimated 129,000 injuries would be prevented annually. The economic savings from these incremental reductions in both fatalities and injuries would be $8.5 billion annually.

## V. Technological Opportunities

The air bag suppliers and vehicle manufacturers are working on a wide range of advanced technologies to upgrade air bag system performance, including but not limited to addressing adverse effects of air bags to out-of-position occupants. To illustrate the kinds of technological opportunities that are available, NHTSA is including a discussion on this subject presented by JPL in the Executive Summary of its Advanced Air Bag Technology Assessment. For additional information, interested persons are referred to the full JPL report, NHTSA's Preliminary Economic Assessment for this proposal and the references it cites, and the docket for this and other notices relating to Standard No. 208.

The JPL Executive Summary includes the following discussion of technological opportunities (section numbers are omitted):

*Model year 2001.* The technologies that are being developed and that may be available for model year 2001 provide both improved information and improved response.[17]

*Information*

- Crash sensor/control systems with improved algorithms will better discriminate when air bag deployment is necessary for occupant crash protection, will provide better threshold control, and will determine the appropriate inflation level for two-stage inflators.
- Belt use status sensors can detect when an occupant is belted so that the air bag deployment threshold can be raised when belts are in use. (These are currently in use in some cars.)
- Seat position sensors provide an approximate surrogate measure of occupant size and proximity to the air bag module. They can be used in combination with belt status sensors to determine the appropriate inflator output.
- Seat belt spool-out sensors could provide additional information about an occupant's size and proximity to the air bag module. These sensors were not mentioned as being part of any current industry use strategy and therefore may not be available by model year 2001.
- Static proximity (occupant position) sensors could identify occupants in the keep-out zone, but will be available only if an aggressive development program is

[16] For a discussion of the actions taken by NHTSA before November 1996 to address the adverse effects of air bags, see pp. 40787–88 of the agency's NPRM published August 6, 1996 (61 FR 40784).

[17] NHTSA notes that JPL, in identifying and analyzing parameters to reflect the functions that may be required of advanced technology, classified those parameters by the information provided about the crash and the occupants and the air bag system response.

undertaken. They would not reduce injuries to all out-of-position occupants, and they could be ''fooled'' some of the time.

*Response*

- Automatic suppression can prevent inflation when sensors determine that an ccupant is in a keep-out zone where injuries could occur.
- Two-stage inflators can permit relatively soft inflation for crashes of lower threshold velocity, and full inflation when necessary for crashes of high threshold velocity.
- Compartmented air bags, radial deployments, and bags with lighter-weight fabrics may reduce the size of the keep-out zone.
- Advanced belts can improve restraint system safety and protectiveness. They may include pretensioners that can provide better coupling of the occupant to the seat for improved ride-down during the crash. Also, they can, to some degree, limit occupant proximity to the air bag module. Load limiters can also improve belt performance by reducing maximum belt loads on the occupant. (Pretensioners and load limiters are currently in some vehicles.)

*Model year 2003.* By model year 2003, there could be evolutionary changes in some of the systems and the possibility of the introduction of occupant and proximity sensors.

*Information*

- Crash sensor/control system algorithms will continue to be improved.
- Belt use sensors will be widely used already.
- Integrated occupant and proximity sensors could be available that would identify occupants in the keep-out zone or those who would enter it.
- Precrash sensors may be available, but their application requires further investigation.

*Response*

- Automatic suppression to prevent inflation will be available for use with proximity sensors.
- Multistage inflators to provide more tailored responses for a variety of occupants and crash severities could be available, if needed.
- Bag designs will continue to be improved, permitting a reduction of the keep-out zone.
- Pretensioners and load limiters will be placed in increasing numbers of vehicles. Air belts will be available to improve safety belt effectiveness.

NHTSA notes that the JPL report presents tables listing specific technologies for advanced safety restraint systems and providing a summary of advanced technology characteristics. The technology items discussed in the JPL report include:

**Sensors**

—Pre-Crash Sensing
—Crash Severity Sensors
—Sensing Diagnostic Modules/Crash Algorithms
—Belt Use Sensors
—Belt Spool-Out Sensors
—Seat Position Sensors
—Occupant Classification Sensors
—Occupant Proximity Motion Sensors
—Computational Systems/Algorithms

**Inflators**

—Non-Azide Propellants
—Hybrid Inflators
—Heated Gas Inflators
—Multistage Inflators
—Inflators With Tailorable Mass Flow Rate

**Air Bags**

—New Fabrics and Coatings
—New Woven Fabrics and Bag Construction
—New Bag Shapes and Compartmented Bags
—New Air Bag Venting Systems

**Seat Belt Systems**

—Pretensioners
—Load Limiting Devices
—Inflatable Seat Belts

The JPL report also presents an assessment of the merits of advanced technologies.

The JPL report cautioned that expected improvements in the safety and protectiveness of air bags must be tempered by the understanding that there are key technology developments that need to be accomplished, namely:

- Air bag deployment time variability must be reduced by improvements in the vehicle crush/crash sensor system.
- Inflator variability must be reduced so that dual-stage inflators can be applied effectively.
- System and component reliability must receive diligent attention to achieve the high levels required under field conditions.
- Occupant sensors must be developed that can distinguish with high accuracy small, medium, and large adults; children; and infant seats.
- Position sensors to measure occupant proximity to the air bag module with the required response time and accuracy must be demonstrated.

The JPL report noted that all of the above are the subject of current development, but development, test, and integration of the advanced technologies needs to be accelerated to enable their incorporation into production vehicles.

The JPL report also notes that its projections of technology availability are based on limited contacts with a limited number of vehicle manufacturers and suppliers, and that the state of the art of advanced air bag technologies is in a high state of flux. The report notes that the projected technologies, as well as other technologies, may advance more or less rapidly than indicated.

NHTSA has had more extensive contacts than JPL with suppliers and vehicle manufacturers, and more recent ones. Based on confidential information shared with the agency during those contacts, NHTSA believes that the JPL report is conservative in its assessment of the stages that some suppliers have reached in developing new technologies and the model year in which some of the very highly advanced air bag designs will first be introduced.

NHTSA recognizes, however, that different suppliers and vehicle manufacturers are at different stages in their development of advanced air bags, and also face different constraints and challenges, e.g., different states-of-the-art of their current air bag systems, engineering resources, number of vehicles for which air bags need to be redesigned, etc. The agency believes the proposed date for the beginning of the phase-in, the phase-in itself, and also the proposal of a number of manufacturer options to reflect different available design choices, would accommodate these differing situations.

## VI. Proposal for Advanced Air Bags

### *A. Introduction*

NHTSA's goals in this rulemaking are to enhance the benefits of air bags for all occupants while eliminating or minimizing risks from air bags, and to ensure that the needed improvements in occupant protection are made expeditiously, and in accordance with the recently adopted statutory deadlines. As discussed in the preceding section of this notice, the vehicle manufacturers and their suppliers are already pursuing a wide variety of technological opportunities that can be used to achieve these goals.

The sheer number and variety of available technological opportunities creates special challenges from a regulatory perspective. While the availability of multiple technologies generally makes it easier to solve the current problems with air bags quickly, it also means that the agency must take special care to ensure that the regulatory language it adopts will not be unnecessarily design-restrictive.

Among other things, the agency wishes to avoid:

- Inadvertently preventing the use of superior air bag designs;

- Favoring one viable technology or design over another, where either would meet the need for safety;
- Requiring an expensive solution, where an inexpensive one will work; or
- Requiring implementation of a particular technology before it can be appropriately developed.

In seeking to ensure that its proposal is not unnecessarily design-restrictive, the agency has sought to develop requirements that are as performance-oriented as possible, and to include manufacturer options that accommodate for the kinds of technological solutions that the agency knows are under development.

Moreover, since the ultimate question for regulators, industry, and the public is how the required safety features will work in the real world, NHTSA has sought to specify test procedures that most closely replicate the real world conditions that affect the possibility of traffic deaths and injuries.

As a result, NHTSA is proposing to require manufacturers to meet improved performance criteria in additional tests using a wider array of test dummies. The existing and proposed tests are identified in Figures 1 and 2, below. Figure 1 shows tests for requirements to preserve and improve occupant protection for different size occupants, belted and unbelted. Figure 2 shows tests for requirements to minimize the risk to infants, children, and other occupants from injuries and deaths caused by air bags.

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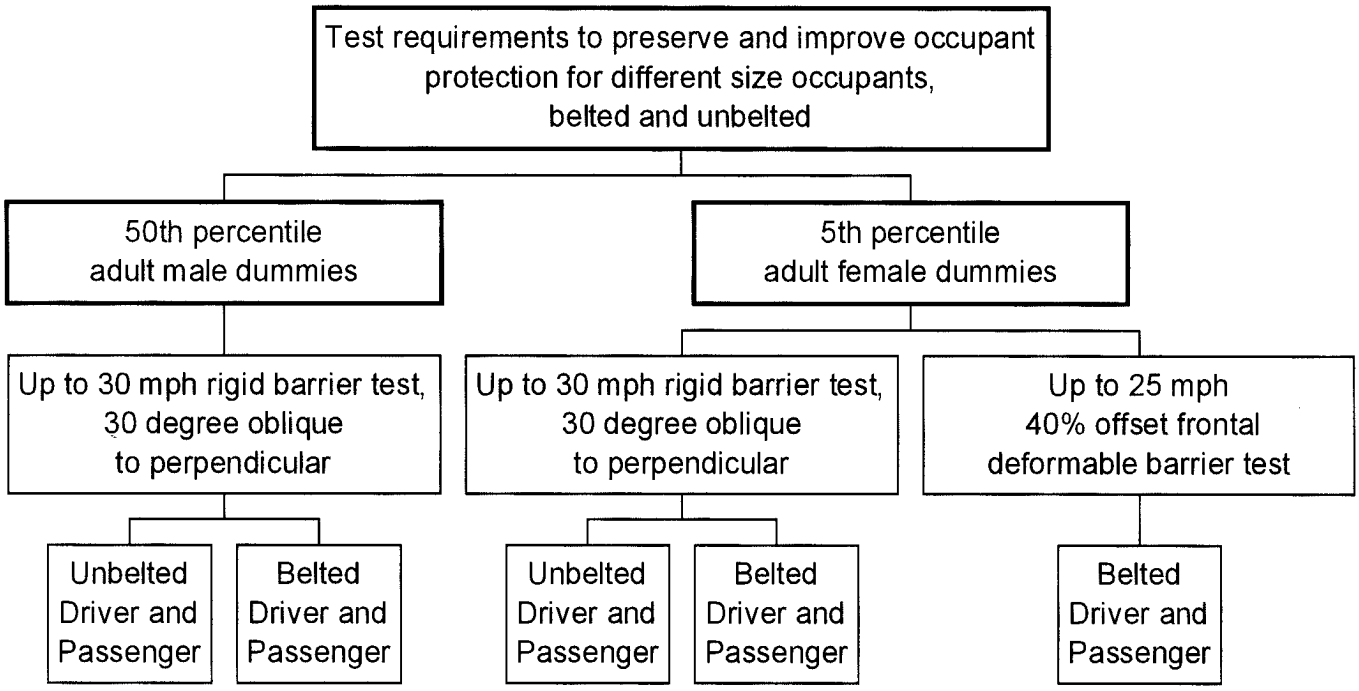


Figure 1. Test Requirements to Preserve and Improve Occupant Protection for Different Size Occupants, Belted and Unbelted

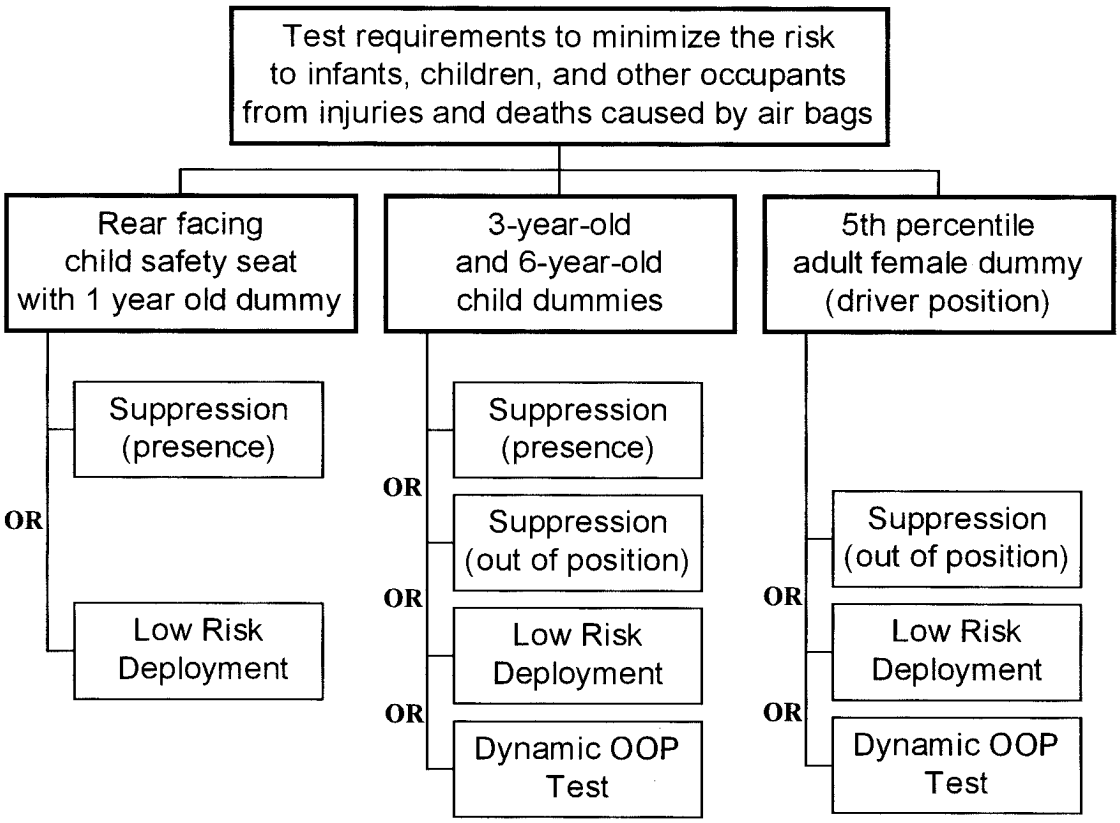


Figure 2. Test Requirements to Minimize the Risk to Infants, Children, and Other Occupants from Injuries and Deaths Caused by Air Bags

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NHTSA notes that, in the future, it expects to propose a higher speed frontal offset test requirement and also is considering proposing one or more tests using 95th percentile adult male dummies. The agency is not proposing a higher speed frontal offset test requirement at this time because it is still conducting research regarding such a requirement.[18] The agency is not proposing tests using 95th percentile adult male dummies at this time because the development of that dummy is not expected to be completed until sometime next year.

Under the proposed performance requirements identified in Figures 1 and 2, vehicle manufacturers would be required to show that the air bags in their vehicles provide protection to small stature occupants as well as to average size males, and to adopt one or more of a number of available design features that will minimize the risk caused by air bags to infants in rear-facing child restraints, out-of-position children, or other out-of-position occupants in low speed crashes.

The test matrix identified in Figures 1 and 2 represents a natural evolution and refinement of Standard No. 208's current requirements. The agency has always sought to include in the standard test procedures that replicate the real world factors that affect the possibility of traffic deaths and injuries. This is the best way to ensure that required safety features will perform well not only in compliance tests, but also in the real world.

Among other things, the agency has long specified full scale vehicle crash tests using instrumented dummies because it is only through such tests that the protection provided by a vehicle and its occupant protection *system* can be fully measured. Different vehicle models have different crash pulses. The results of crash tests reflect not only the performance of the air bag, but how a particular vehicle model crumples and absorbs energy in a crash, i.e., its individual crash pulse. The use of crash tests necessitates that vehicle manufacturers take into account the crash pulse of their vehicles, the air bag design, occupant compartment design features, seat belt design (for belted tests) and specific attributes of each of their subsystems.

[18] For information concerning the agency's research program, interested persons are referred to the agency's Report to Congress, Status Report on Establishing a Federal Motor Vehicle Safety Standard for Frontal Offset Crash Testing, April 1997. This report is available on NHTSA's web site. The address for the section of the web site where this report is located is ''http://www.nhtsa.dot.gov/cars/rules/CrashWorthy/''.

Also, the agency has long included tests for air bag-equipped vehicles using both belted and unbelted dummies, since a large number of occupants in the United States continue to ride unbelted. Even today, nearly half of all occupants in potentially fatal crashes do not wear their seat belts. Teenagers are particularly likely to ride unbelted.

Moreover, the Standard has long included test conditions that replicate a variety of different types of crashes. Of particular note, the standard's longstanding barrier test requirements specify crash tests at any speed up to and including 48 km/h (30 mph), and at a range of impact angles.

NHTSA has also always sought to maximize manufacturer flexibility in providing effective occupant protection. As the agency has stated many times, Standard No. 208 has never specified the design of an air bag. Manufacturers have been free to design their air bags in any manner they like, e.g., any size, any inflation level, etc. so long as the standard's injury criteria limits are not exceeded in specified crash tests.

Today's proposal follows these longstanding practices by proposing to add new tests that replicate additional real world factors that affect the possibility of deaths and injuries which are not directly addressed by the standard's current requirements. Manufacturers would continue to be permitted maximum design freedom in designing their air bags, so long as the standard's injury criteria performance limits are met in specified tests.

Manufacturers can use many different technologies and designs to meet the proposed requirements. One approach is for manufacturers to develop air bags that inflate in a manner that does not cause injuries to out-of-position occupants. Several air bag suppliers have recently demonstrated air bags that incorporate improved folding patterns and internal tethering and venting to reduce the risk of injury to out-of-position occupants. For example, Autoliv has demonstrated an ''umbrella'' air bag that deploys first radially and then toward the vehicle occupant. It also may be possible to design air bags that use vents or other means of preventing further deployment if the air bag is blocked by the occupant during inflation. Again, under today's proposal, manufacturers would be permitted flexibility in designing their air bags as long as all of the standard's performance requirements are met in specified tests.

A discussion of each of the specific proposed test requirements follows, in the general order presented in Figures 1 and 2.

*B. Existing and Proposed Test Requirements*

1. Tests for Requirements To Preserve and Improve Occupant Protection for Different Size Occupants, Belted and Unbelted

a. *Safety of medium to large teenagers and adults.* Standard No. 208 has long required vehicles to meet specified injury criteria, including criteria for the head and chest, measured on 50th percentile adult male test dummies during a rigid barrier crash test at any speed up to 48 km/h (30 mph) and over the range of angles from −30 degrees to +30 degrees. The standard has required air-bag-equipped vehicles to meet the criteria both with the dummies belted and unbelted.

If a vehicle crash test is to measure the overall ability of a vehicle and its occupant protection system to prevent fatalities and serious injuries, the crash test must have the severity of a potentially fatal crash. It is also important that the crash test make it necessary for vehicle manufacturers to design and equip their vehicles so that they provide protection in a range of potentially fatal crashes, recognizing that no single type of crash test can be directly representative of all the myriad potentially fatal crashes that occur in the real world.

The longstanding barrier test requirement specified in Standard No. 208 simulates a wide range of potentially fatal crashes, both with respect to severity and crash pulse. The test is conducted at any speed up to 48 km/h (30 mph), meaning that protection must be provided at all such speeds, e.g., 32 km/h (20 mph) and 40 km/h (25 mph), as well as 48 km/h (30 mph). The test is also conducted at any angle between 30 degrees to the left and 30 degrees to the right. While the perpendicular rigid barrier test results in crash pulses of short duration, e.g., the kind of pulse that a vehicle experiences when it strikes a bridge abutment or fully engages another similar-sized or larger vehicle directly head-on, the angled rigid barrier tests result in crash pulses of longer duration, i.e., a softer crash pulse.

The rigid barrier test requirements have been an integral part of the standard's automatic crash protection requirements and have resulted in enormous savings of lives. As noted above, NHTSA estimates that air bags have saved about 3,148 drivers and passengers. Of these, 2,725 were unbelted and 423 were belted. If these levels of effectiveness are maintained, i.e., 21 percent in frontal crashes for restrained occupants and 34 percent in

frontal crashes for unrestrained occupants, air bags will save more than 3,000 lives each year in passenger cars and light trucks when all light vehicles on the road are equipped with dual air bags. Standard No. 208's current requirements thus represent one of NHTSA's most effective regulations in terms of the numbers of lives saved.

As also noted earlier in this notice, the agency amended Standard No. 208 in March 1997 to provide a temporary option for manufacturers to certify their vehicles to an unbelted sled test as an alternative to the unbelted barrier test requirement. NHTSA established the sled test option to ensure that the vehicle manufacturers could quickly depower all air bags so that they inflate less aggressively.[19] While vehicle manufacturers could have depowered many or most of their vehicles' air bags without changes to Standard No. 208, the final rule expedited this process.

Under the March 1997 final rule, the sled test option was scheduled to terminate on September 1, 2001. The agency explained that there was no need to permanently reduce Standard No. 208's performance requirements to enable manufacturers to fully address the adverse effects of air bags. This is because there were various alternatives already allowed by the standard to address the problem that did not necessitate reducing the standard's performance requirements. While the agency specified a several year duration for the alternative sled test, it indicated that it would revisit the end date, to the extent appropriate, in its future rulemaking on advanced air bags. See 62 FR 12968; March 19, 1997.

The September 1, 2001 termination date for the sled test option has been superseded by the NHTSA Reauthorization Act of 1998. In a paragraph titled ''Coordination of Effective Dates,'' the Act provides that the unbelted sled test option ''shall remain in effect unless and until changed by [the final rule for advanced air bags].'' The Conference Report states that the current sled test certification option remains in effect ''unless and until phased out according to the schedule in the final rule.''

In light of the Act, the agency is proposing to phase out the sled test option as the requirements for advanced air bags are phased in. While NHTSA believes the sled test option has been an expedient and useful temporary measure to ensure that the vehicle manufacturers could quickly depower all of their air bags and to help ensure that some protection would continue to be provided, the agency does not consider sled testing to be an adequate long-term means of assessing the extent of occupant protection that a vehicle and its air bag will afford occupants in the real world. The sled test, first, excludes vehicle factors that can significantly affect the level of protection received in the real world and, second, is insufficiently representative of potentially fatal real world crashes.

Unlike a full scale vehicle crash test, a sled test does not, and cannot, measure the actual protection an occupant will receive in a crash. The current sled test measures limited performance attributes of the air bag, but cannot measure the performance provided by the vehicle structure in combination with the air bags or even the full air bag system by itself.

Among other shortcomings, the sled test does not evaluate the actual timing of air bag deployment. Deployment timing is a critical component of the safety afforded by an air bag. If the air bag deploys too late, the occupant may already have struck the interior of the vehicle before deployment begins.

Air bag timing is affected by parts of the air bag system which are not tested during a sled test, i.e., the crash sensors and computer crash algorithm. A barrier crash test evaluates the ability of sensors to detect a crash and the ability of an algorithm to predict, on the basis of initial sensing of the rate of increase in force levels, whether crash forces will reach levels high enough to warrant deployment. However, the sled test does not evaluate these critical factors. The ability of an algorithm to correctly, and quickly, predict serious crashes is critical. The signal for an air bag to deploy must come very early in a crash, when the crash forces are just beginning to be sensed by the air bag system. A delay in an air bag's deployment could mean that the air bag deploys too late to provide any protection. In a sled test, the air bag is artificially deployed at a predetermined time. The time of deployment in a sled test is artificial and may differ significantly from the time when the air bag would deploy during an actual crash involving the same vehicle.

Second, the current generic sled pulse does not replicate the actual crash pulse of a particular vehicle model, i.e., the specific manner in which the front of the vehicle deforms during a crash, thereby absorbing energy. The actual crash pulse of a vehicle is a critical factor in occupant protection. A crash pulse affects the timing of air bag deployment and the ability of an air bag to cushion and protect an occupant. However, the current sled test does not use the crash pulse of the vehicle being tested. In many cases, the crash pulse used in the sled test is not even one approximately representative of the test vehicle. The sled test uses the crash pulse of a large passenger car for all vehicles, regardless of their type or size. This crash pulse is appropriate for large passenger cars, but not for light trucks and smaller cars since they typically have much ''stiffer'' crash pulses than that of the sled test. In the real world, deceleration of light trucks and smaller cars, and their occupants, occurs more quickly than is simulated by the sled test. Thus, the sled test results may overstate the level of occupant protection that would be provided by a vehicle and its air bag system in the real world. An air bag that can open in a timely fashion and provide adequate cushioning in a soft pulse crash may not be able to do so in a stiffer pulse crash. This is because an occupant of a crashing vehicle moves forward, relative to the vehicle, more quickly in stiffer pulse crash than in a softer pulse crash.

Third, a sled test does not measure the potential for harm from vehicle components that are pushed back into the occupant compartment during a crash. Examples of components that may intrude into the occupant compartment include the steering wheel, an A-pillar and the toe-board. Since a sled test does not involve any kind of crash or deformation of the vehicle, it implicitly assumes that such intrusion does not occur in crashes. Thus, the sled test may indicate that a vehicle provides good protection when, as a result of steering wheel or other intrusion in a real world, the vehicle will actually provide poor protection in a real world crash.

Fourth, the sled test does not measure how a vehicle performs in angled crashes. It only tests vehicles in a perpendicular crash. In the real world, frontal crashes occur at varying angles, resulting in occupants moving toward the steering wheel and instrument panel in a variety of trajectories. The specification of angled tests in conjunction with the barrier test requirement ensures that a vehicle is tested under these real world conditions.

As noted below in the appendix to this preamble, NHTSA received several petitions for reconsideration concerning the sled test's sunset date (subsequently superseded by the NHTSA Reauthorization Act of 1998). The

[19] The agency's initial steps regarding technological solutions focused on depowering primarily because the lead time needed for depowering was significantly shorter than the lead time for the technological solutions that are the subject of this proposal.

agency notes that its proposal to phase the option out as the requirements for advanced air bags are phased in will provide additional time for the vehicle manufacturers to redesign their air bags to avoid causing harm and to provide improved protection for all occupants, belted and unbelted. In the appendix, the agency provides additional reasons supporting its proposal for terminating the sled test option, including a discussion of the importance for safety of maintaining effective unbelted frontal crash test requirements.

NHTSA is requesting comments on whether it should develop potential alternative unbelted crash test requirements. The auto industry and other parties have raised a number of objections to the existing unbelted barrier test requirements. NHTSA is willing to consider alternatives and to that end is placing a technical paper on this subject in the docket. Among other things, the paper compares the existing rigid barrier test to tests using a stationary deformable barrier and a movable deformable barrier.

With respect to the current barrier test requirements, and as discussed later in this notice in a section titled ''Injury Criteria,'' the agency is proposing to upgrade the standard's chest injury criteria and to add neck injury criteria. NHTSA notes that, as part of developing this proposal for advanced air bags, it considered the latest available information concerning injury criteria for both the existing 50th percentile adult male dummy and for each of the proposed new dummies. The agency is placing in the public docket a technical paper which explains the basis for each of the proposed injury criteria and the proposed performance limits.

NHTSA is also proposing to include, for all crash tests specified by Standard No. 208, certain vehicle integrity requirements. These requirements would specify that vehicle doors may not open during the crash test. For many years the agency has monitored whether doors open during 30 mph frontal barrier crash tests. In the agency's experience, doors remain closed in these crash tests. Since vehicles already can and do comply with this requirement, this proposal would establish this norm as a minimum level of safety. This requirement would support the agency goal of mitigating the fatalities and serious injuries attributable to complete and partial ejections.

This proposal would also specify that, after crash testing, vehicles having a roof of rigid construction (i.e., vehicles other than convertibles), must meet the following requirements. It must be possible, without the use of tools, to open at least one door, if there is one, per each row of seats. Further, where there is no such door, it must be possible to move the seats or tilt their backrests as necessary to allow the evacuation of all the occupants. This post crash door opening check has always been a demonstration part of the agency's compliance test procedure. The purpose is to demonstrate the potential for entrapment. After each test, the technicians approach the vehicle and try to open the vehicle doors. In the majority of these full frontal crash tests conducted by the agency, the technicians are able to open the vehicle doors without the use of tools. This process is recorded on the test films. The agency is proposing to add this door opening requirement to the regulation. NHTSA does not have any information indicating that there would anything other than a minimal cost impact associated with this proposed requirement, but requests comments on this issue.

*b. Safety of small teenagers and small adults.* Another part of the agency's proposal that is intended to enhance the benefits of air bags is to require vehicles to meet performance requirements for 5th percentile adult female dummies in the same tests long specified for 50th percentile adult male dummies.

Accordingly, the agency is proposing to require vehicles to meet specified injury criteria, including criteria for the head, neck, chest, and femurs, measured on 5th percentile adult female test dummies during a rigid barrier crash test at any speed up to 48 km/h (30 mph) and at the same range of angles applicable to the tests using 50th percentile male dummies. Under the proposal, vehicles must meet the criteria both with the dummies belted and unbelted.

Certain of the proposed injury criteria differ from those specified or proposed for 50th percentile adult male dummies to reflect the different injury risks faced by 5th percentile adult females. Dummy seating positions are also adjusted to reflect 5th percentile adult females. The agency is proposing that tests be conducted with the dummies seated in a full forward position. While many 5th percentile adult females can sit further back, the proposed test will ensure that protection is provided in a more extreme position, but one where air bags can still provide protection.

NHTSA is proposing to specify the use of the Hybrid III 5th percentile adult female dummy. The Society of Automotive Engineers has guided the development of this dummy, and that work is nearly complete. Therefore, the motor vehicle industry is familiar with this dummy. NHTSA has not, however, yet proposed to add this dummy to Part 572, the agency's regulation containing specifications for the various dummies it specifies in the Federal motor vehicle safety standards. The agency expects to propose adding the Hybrid III 5th percentile adult female dummy to Part 572 later this year.[19a]

NHTSA is also proposing one additional barrier test requirement using 5th percentile adult female dummies, an up to 40 km/h (25 mph) offset deformable barrier test requirement, using restrained dummies.

Research conducted by Transport Canada has shown that one of the causes of adverse effects of air bags is late deployment of some air bags in crashes with a ''soft crash pulse.'' In order to reproduce the softer, longer duration crash pulse, it selected the 40 percent offset barrier. It conducted crash tests into the barrier at 8 km/h (5 mph) increments up to 40 km/h (25 mph). These tests were conducted with a 5th percentile adult female belted dummy in a full-forward position, to simulate short stature drivers and the high belt use pattern in Canada. It found that at 40 km/h (25 mph), all the air bag systems of the vehicles tested would deploy. It also found that even for a belted driver, the deployment of the air bag frequently was so late that the test dummy would be right on the steering wheel, a ''worst case'' condition. The test procedure was shown to be a good test for the head, neck and chest loading on the dummy by the air bag.

NHTSA notes that the timing of air bag deployment is determined by a vehicle's crash sensing system, including both the crash sensing hardware and associated computer algorithm, i.e., the software. The decision to deploy an air bag is necessarily predictive, that is, the decision that a crash will be severe enough to warrant air bag deployment must be made very early in the crash if the air bag is to deploy in time to provide protection. The work done by Transport Canada, as well as other research, has indicated that the crash sensing systems of some vehicles need to be improved to better evaluate some crash pulses.

The agency is proposing a 40 km/h (25 mph) offset deformable barrier crash test requirement to help ensure that vehicle manufacturers upgrade their crash sensing and software systems, as necessary, to better address soft crash pulses. The proposed test is essentially

[19a] The proposed rule to add Hybrid III 5th percentile adult female dummy to Part 572 published in the **Federal Register** September 3, 1998.

the one that Transport Canada has been conducting for purposes of research. Restrained 5th percentile adult female dummies would be positioned in the same full forward position being proposed for the rigid barrier test discussed above, and the same injury criteria limits would apply. Since this is a relatively low energy test, it should be very easy to meet the injury criteria limits so long as the air bag deploys early in the crash event before the dummy moves very far forward.

Based on the testing conducted by Transport Canada, the problem of late deployments appears to be a problem with only some vehicles, at least in the environment measured in this particular crash test. The agency expects that the problem can be solved using a number of readily available approaches. These include improving computer algorithms, and adding crash sensors, e.g., using extra sensors mounted in the crush zone of the vehicle to provide additional, and earlier, information to use in the decision making algorithm. A longer term means of ensuring that air bags deploy early in a crash would be to use anticipatory crash sensors.

The agency is also proposing specifications for the deformable barrier to be used in this test. The specifications for this barrier would be included in Part 587.

2. Tests for Requirements To Minimize the Risk to Infants, Children and Other Occupants From Injuries and Deaths Caused by Air Bags

The one fact that is common to all persons who are at risk from air bags is that they are extremely close to the air bag at time of deployment. Behavioral changes, such as ensuring that children ride in the back seat and that all occupants are properly restrained, can sharply reduce the number of persons who are in such positions.

However, to minimize or eliminate air bag risks for the remaining persons who may be close to the air bag at time of deployment, one of two things must be done: either air bag deployment must be suppressed, or the air bag must be designed to deploy in such a manner that it does not cause a significant risk of injury to persons in such positions. All of the technologies to minimize or eliminate air bag risks follow one of these approaches.

As NHTSA developed test requirements to minimize or eliminate air bag risks, it needed to account for the fact that the persons who are potentially at risk vary from infants to adults, and have different potentials for injury. The agency therefore found it necessary to develop requirements using a variety of test dummy sizes. Moreover, since the agency wished to avoid requirements that are unnecessarily design-restrictive, it was necessary to develop a variety of manufacturer options that account for the kinds of effective technological solutions that the agency knows are under development.

Each of the test requirements being proposed by the agency is discussed below.

*a. Safety of infants.* Infants in rear facing child seats are at significant risk from deploying air bags, since the rear facing orientation of the child seat places their heads extremely close to the air bag cover. This is why NHTSA emphasizes that rear facing infant seats must never be placed in the front seat unless the air bag is turned off.

In order to address the risks air bags pose to infants in rear facing child seats, NHTSA is proposing two alternative test requirements, the selection of which would be at the option of the manufacturer. The two manufacturer options are: (1) test requirements for an automatic air bag suppression feature or (2) test requirements for low-risk deployment involving deployment of the air bag in the presence of a 12-month old Crash Restraints Air Bag Interaction (CRABI) dummy in a rear facing child restraint.

If the automatic suppression feature option were selected, the air bag would need to be suppressed during several static tests using, in the right front passenger seat, a 12 month old child dummy in a rear facing infant seat, and also during rough road tests. The rear facing infant seat would be placed in a variety of different positions during the static tests. In order to ensure that the suppression feature does not inappropriately suppress the air bag for small statured adults, the air bag would need to be activated during several static tests using a 5th percentile adult female dummy in the right front passenger seat, and also during rough road tests using that dummy.

The agency is proposing rough road tests to address the possibility that some types of automatic suppression features, e.g., weight sensors, might be ''fooled'' by occupant movement associated with riding on rough roads. For example, depending on the design of the sensor, occupant movement such as bouncing might cause the weight sensor to read a higher weight or lower weight. The agency believes that such devices should be designed so they do not turn on the air bag in the presence of a small child who is bouncing as a result of riding on a rough road, and so that they do not turn off the air bag in the presence of a small-statured adult who is bouncing as a result of riding on a rough road.

If the automatic suppression feature option were selected, a manufacturer would be required to provide a telltale light on the instrument panel which is illuminated whenever the passenger air bag is deactivated and not illuminated whenever the passenger air bag is activated. This telltale would advise vehicle occupants of the operational status of the air bag. In addition, the agency would use the telltale to determine, during the tests discussed above, whether the air bag is appropriately activated or deactivated.

If the low risk deployment option were selected, a vehicle would be required to meet specified injury criteria when the passenger air bag is deployed in the presence of a 12 month old child dummy placed in a rear facing infant seat. The agency is proposing injury criteria appropriate for a 12 month old child. In the case of air bags with multiple inflation levels, the injury criteria would need to be met for all levels.

NHTSA notes that there are uncertainties associated with all of the injury criteria proposed by this notice, especially those for children. Because experimental test data are generally not available from children, it is necessary to estimate injury tolerances by other means, e.g., by applying scaling methods to adult data. Particularly because injury mechanisms may differ in some respects between adults and children, there are necessarily some uncertainties associated with injury criteria developed by these means.

NHTSA requests comments on how to take account of these uncertainties in this rulemaking. For example, the agency is proposing a HIC limit of 660 for the 12-month old CRABI dummy in a rear facing child restraint. However, there are uncertainties as to how much risk of injury is represented by this value. The agency requests commenters to address the appropriateness of the proposed value, and on whether the agency should permit a low risk deployment option or instead require suppression for infants in rear facing child restraints.

With respect to that part of the proposed low risk deployment option that would require injury criteria limits to be met for all levels of a multi-level air bag, NHTSA notes that a child in a rear facing infant seat would be extremely close to the passenger air bag in any crash, regardless of crash severity. Moreover, based on discussions with suppliers and vehicle manufacturers, the agency believes that the development of technologies which

suppress the passenger air bag in the presence of a rear facing infant seat is nearing completion. Thus, it appears reasonable to expect advanced air bag designs to essentially eliminate risk of serious injury or fatality resulting from air bag deployment to children in rear facing infant seats. Of course, even with advanced air bags, children in rear facing infant seats, like other children, will be safer in the back seat.

Under both test procedures, manufacturers would be required to assure compliance in tests using any child restraint capable of being used in the rear facing position which was manufactured for sale in the United States between two years and ten years prior to the date the first vehicle of the model year carline of which the vehicle is a part was first offered for sale to a consumer. This would ensure that vehicle manufacturers take account of the variety of different rear facing child restraints in use as they design their systems. The restraints used for compliance testing could be unused or used; however, if used, there could not be any visible damage prior to the test. The agency requests comments on whether there are alternative means of achieving this result, e.g., specifying use of several representative devices.

NHTSA is proposing to specify use of the 12 month old CRABI dummy. The motor vehicle industry is familiar with this dummy, and the agency expects to propose adding it to Part 572 later this year.

*b. Safety of 3-year-old children.* Young children are at special risk from air bags because, when unbelted, they are easily propelled close to the air bag as a result of pre-crash braking. NHTSA strongly recommends that young children ride in the back seat, which is a much safer location whether or not a vehicle has air bags.

In order to address the risks air bags pose to young children who do ride in the front seat, NHTSA is proposing requirements using both 3-year old and 6-year old child dummies. While there are both similarities and overlap between the requirements using the different dummies, the agency will discuss them separately (and cover them separately in the proposed regulatory text) because a manufacturer might choose to select different compliance options for the two dummies.

As to 3-year-old child dummies, the agency is proposing four alternative test requirements, the selection of which would be at the option of the manufacturer. The four manufacturer options are: (1) test requirements for an air bag suppression feature that suppresses the air bag when a child is present, i.e., a weight or size sensor, (2) test requirements for an air bag suppression feature that suppresses the air bag when an occupant is out of position, (3) test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 3-year old child dummies, and (4) full scale dynamic out-of-position test requirements, which include pre-impact braking as part of the test procedure.

NHTSA is proposing to specify use of the Hybrid III 3-year-old child dummy. The motor vehicle industry is familiar with this dummy, and the agency expects to propose adding it to Part 572 later this year.

*Requirements for an air bag suppression feature (weight or size sensor) that suppresses the air bag when a child is present.* These requirements would mirror those being proposed with respect to a suppression feature for infants in rear facing child seats. If this option were selected, the air bag would need to be deactivated during several static tests using, in the right front passenger seat, a 3-year old child dummy, and also during rough road tests.

The child dummy would be placed in a variety of different positions during the static tests. Because the effectiveness of such a feature depends on the air bag being suppressed regardless of how a child may be positioned, and given the ease of conducting such tests, the agency is specifying a relatively large number of such positions. Some of the positions specify placing the dummy in a forward-facing child seat or booster seat.

In order to ensure that the suppression feature does not inappropriately suppress the air bag for small statured adults, the air bag would need to be activated during several static tests using a 5th percentile adult female dummy in the right front passenger seat, and also during rough road tests using that dummy. A manufacturer would also be required to provide a telltale light on the instrument panel which is illuminated whenever the passenger air bag is deactivated and not illuminated whenever the passenger air bag is activated.

*Test requirements for an air bag suppression feature that suppresses the air bag when a child is out-of position.* The agency believes that a suppression feature that suppresses the air bag when an occupant is out-of-position would need to be tested very differently than one which suppresses the air bag whenever a child is present. While various static and rough road tests can be used to determine whether the latter type of suppression device is effective, they would be of limited utility in testing a feature that suppresses the air bag when an occupant is out of position. This is because one of the key criteria in determining whether the latter type of suppression feature is effective is whether it works quickly enough in a situation where an occupant is propelled out of position as a result of pre-crash braking (or other pre-crash maneuvers) before a crash. The agency has accordingly developed separate test requirements for such devices.

If this option is selected by the vehicle manufacturer, the manufacturer would be required to provide a telltale indicating whether the air bag was activated or deactivated. Operation of the suppression feature would be tested through the use of a moving test device which would be guided toward the area in the vehicle where the air bag is located.

This test device would begin its course of travel in a forward direction toward a target area inside the vehicle. This target area, the air bag suppression zone, consists of a portion of a circle centered on the geometric center of the vehicle's air bag cover. The function of the air bag suppression system would be tested through the use of a headform propelled toward the air bag suppression zone at any speed up to 11 km/h (7 mph)—equivalent to a typical speed that the head of an occupant attains in pre-crash braking. When the test fixture enters the area near the air bag—the air bag suppression zone—where injuries are likely to occur if the air bag deploys, the telltale is monitored to determine if the suppression feature has disabled the air bag.

Apparatus that could be used to conduct this test would include a pneumatically operated ram whose stroke is sufficient to propel a 165 mm (6.5 inch) headform from a point of origin to a point forward of the automatic suppression plane of the test vehicle. Once activated, the pneumatic ram will propel the headform toward the air bag at up to 11 km/h (7 mph). The test headform consists simply of a 165mm (6.5 inch) outside diameter hemispherical shell. This headform is not instrumented nor is it intended to impact with the interior of the vehicle. Therefore, the agency is not specifying that it have a particular mass in an effort to provide maximum flexibility in configuring a test apparatus.

The automatic suppression plane of the vehicle, the point at which the air bag suppression feature must be activated when the plane is crossed by the headform, is located at that point rearward of the air bag and forwardmost

of the center of gravity of the head of a seated occupant which the manufacturer determines to be that point where, if the air bag is deployed, a 3-year-old child dummy would meet specified injury criteria.

NHTSA notes that the test procedure it is proposing for air bag suppression features that suppress the air bag when an occupant is out-of-position is similar to one developed by GM. The agency is placing a copy of the GM procedure in the docket.

The agency requests comments as to whether the proposed test procedure would accommodate air bag suppression systems under development. In particular, the agency requests comments as to whether these suppression systems would ''recognize'' the test device. Additional questions concerning this proposed test procedure are included in a section titled ''Questions'' later in this notice.

*Static tests involving deployment of the air bag in the presence of out-of-position 3-year old child dummies.* If the low risk deployment option were selected, a vehicle would be required to meet specified injury criteria when the passenger air bag is deployed in the presence of out-of-position 3-year-old child dummies. Because this test is relatively difficult to run (it requires deployment of an air bag), the agency is proposing that it be conducted at two positions which tend to be ''worst case'' positions in terms of injury risk. The agency is also proposing more detailed positioning procedures for these two tests than for many of those proposed for the static suppression tests, since injury measures may vary considerably with position. The agency is proposing injury criteria appropriate for a 3-year-old child.

In the case of air bags with multiple inflation levels, the injury criteria would need to be met only for the levels that would be deployed in lower severity crashes, e.g., crashes of 32 km/h (20 mph) or below. The agency notes that while an infant in a rear facing child seat would always be extremely close to the passenger air bag, this is not true for older children. An older child would most likely be extremely close to the air bag in lower severity crashes, following pre-crash braking. Of the 46 older children NHTSA has confirmed as having been killed by a passenger air bag, 38, or 83 percent, were in crashes with a delta V of 24 km/h (15 mph) or below, and all were in crashes with a delta V of 32 km/h (20 mph) or below.

NHTSA requests comments concerning the threshold below which air bag deployment levels should be required to meet injury criteria and above which the injury criteria would not apply. The agency also requests comments concerning test procedures.

*Full scale dynamic out-of-position test requirements, which include pre-impact braking as part of the test procedure.* Under this option, a vehicle would be required to meet injury criteria in a rigid barrier crash test that included pre-impact braking as part of the test procedure, using an unrestrained 3-year-old child dummy.

Pre-crash braking would be simulated by a vehicle, initially accelerated to the predetermined pretest speed, that is retarded by application of a suitable pre-crash deceleration prior to contact with the rigid barrier. The agency believes that a 24 km/h (15 mph) impact speed with the rigid barrier would generate the crash pulse necessary to evaluate occupant crash protection to the out-of-position occupant. Further details on this alternative test procedure are set forth in the proposed regulatory text (see proposed S29 and S30 for Standard No. 208).

The agency is requesting comments on what impact speed should be specified, as well as on other aspects of the test procedure for this requirement, including dummy seating procedures. Depending on the comments, the agency may modify the test speeds, dummy seating procedures, or other aspects of the test procedure for the final rule.

*c. Safety of 6-year-old children.* These test requirements would include the same basic tests and options as specified for 3-year old child dummies, except that 6-year-old child dummies would be used in place of 3-year old child dummies. The agency believes it is necessary to specify requirements for 6-year-old child dummies as well as 3-year-old child dummies because a device that worked for one might not work for the other. For example, an automatic suppression feature that suppressed air bag deployment in the presence of a 3-year-old child dummy, based on information about size and/or weight, might not suppress air bag deployment in the presence of the larger, heavier 6-year-old child dummy.

The agency notes that, with respect to requirements for an air bag suppression feature (weight or size sensor) that suppresses the air bag when a child is present, some of the positions specified for the 3-year-old child dummy would not apply to the 6-year-old child dummy. This is because the 6-year-old child dummy is too large to be placed in those positions.

NHTSA is proposing to specify use of the Hybrid III 6-year-old child dummy. The Society of Automotive Engineers has guided the development of this dummy, and recently completed that work. Therefore, the motor vehicle industry is familiar with this dummy. The agency published an NPRM in the **Federal Register** (63 FR 35171) to add the Hybrid III 6-year-old child dummy to Part 572 on June 29, 1998.

*d. Safety of small teenage and adult drivers.* Out-of-position drivers are at risk from air bags if they are extremely close to the air bag at time of deployment. While any driver could potentially become out of position, small statured drivers are more likely to become out of position because they sit closer to the steering wheel than larger drivers.

In order to address the risks air bags pose to out-of-position drivers, NHTSA is proposing requirements using 5th percentile adult female dummies. The agency is proposing three alternative test requirements, the selection of which would be at the option of the manufacturer.

The manufacturer options are similar to those using 3-year-old and 6-year-old child dummies, with one significant exception. Since air bags provide safety benefits to small statured female drivers, it is obviously not appropriate to permit manufacturers to suppress air bag deployment under all conditions in the presence of such occupants. Therefore, this type of suppression feature would not be permitted for 5th percentile adult female dummies.

The three manufacturer options being proposed by the agency are: (1) test requirements for an air bag suppression feature that suppresses the driver air bag when the driver is out of position, (2) test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 5th percentile adult female dummies, and (3) full scale dynamic out-of-position test requirements, which include pre-impact braking as part of the test procedure.

Again, the manufacturer options which the agency is proposing largely mirror the similar ones being proposed for 3-year-old and 6-year old child dummies. The test procedures are adjusted to reflect the driver, rather than the right front passenger position, and the different dummy. The proposed injury criteria are the same as being proposed for other tests using the 5th percentile adult female dummy.

The agency also notes that the option specifying test requirements for an air bag suppression feature that suppresses the driver air bag when an occupant is out of position would include both static tests and tests using a moving test device. The static tests are needed to,

among other things, ensure that the driver air bag is not inappropriately deactivated because the driver's arms are near the air bag. Further details on this alternative test procedure are set forth in the proposed regulatory text (see proposed S25.2, S27 and S28 for Standard No. 208).

The agency also notes that the proposed full scale dynamic out-of-position test requirements, which include pre-impact braking as part of the test procedure, represent a surrogate for a variety of crash situations where the driver might be essentially against the steering wheel, in addition to directly addressing situations involving pre-crash braking. These other situations include ones where small-statured persons drive in a position where they are extremely close to the air bag all of the time.

*C. Injury Criteria*

NHTSA is proposing injury criteria and performance limits that it believes are appropriate for each size dummy. The agency is placing in the public docket a technical paper which explains the basis for each of the proposed injury criteria, and for the proposed performance limits. The title of the paper is ''Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems.''

Standard No. 208 currently specifies five injury criteria for the Hybrid III 50th percentile adult male dummy in barrier crash tests: (1) dummy containment—all portions of the dummy must be contained in the vehicle passenger compartment throughout the test, (2) HIC (Head Injury Criterion) must not exceed 1,000, (3) chest acceleration must not exceed 60 g's, (4) chest deflection must not exceed 76 mm (3 inches), and (5) upper leg forces must not exceed 2250 pounds.

Under today's proposal, NHTSA would generally apply these and certain additional injury criteria to all of the dummies covered by the proposal. However, the criteria would be adjusted to maintain consistency with respect to the injury risks faced by different size occupants. Also, with respect to some types of injuries, the agency is considering alternative injury criteria.

For chest injury, NHTSA is considering two alternatives. Under the first, or primary, alternative, the agency would add a new criterion, Combined Thoracic Index (CTI), which was recently developed by the agency. New analyses of cadaver test data using a variety of restraint system combinations indicate that thoracic injury prediction can be improved by considering a linear combination of chest deflection and chest acceleration rather than solely by considering the criteria independently. CTI links the combined effect of both parameters with the risk of injury.

In proposing to add CTI, the agency has considered whether to adjust the existing limits on chest deflection and/or chest acceleration. In the absence of the existing injury criteria, the proposed CTI limit (CTI = 1) would permit (for the Hybrid III 50th percentile adult male dummy) chest deflection to exceed 76 mm (3 inches) when acceleration is very low, and acceleration to exceed 60 g's when chest deflection is very low.

NHTSA notes that, in the case of chest deflection, the current 76 mm (3 inch) limit is very close to the limit capable of being measured by the Hybrid III 50th percentile adult male dummy. Therefore, it does not appear to be possible to adjust this parameter in a meaningful way. In the case of chest acceleration, the agency notes that it does not have any cadaver data concerning injury risk associated with very low deflection and chest acceleration above 60 g's. The agency requests comments on this issue. NHTSA is especially interested in data and/or analyses concerning the risk of injury associated with low deflection and high acceleration.

As the second alternative for chest injury, the agency would simply continue to maintain separate limits on chest acceleration and chest deflection.

NHTSA is also proposing to add neck injury criteria. The agency notes that it added neck injury criteria as part of the temporary sled test alternative, although the standard does not otherwise specify neck injury criteria. The neck injury criteria for the sled test alternative include separate limits on flexion, extension, tension, compression and shear.

NHTSA has recently developed an improved neck injury criterion, called Nij. The agency believes that a disadvantage associated with specifying separate limits for flexion, extension, tension, compression, and shear is that it does not account for the superposition of loads and moments, and the additive effects on injury risk. The agency developed Nij to take account of these effects.

NHTSA is considering two alternatives with respect to neck injury criteria. Under the first, or primary alternative, the agency would add Nij to Standard No. 208. In terms of performance limits, the agency is requesting comments on Nij=1.4 and on Nij=1. As discussed in the technical paper concerning injury criteria, Nij=1 reflects certain critical values developed using biomechanical data. However, based on concerns about practicability, particularly with respect to tests specifying use of the 5th percentile adult female dummy, as well as concerns about correlations between biomechanical data and real-world crash data, the agency believes that Nij=1.4 might be a more appropriate performance limit. NHTSA requests comments on this issue.

As an alternative to Nij, NHTSA is also requesting comments on establishing separate limits on flexion, extension, tension, compression and shear, i.e., the approach adopted for the sled test alternative. The proposed regulatory text includes this second alternative as well as Nij.

As indicated earlier in this section, NHTSA is generally proposing to apply the same injury criteria to all of the dummies covered by today's proposal, adjusted to maintain consistency with respect to the injury risks faced by different size occupants. There are, however, some exceptions to this. The agency is not proposing to apply the dummy containment injury criterion to the 12 month old CRABI dummy since that criterion does not appear to be relevant to the low risk deployment test using that dummy. The agency is not proposing chest deflection or CTI requirements for the 12 month old CRABI dummy because that dummy does not measure chest deflection. (As indicated above, chest deflection is needed to calculate CTI.)

The agency requests comments on the proposed injury criteria, on how they are calculated, and on the proposed performance limits. To help facilitate focused comments, the agency is including specific values for each performance limit in the proposed regulatory text. However, NHTSA is considering a range of limits above and below each specified value. Depending on the public comments, the agency may adopt for the final rule values higher or lower than the ones included in the proposed regulatory text. The agency requests commenters to address what values should be selected for the final rule, their rationale for their recommendation, and the implications of adopting lower or higher values than those specified in the proposed regulatory text.

*D. Dummy Recognition*

The agency has explained many times that, in developing crash test dummies for regulatory and research purposes, it seeks to ensure insofar as possible that the measurements obtained on the dummy for measuring injury risk are the same as would be obtained on a human

being. In other words, the dummy is used as a surrogate for determining how a human being would fare in a particular crash situation.

As the agency proposes to specify the use of dummies and an out-of-position occupant simulator to test suppression devices, it is similarly necessary to ensure that the test results using these devices will be as close as possible to those that would occur when a human being is present. NHTSA notes, however, that test dummy compatibility with air bag occupant presence and range sensors is not possible in all cases using the currently available dummies. Some technologies, e.g., ultrasonic and active infrared, can be used to recognize human beings but may not recognize current dummies or the out-of-position occupant simulator.

NHTSA notes that it is monitoring research, funded by General Motors, by the Johns Hopkins University Applied Physics Laboratory that specifically investigates and addresses this subject. The project objectives compare the characteristic output signals generated by both human subjects and test dummies, in response to current and projected air bag sensors of the following general types: ultrasonic/acoustic, active infrared, passive infrared, capacitive, and electric field. However, this is a longer-range research project, and is not expected to be completed by the time of the final rule.

Specialized dummy treatments may be required to enable the test dummy and out-of-position occupant simulator to properly interface with the full range of projected sensor technologies. However, it is possible that relatively straightforward surface treatments or clothing selection may suffice for compatibility with ultrasonic and active infrared sensor types.

The agency requests comments on this issue.

*E. Lead Time and Proposed Effective Date*

NHTSA has sought information by a variety of means to help it determine when the vehicle manufacturers can provide advanced air bag systems to consumers. This is known as lead time. Vehicle lead time is a complex issue, especially when it involves technology and designs that are still under development.

In three different formal actions, the agency has gathered information concerning lead time. First, the agency held a public meeting on advanced air bags on February 11 and 12, 1997, in Washington D.C. The proceedings of that meeting are included in Docket NHTSA–97–2814. Next, and as discussed earlier in this notice, JPL conducted, at NHTSA's request, a survey of the automotive industry and independent analysis concerning the readiness of the advanced air bag technologies. Finally, the agency contracted Management Engineering Associates (MEA), an engineering management consulting company, to conduct a feasibility study on advanced air bag technologies.

These three sources of information indicated the same basic time schedules: currently available technological solutions such as seat sensors, seat belt buckle sensors, dual-stage inflators and advanced air bag fold patterns, can be and will be in production between model year 1999 and model year 2002. More sophisticated systems such as dynamic occupant position sensing systems and pre-crash sensors, will be available after September 1, 2001.

NHTSA has also held numerous meetings with the vehicle manufacturers and suppliers during the past two years. The companies have shared confidential information with the agency about their ongoing development efforts and future product plans.

The agency notes that lead time for technology still under development typically depends on two things: initial development to demonstrate that a concept is feasible, and then further development to apply the technology to a specific vehicle design. These typically involve efforts both by suppliers and by vehicle manufacturers. In this field of technology, it appears that much of the innovative development is being borne by the component suppliers, based on performance specifications defined by the vehicle manufacturers. First the systems are designed, tested and produced in limited quantities by the component manufacturers. Next these systems are turned over to the vehicle manufacturers. The vehicle manufacturers then conduct prototype design verifications, conduct production level equipment verification and finally complete production and include the systems in their new vehicles. MEA estimates the vehicle manufacturers' cycle could take an average of 36 months.

The suppliers and vehicle manufacturers have, however, been working on various advanced technologies for several years. Thus, to a large degree, lead time is dependent on where the suppliers and vehicle manufacturers are currently in their development and implementation efforts. As discussed earlier in this notice, NHTSA believes that different suppliers and vehicle manufacturers are at different stages with respect to designing advanced air bags, and also face different constraints and challenges, e.g., different states-of-the-art of their current air bag systems, engineering resources, number of vehicles for which air bags need to be redesigned, etc. NHTSA believes that these differing situations can best be accommodated by phasing in requirements for advanced air bags.

Taking account of all available information, including but not limited to the wide variety of available technologies that can be used to improve air bags (and thereby meet the proposed requirements) and information concerning where the different suppliers and vehicle manufacturers are in developing and implementing available technologies, the agency is proposing to phase in the new requirements in accordance with the following implementation schedule:

25 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2002;

40 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2003;

70 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2004;

All vehicles manufactured on or after September 1, 2005.

The agency is proposing a separate alternative to address the special problems faced by limited line manufacturers in complying with phase-ins. The agency notes that a phase-in generally permits vehicle manufacturers flexibility with respect to which vehicles they choose to initially redesign to comply with new requirements. However, if a manufacturer produces a very limited number of lines, e.g., one or two, a phase-in would not provide such flexibility.

NHTSA is accordingly proposing to permit manufacturers which produce two or fewer carlines the option of omitting the first year of the phase-in if they achieve full compliance effective September 1, 2003. The agency is proposing to limit this alternative to manufacturers which produce two or fewer carlines in light of the statutory requirement concerning when the phase-in is to begin. Without such a limitation, it would technically be possible for the industry as a whole to delay introducing any advanced air bags for a year. However, the agency doubts

that any full-line vehicle manufacturers would want to take advantage of the alternative, given the need to achieve full compliance by September 1, 2003.

As with previous phase-ins, the agency is proposing to exclude vehicles manufactured in two or more stages and altered vehicles from the phase-in requirements. These vehicles would be subject to the advanced air bag requirements effective September 1, 2005. They would, of course, be subject to Standard No. 208's existing requirements before and throughout the phase-in.

Also as with previous phase-ins, NHTSA is proposing reporting requirements to accompany the phase-in. The agency is proposing to include the reporting requirements in 49 CFR Part 585, which currently specifies automatic restraint phase-in reporting requirements. Since the phase-ins currently addressed by Part 585 are complete, effective September 1, 1998, the agency is proposing to replace the existing language with regulatory text addressing the phase-in of Standard No. 208's requirements for advanced air bags.

NHTSA believes that the proposed phase-in addresses two potential concerns. First, the agency believes that it would not be possible for manufacturers which produce large numbers of models of passenger cars and lights trucks to simultaneously design and implement advanced air bags in all of their vehicles at once. All manufacturers have limited engineering resources, and the same resources are often used for different models. The proposed phase-in will address this concern.

Second, NHTSA wishes to see advanced air bags implemented expeditiously, but wants to encourage the vehicle manufacturers to adopt the best designs possible. The agency believes the proposed phase-in balances these competing concerns.

The new air bag designs having the potential to offer the greatest safety benefits, e.g. designs that would tailor inflation based on the widest variety of relevant information including dynamic occupant proximity, also have the longest lead times. If an effective date were too early, it might force manufacturers working on such advanced designs to drop those plans and adopt designs with shorter lead times. At the same time, the agency recognizes that relatively simple solutions, with shorter lead times, can be used to solve current problems with air bags. The agency therefore does not want endless quests for the ''perfect'' air bag to unnecessarily delay solving the current problems.

An issue which is closely related to lead time for advanced air bags is the time when amendments providing temporary reductions in Standard No. 208's performance requirements should expire. The amendment permitting manufacturers to provide manual on-off switches for air bags in vehicles without rear seats or with rear seats too small to accommodate a rear facing infant seat is scheduled to expire on September 1, 2000. The amendment providing a generic sled test alternative to Standard No. 208's unbelted barrier test requirements originally had an expiration date of September 1, 2001, although, as discussed earlier in this notice, this date has been superseded by the NHTSA Reauthorization Act of 1998.

The agency received petitions objecting to the expiration dates for these temporary amendments. In an appendix to this notice, NHTSA is denying the petition concerning on-off switches to the extent that it requests making the switch amendment permanent. However, the agency is granting it to the extent that it is proposing phase out the switch amendment as the upgraded requirements are phased in. The petitions concerning the sled test option were mooted by the NHTSA Reauthorization Act. As in the case of the switch amendment, the agency is proposing to phase out the sled test option as the new requirements are phased in.

During the proposed phase-in, the temporary amendments (sled test alternative and OEM manual on-off switches for certain vehicles) would not be available for vehicles certified to the upgraded requirements, but would be available for other vehicles under the same conditions as they are currently available. Thus, as manufacturers developed advanced air bags, they would need to ensure that vehicles equipped with these devices meet all of Standard No. 208's longstanding performance requirements as well as the new ones being proposed today.

*F. Selection of Options*

NHTSA notes that, where a safety standard provides manufacturers more than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test. Moreover, based on previous experience with enforcing standards that include compliance options, the agency is aware that a manufacturer confronted with an apparent noncompliance for the option it has selected (based on a compliance test) may respond by arguing that its vehicles comply with a different option for which the agency has not conducted a compliance test. This response creates obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities, e.g., the possible need to conduct multiple compliance tests (possibly involving full-scale vehicle crash tests) for first one compliance option, then another, to determine whether there is a noncompliance.

To address this problem, the agency is proposing to require that where manufacturer options are specified, the manufacturer must select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. This will mean that failure to comply with the selected option will constitute a noncompliance with the standard regardless of whether a vehicle complies with another option.

Similarly, for manufacturers which select the option for an automatic suppression feature that suppresses the air bag when an occupant is out of position, the agency is proposing to require that the manufacturer must select the passenger side automatic suppression plane and the driver side automatic suppression plane by the time it certifies the vehicle, and may not thereafter select different planes. This is to avoid situations where the agency conducts compliance tests using the automatic suppression planes selected by the manufacturer and is later told, after a test indicates an apparent noncompliance, that the vehicle may comply for different automatic suppression planes.

*G. Availability of Retrofit Manual On-Off Switches*

As discussed earlier in this notice, on November 11, 1997, NHTSA published in the **Federal Register** (62 FR 62406) a final rule exempting, under certain conditions, motor vehicle dealers and repair businesses from the ''make inoperative'' prohibition in 49 U.S.C. § 30122 by allowing them to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is approved by NHTSA. The final rule is set forth as Part 595, *Retrofit On-Off Switches for Air Bags.*

The purpose of the exemption is to preserve the benefits of air bags while reducing the risk of serious or fatal injury that current air bags pose to identifiable groups of people. In issuing that final rule, NHTSA explained that although vehicle manufacturers are beginning to replace current air bags

with new air bags having some advanced attributes, i.e., attributes that will automatically minimize or avoid the risks created by current air bags, an interim solution is needed now for those groups of people at risk from current air bags in existing vehicles.

Just as NHTSA is proposing to phase out the temporary amendments to Standard No. 208 as the upgraded requirements are phased in, the agency is also proposing to phase out the availability of this exemption. Under the proposal, retrofit on-off switches would not be available for vehicles which have been certified to the advanced air bag requirements being proposed in today's notice.

NHTSA requests comments, however, on whether retrofit on-off switches should continue to be available under eligibility criteria revised to be appropriately reflective of the capabilities of advanced air bag technology. The agency observes that if such switches were to be available at all, the criteria would need to be much narrower since the risks would be smaller than they are currently. For example, the passenger side air bag in a vehicle with a weight sensor would not deploy at all in the presence of young children. Therefore, there would no safety reason to permit a retrofit passenger side on-off switch because of a need for a young child to ride in the front seat. The agency requests any commenters who advocate any continued availability of retrofit on-off switches to discuss how the existing eligibility criteria should be tailored to the specific technologies that would be used in vehicles certified to the advanced air bag requirements being proposed in today's notice.

*H. Warning Labels*

As indicated in an earlier section of this notice, on November 27, 1996, the agency published in the **Federal Register** (61 FR 60206) a final rule which, among other things, amended Standard No. 208 to require improved labeling on new vehicles to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children. These warning label requirements did not apply to vehicles with passenger air bags meeting specified criteria. The agency is similarly proposing that vehicles certified to the advanced air bag requirements being proposed today would not be subject to those warning label requirements. The agency requests comments, however, concerning whether any of the existing labeling requirements should be retained for vehicles with advanced air bags and/or whether any other labeling requirements should be applied to these vehicles.

*I. Questions*

As discussed earlier in this notice, NHTSA has sought to develop requirements that are as performance-oriented as possible, and to include options for manufacturers that account for the kinds of technologies and designs that may be used. It is the agency's intent to permit the vehicle manufacturers to use any technology or design which can solve the problem of adverse effects of air bags to out-of-position occupants, so long as all of the standard's performance requirements can be met.

To aid the agency in obtaining useful comments, NHTSA is setting forth in this section a specific list of questions for commenters relating to a number of issues including, among other things: (1) whether the agency's overall proposal, and whether each of the proposed manufacturer options, would achieve an appropriate level of safety, and (2) whether additional manufacturer options or test procedures are needed to accommodate some technologies or designs. NHTSA notes that the vehicle manufacturers and air bag suppliers are in the best position to evaluate whether the proposed manufacturer options and test procedures are appropriate for the technologies and designs they have under development. Depending on the comments, the agency may issue a final rule providing some but not all of the proposed options, and/or provide additional manufacturer options or test procedures to accommodate some technologies or designs.

For easy reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses to each question for which they may have information or views. In addition, in order to facilitate tabulating the comments by issue, the agency encourages commenters to respond to the questions in sequence, and to identify the number of each question to which they are responding.

NHTSA requests that commenters provide as specific and documented a rationale as possible, including an analysis of safety consequences, for any positions that are taken. Commenters with a technical background are encouraged to provide scientific analysis of these matters.

The list of questions does not purport to be an all inclusive list of items or information which the public may have available and believe is valuable in assessing the issues. Commenters are encouraged to provide any other data that they believe are relevant.

1. *Overall safety.* Does the agency's overall proposal achieve an appropriate level of safety with respect to risks from air bags for out-of-position occupants?

a. Please address this question separately for the driver side and for the passenger side.

b. If a commenter believes that the proposal does not ensure an appropriate level of safety, please provide a detailed explanation of why. Please also describe in detail what additional or alternative requirements the agency should consider, and the kind of technologies, designs and lead time that would be needed to meet those requirements.

2. *Adequacy of each proposed manufacturer option.* Does each proposed manufacturer option ensure an appropriate level of safety with respect to the specific problem it addresses? How do the different options differ with respect to benefits and costs? If a commenter believes that a particular option should be changed or deleted for the final rule, please explain why. Also, please explain the consequences of changing or deleting the option, e.g., would greater lead time be needed to meet one of the remaining options?

3. *Accommodation of all effective designs.* Do the proposed manufacturer options accommodate all designs under development that would effectively address air bag-induced injuries and/or fatalities, and designs that are expected to be under development in the foreseeable future? More specifically, is there a need to either modify or add test procedures to the proposed options to accommodate particular technologies or designs, or to add additional options? If a commenter believes there is such a need, please provide a detailed explanation of why, both with respect to why the technology is not accommodated by the proposed options and why the technology will ensure an appropriate level of safety. Please also provide a detailed recommendation concerning what specific regulatory text the agency should adopt to accommodate the technology.

4. *Possible unintended consequences.* To what extent could the advanced technologies the manufacturers might adopt result in unintended adverse consequences? For example, could some occupants face higher risks than now? How should the agency consider that possibility in this rulemaking? Are there any additional or alternative requirements the agency should adopt to prevent such consequences?

5. *Likely manufacturer responses.* How would vehicle manufacturers likely respond to the proposed requirements, i.e., what technologies and design changes would they actually

adopt? (Vehicle manufacturers are asked to provide a specific response to this question, with respect to their future product plans.)

6. *Necessity of all proposed manufacturer options.* Are any of the proposed manufacturer options unnecessary because no manufacturer would ever select the option?

7. *Proposed test procedures—in general.* NHTSA notes that some of the proposed test procedures are new. The agency requests specific comments on each of the proposed test procedures, including whether any of them should be made more specific and whether any additional conditions should be specified.

8. *Proposed injury criteria.* As discussed earlier in this notice, NHTSA is placing a technical paper in the docket which discusses the proposed injury criteria. The agency requests comments on each of the proposed injury criteria, the proposed calculation methods, and the proposed performance limits. The agency also requests comments on alternatives to the proposed criteria. Among other things, NHTSA requests commenters to address what risk levels are acceptable, what factors should be considered in selecting performance limits for different test requirements, and whether the same limits should be established for all test requirements, e.g., out-of-position tests, low speed tests, high speed tests. The agency also requests commenters to address how it should take account of uncertainties relating to the injury criteria, especially with respect to children.

9. *Dummy recognition.* a. How should the agency address the suitability of test dummies and out-of-position occupant simulators (e.g., headforms) for testing technologies (e.g., weight sensors) for detecting the presence of occupants and technologies (e.g., infrared and ultra sound) for sensing the distance of occupants from an air bag? To what extent can the addition of simple surface treatments or clothing selection be used to solve this problem?

b. If full resolution of this or any other potential test procedure problems should necessitate the performance of longer range (multi-year) research, what interim approaches should the agency use for assessing performance? For example, one possible approach would be to permit vehicle manufacturers to specify the attributes of their suppression devices, e.g., the size of the suppression zone and to require out-of-position-type test requirements to be met for those conditions. If, for example, a manufacturer specified that the suppression zone for a vehicle's passenger-side air bag extended five inches from the centerpoint of the air bag cover, injury criteria performance limits would need to be met for infant and child dummies located anywhere outside that zone. Under such an interim approach, the introduction of effective suppression devices would not be delayed by potential problems related to completing the development of test procedures. While such an approach would not test the performance of the suppression device itself, vehicle manufacturers would have strong incentives, e.g., product liability considerations, to design the device so that it works properly under real world conditions. While the agency is hopeful that any potential test problems can be resolved in a timely manner before the final rule, it requests comments on adopting this type of interim approach, and on other potential interim approaches, should the need rise.

10. *Seating procedure for 5th percentile adult female dummy.* NHTSA notes that the seating procedure for the 5th percentile adult female dummy set forth in the proposed regulatory text is based on the equipment and procedures in SAE J826, ''Devices for Use in Defining and Measuring Vehicle Seating Accommodations.'' The seating procedure is similar to that specified in Standard No. 208 for the Hybrid III 50th percentile adult male dummy. However, the agency is proposing, with respect to the SAE J826 equipment, certain adjustments in the lengths of the lower leg and thigh (femur) segments to make it appropriate for the 5th percentile adult female dummy. The agency is also aware that the SAE Hybrid III 5th Percentile Dummy Seating Procedures Task Group is developing specialized seating equipment to locate the 5th percentile adult female dummy. This equipment was expected to become available by mid-summer 1998, and the agency will place specifications for the equipment in the docket. NHTSA recognizes that this new equipment might be used as an alternative to that specified in the proposed regulatory text. The agency seeks comments on this issue.

11. *Rough road tests.* Are the proposed requirements and test procedures for the rough road tests appropriate? The agency is especially interested in comments concerning proposed specifications for road surface, speed, and distance of travel.

12. *Telltales for automatic suppression.* For vehicles which have automatic suppression features, are there both pros and cons to requiring telltale lights on the instrument panel to advise vehicle occupants of the operational status of the air bag? Please address this question separately for the driver position and the passenger position, and for rear facing infant seats and older children. If the agency did not require a telltale light, what procedure should it use in testing for determining whether an air bag is activated or deactivated?

13. *Proposed automatic suppression test.* The agency observes that the proposed automatic suppression test is new and may require further refinement. NHTSA therefore requests comments on all aspects of the proposed test procedure, including, but not limited to, the following issues. Is the proposed 165mm (6.5 inch) outside diameter hemispheric headform an appropriate simulator of an out-of-position occupant for the purposes of assessing the performance of an air bag suppression device? What other characteristics should the headform possess if the proposed headform is not sufficient? Should the agency specify the surface and other material of the headform? Will the hemispheric headform be recognized as a vehicle occupant by each of the various suppression systems under development? If not, are there changes in the headform that would make it recognizable?

14. *Proposed dynamic out-of-position test.* NHTSA notes that the proposed dynamic out-of-position test is newly developed. The agency requests commenters to address the following issues.

(a) When the proposed dynamic out-of-position test procedure is conducted for various vehicles, what are the likely trajectories of the dummies? Does the procedure result in the dummy moving directly toward a ''worst-case'' position in terms of potential air bag risk for each vehicle? If not, should any changes be made in the test procedure, e.g., changing initial dummy position? Please address this question separately for the 3-year old child, 6-year old child, and 5th percentile adult female dummies.

(b) The proposed seating procedures for the dummies specify the use of low friction material between the dummies and the seat. The agency has proposed to specify the use of certain readily available fabrics that could be used for this purpose. Comments are requested on other means of achieving a low friction condition, such as specifying a coefficient of static or sliding friction and the conditions for which the coefficients would apply. Specific values of a friction factor are solicited, as appropriate.

(c) Should the proposed dynamic out-of-position test be run at different speeds or angles? NHTSA notes that if a 24 km/h (15 mph) impact were specified, it is conceivable that manufacturers might be able to certify to this requirement by raising their deployment thresholds to, or slightly above, that level. The agency requests comments on whether higher deployment thresholds alone could be used to meet this test, and, if so, the safety implications of this type of countermeasure.

(d) What are reasonable tolerances on final impact speed and deceleration in order to ensure that a test is repeatable? Should a specific methodology be adopted to ensure an appropriate degree of repeatability?

15. *Tests with child dummies.* (a) NHTSA is proposing that tests using infant dummies be conducted with any rear facing child restraint which was manufactured for sale in the United States between two years and ten years prior to the date the first vehicle of the model year carline of which the vehicle is a part was first offered for sale to a consumer. The agency is proposing the same approach, with respect to forward-facing child seats and booster seats, for tests using older child dummies. The agency requests comments on this approach. Is there an effective alternative means of ensuring that vehicle manufacturers take account of the variety of different child restraints in use as they design their systems?

(b) NHTSA is proposing to specify use of the 12-month-old CRABI dummy for tests using rear facing infant restraints. However, some rear facing infant restraints may only be certified for use with smaller infants, e.g., 9-month-olds. This raises the issue of whether the proposed dummy could be placed into these child restraints. The agency requests comments on how to address this issue.

(c) Some rear facing child seats are now produced for children older than 12 months. Should the agency specify additional test requirements to address this situation?

(d) Should the agency specify test requirements using car beds and, if so, what specific requirements?

16. *Older children.* Standard No. 208 currently defines advanced air bag to include, among other things, a passenger air bag that provides an automatic means to ensure that the air bag does not deploy when a child seat or child with a total mass of 30 kg (66 pounds) or less is present on the front outboard passenger seat. That definition was included because vehicles with such air bags are not required to have certain warning labels.[20] NHTSA notes that the part of the definition referring to a child with a total mass of 30 kg (66 pounds) or less was included to reflect the possible use of weight sensors. The 30 kg (66 pound) threshold was originally suggested by Mercedes-Benz and corresponds to the weight of a 50th percentile 10-year-old and a 95th percentile 7-year-old. The agency stated that the threshold was far enough below the weight of a 5th percentile adult female (approximately 46 kg (101 pounds)) to avoid inadvertently deactivating the air bag when a small adult is occupying the seat. In today's proposal, the agency is not proposing a threshold as such but is instead proposing tests using specified dummies. The heaviest child dummy that would be used in testing a weight sensor intended to suppress air bag deployment for children would be the Hybrid III 6-year-old child dummy, which has a weight of approximately 24 kg (51.8 pounds). No Hybrid III child dummies are available that correspond a 9-year-old or 10-year-old. A similar issue would exist with respect to a sensor intended to suppress air bag deployment based on size, i.e., the largest size child dummy tested would be the 6-year-old. The agency requests comments on the potential gap between the size/weight of the 6-year-old child dummy and the largest/heaviest child for which suppression might be appropriate (based on presence as opposed to being out-of-position) and how the agency should deal with this issue. For example, should the agency ballast the 6-year-old child dummy to a greater weight when testing weight sensors?

17. *Possible information for consumers.* NHTSA notes that, during the phase-in of new requirements for advanced air bags, consumers may be interested in knowing which vehicles are certified to the new requirements. The agency requests comments on whether a means should be provided so that consumers can easily determine whether a vehicle has been certified to these requirements and, if so, which option(s) were selected. NHTSA also requests comments on what means should be established for communicating such information to consumers, should the agency decide to do so, e.g., a required statement on the certification label. The agency notes that such a statement or other means could also be used to determine whether the vehicle is permitted to have a retrofit on-off switch under Part 595.

18. *Temperature.* NHTSA notes that it is asking several questions related to temperature and air bag performance in connection with its consideration of a petition for rulemaking submitted by Parents for Safer Air Bags. A discussion of the petition is included in an appendix to this notice.

Does temperature have a significant effect on air bag deployment performance? Is there a need to address this variable in Standard No. 208? If so, what specific performance requirements and test procedures should be considered? How are vehicle manufacturers and suppliers currently addressing this issue? The agency specifically requests data related to temperature effects on sled and vehicle crash testing.

19. *Possible requirements relating to turning off cruise controls upon air bag deployment.* NHTSA notes that cruise controls are turned off when a vehicle is braked. Many crashes, however, do not involve braking. The agency requests comments on a possible requirement to require cruise controls to be turned off upon air bag deployment.

20. *Possible requirements related to preventing air bag deployments during rescue operations following a crash.* As the agency has monitored the real world performance of air bag deployments, it has noted scattered reports of air bags deploying during rescue operations following a crash. This can result in injury to rescue personnel and also cause further injury to occupants. In NHTSA's Emergency Rescue Guidelines for Air Bag Equipped Vehicles,[21] the agency explains that deactivating the vehicle's electrical system prevents deployment of all electrically initiated air bags after a specific time period. The specific times for different vehicles are identified as part of the guidelines. The times vary significantly for different vehicles, ranging from 0 seconds to 10 and even 20 minutes.

The agency requests comments on possible requirements relating to preventing air bag deployments during rescue operations following crashes. Should the agency specify requirements concerning air bag deactivation times relative to deactivation of the vehicle's electrical system for electrically initiated air bags, or some other means of deactivation? Should the agency specify any other requirements for these and/or other kinds of air bags?

21. *Organization of Standard No. 208.* Do commenters have any specific recommendations concerning the

[20] See 61 FR 40784, 40791–92, August 6, 1996; 61 FR 60206, November 27, 1996.

[21] These guidelines are available on NHTSA's website at http://www.nhtsa.dot.gov/people/injury/ems/airbag/.

organization of the regulatory text for Standard No. 208, with respect to either or both the existing and the proposed text? The agency notes that one way of simplifying the standard would be to remove outdated text and to separate seat belt requirements from crash test requirements. NHTSA is especially interested in specific comments concerning how all of the crash test requirements, existing and proposed, could be organized in a simple manner.

22. *Possible development of alternative unbelted crash test requirements.* The vehicle manufacturers have raised various objections to the existing unbelted barrier test requirements. As discussed earlier in this notice, NHTSA is placing in the docket a technical paper which discusses the representativeness of those requirements with respect to real-world frontal crashes which have a potential to cause serious injury or fatality. NHTSA requests comments on that paper and on whether the agency should develop alternative unbelted crash test requirements. NHTSA requests commenters that advocate alternative unbelted crash test requirements to recommend specific alternative requirements and to address the following questions:

a. How do the recommended alternative requirements compare to the existing unbelted barrier test requirements (tests at any speed up to 48 km/h (30 mph), and at angles ranging from ±30 degrees oblique to perpendicular, into a rigid barrier) with respect to representing the range of frontal crashes which have a potential to cause serious injuries or fatalities? In answering this question, please consider the entire range of tests incorporated into the existing requirements and the recommended alternative requirements. Please specifically address representativeness with respect to (1) crash pulses, (2) crash severities, and (3) occupant positioning, and provide separate answers for crashes likely to cause fatalities and crashes likely to cause serious but not fatal injuries.

b. How do the recommended alternative requirements compare to the existing requirements with respect to repeatability, reproducibility, and objectivity?

c. To what extent can it be concluded that a countermeasure needed to meet the recommended alternative would ensure protection in frontal crashes not directly represented by the test, e.g., crashes with different pulses (harder or softer) or different severities (more severe or less severe)? Please quantify the amount of protection that would be ensured in other types of crashes, i.e., what the injury criteria measurements would be. Please answer this same question for the existing unbelted barrier test requirements.

d. Commenters are asked to specifically address why they believe the recommended alternative is superior to the current requirements. In providing this answer, commenters are asked to respond to the following questions:

1. If the recommended alternative is believed to be representative of crashes not directly represented by the current requirements, should it be added to Standard No. 208 rather than replace the existing requirements?

2. If a commenter believes that air bag designs needed to meet the existing unbelted barrier test requirements provide less-than-optimum protection in other types of crashes, please provide specific examples and explain why advanced technologies permitting tailored air bag response cannot be used to meet the existing performance requirements and provide appropriate protection in the examples at issue.

23. *Possibility of more children sitting in the front seat with advanced air bags.* As vehicle manufacturers install advanced air bags which minimize the risks air bags pose to children, the public may believe that the front seat is now safe for children, and more children would then sit in the front seat. However, the back seat has always been safer for children, even before there were air bags. NHTSA conducted a study of children who died in crashes in the front and back seats of vehicles, very few of which had passenger air bags. The study concluded that placing children in the back reduces the risk of death in a crash by 27 percent, whether or not a child is restrained.[22] NHTSA requests comments on what steps it and others can take to address the possible problem of more children riding in the front seat with advanced air bags.

## VII. Costs and Benefits

NHTSA is placing in the docket a Preliminary Economic Assessment (PEA) which analyzes the potential impact of the proposed new performance requirements and associated test procedures for advanced air bag systems. The Executive Summary of that document summarizes its conclusions as follows.

*Compliance scenarios.* This analysis identified and analyzed three groups of possible compliance scenarios that combine the mandatory and optional test procedures for each risk group. Each scenario includes the three mandatory 5th percentile female dummy tests, as well as the existing 50th percentile male dummy frontal barrier tests with upgraded injury criteria. One scenario (Option #1) assumes that out-of-position children and driver requirements will be met with the out-of-position suppression test, while infant requirements will be met with the infant presence suppression test. A second scenario (Option #2) assumes that requirements for all three groups will be met with the low risk deployment test. A third scenario (Option #3) assumes that child and adult requirements are met with the dynamic out-of-position test, and the infant requirements are met with the infant presence suppression test.

*Methodology.* The analysis estimates the benefits and costs of incremental improvements in safety compared to two different baselines. The first is a baseline of pre-MY 1998 air bag vehicles. Tables E–1 and E–2 provide cost and benefits estimates assuming a pre-MY 1998 air bag vehicle baseline. The second baseline assumes that all vehicles are designed to the sled test and provide benefits in full frontal impacts (12 o'clock strikes), but no benefit in partial frontal impacts (10, 11, 1, and 2 o'clock strikes). Table E–3 provides costs and benefits assuming a baseline of vehicles designed to the sled test. Neither of these baselines reflect potential shifts in occupant demographics, driver/passenger behavior, belt use, child restraint use, or the percent of children sitting in the front right seat due to education efforts and labeling. The agency requests comments on alternative baselines, including ways to predict future changes in occupant behavior, and including the likely evolution of air bag designs in the absence of this rulemaking.

While primary and alternative injury criteria performance limits are proposed and analyzed in this assessment, only the primary proposal results are discussed in this executive summary.

*Safety impacts.* Potential safety impacts of this proposal are dependent on the specific method chosen by manufacturers to meet the proposed test requirements. Some countermeasures reach a larger target population and potentially provide more benefits than others, although each might adequately meet test requirements. For example, a weight sensor could suppress the air bag up to its design limit for weight, but would not suppress the air bag for heavier occupants. Thus, in Table E–1, it is assumed that a 54 pound weight

[22] For a further discussion of this subject, see NHTSA's final rule concerning on-off switches, 62 FR 62406, 62420 (footnote 23), November 21, 1997.

sensor would be utilized to meet the ''Suppression When Presence'' test with the 6 year-old dummy. While it could potentially save 102 children ages 1 to 12, it could not save all 129 children in that age category, because it is estimated that the remaining children will weigh more than 54 pounds. Multi-stage inflation systems are an example of a system that could potentially impact a wider range of injuries than do proximity sensors.

The ranges of potential safety impacts by test type are shown in Table E–1 and total fatality benefits for the three examined compliance options are shown in Table E–2. The estimated range of fatalities prevented from the three scenarios is 226–239 annually. Of these, 25 are in high speed tests and the remainder are in tests to minimize risks to out-of-position occupants. These estimated lives saved can also be broken into 167–175 passengers and 59–64 drivers. Injuries were not examined in this preliminary analysis because research to establish injury impacts has not been completed. However, the agency believes there will be significant injury reductions, particularly chest injuries.

TABLE E–1.—ESTIMATED TARGET POPULATION AND LIVES SAVED ANNUALLY FOR THE PRIMARY PROPOSAL COMPARED TO PRE-MY 1998 AIR BAGS

| Tests | Drivers | Passengers | | | Total |
|---|---|---|---|---|---|
| | | RFCSS | 1–12 year old children | Adult | |
| Out-of-Position Target Population | 41 | 33 | 129 | 11 | 214 |
| Estimated Lives Saved by Different Tests (These are *not* additive): | | | | | |
| Suppression When Presence | NA | 33 | 102 | NA | 135 |
| Suppression When Out-of-Position | 41 | NP | 129 | 11 | 181 |
| Low Risk Deployment | 36–39 | 31–33 | 114–122 | 10 | 191–204 |
| Dynamic Out-Of-Position | 36–39 | NP | 114–122 | 10 | 160–171 |
| 25 mph Offset Barrier | 36–39 | 0 | 0 | 10 | 46–49 |
| In-Position Target Population | 6,778 | NP | NP | 1,501 | 8,279 |
| Estimated Lives Saved by Different Tests (These are additive): | | | | | |
| 30 MPH, Belted/Unbelted 50th Male | 11 | NP | NP | 0 | 11 |
| 30 MPH, Belted/Unbelted 5th Percentile Female | 5 | NP | NP | 1 | 6 |
| 25 MPH Offset Barrier | 7 | NP | NP | 1 | 8 |

NP: Not proposed test for this group.

*Costs.* Potential compliance costs for this proposal vary considerably and are dependent on the method chosen by manufacturers to comply. Methods such as modified fold patterns and inflator adjustments can be accomplished for little or no cost. More sophisticated solutions such as proximity sensors can increase costs significantly. Table E–2 lists the range of compliance costs for each compliance option. The range of potential costs for the compliance scenarios examined in this analysis is $22–$162. This amounts to a total potential annual cost of up to $2.5 billion, based on 15.5 million vehicle sales per year.

*Property damage savings.* Compliance methods that involve the use of suppression technology have the potential to produce significant property damage cost savings because they prevent air bags from deploying unnecessarily. This saves repair costs to replace the passenger side air bag, and frequently to replace windshields damaged by the air bag deployment. Property damage savings are shown in Table E–2. Property damage savings from these requirements could total up to $158 over the lifetime of an average vehicle. This amounts to a total potential cost savings of nearly $2.5 billion over the lifetime of a complete model year's fleet.

*Net cost per fatality Prevented.* Table E–2 summarizes the cost per fatality prevented of each compliance option. Property damage savings have the potential to offset all, or nearly all of the cost of meeting this proposal. The maximum range of cost per fatality saved from the scenarios examined in this analysis is a savings of $9.4 million per fatality saved to a cost of $4.8 million per fatality saved. The range for passenger-side impacts is more favorable than for driver-side impacts. This is due to the potential property damage savings from suppressing air bags for children, and because there are far fewer out-of-position drivers at risk than there are passengers, particularly children. Passenger side costs vary from a *savings* of $14.7 million per fatality to a cost of $4.5 million per fatality. On the driver's side, costs range from zero to a cost of $21.2 million per fatality prevented.

TABLE E–2.—SUMMARY OF COSTS AND BENEFITS COMPARED TO PRE-MY 1998 AIR BAGS

| | Cost per vehicle (1997 dollars) | Annual total costs (billions) | Annual fatalities prevented (after 7% discount) | Lifetime property damage savings per vehicle | Net cost (net savings) per vehicle | Net cost (net savings) per discounted fatality saved (millions)** |
|---|---|---|---|---|---|---|
| Compliance Option #1 OOP Suppression*, Child Suppression. | $75–$162 | $1.16–$2.51 | 239 (172) | $21–$158 | $4–$53 | $0.3–$4.8M. |
| Compliance Option #2 Low Risk Deployment. | $22–$56 | $0.34–$0.86 | 226–233 (163–168) | $21–$158 | $1–$(102) | $(9.4)–$0.1. |

TABLE E–2.—SUMMARY OF COSTS AND BENEFITS COMPARED TO PRE-MY 1998 AIR BAGS—Continued

| | Cost per vehicle (1997 dollars) | Annual total costs (billions) | Annual fatalities prevented (after 7% discount) | Lifetime property damage savings per vehicle | Net cost (net savings) per vehicle | Net cost (net savings) per discounted fatality saved (millions) ** |
|---|---|---|---|---|---|---|
| Compliance Option #3 Dynamic OOP*, Child Suppression. | $24–$162 | $0.37–$2.51 | 228–233 (165–168) | $21–$158 | $2–$4 | $0.2–$0.4. |

* Note: OOP = out-of-position. All three options include offset barrier and frontal barrier tests.
** Net cost per discounted fatality saved is computed by taking the net cost per vehicle times 15.5 million vehicles divided by discounted fatalities prevented.

*Sled tests.* Sled tests were temporarily allowed as an alternative method to certify compliance with FMVSS 208 in March 1997 in order to facilitate introduction of depowered air bags. A provision of the NHTSA Reauthorization Act (P.L. 105–178) provided that this method would remain in effect until changed by rule. This analysis thus addresses the relative merits of full frontal barrier tests and the sled test alternative. NHTSA is proposing to eliminate the sled test alternative because it is not representative of real world crashes that have the potential for serious injury or fatality, and it does not adequately test how well the vehicle and its restraint system protect outboard front seat occupants in those situations. Relatively modest changes have occurred thus far in air bag designs that use the sled test for compliance. However, NHTSA is concerned that potentially, air bag systems designed only to pass the sled test would expose occupants in higher speed crashes to significant increases in crash forces. For example, because the sled test is only a ''12 o'clock'' test, there is concern that it could lead to decreased air bag volume, which would provide less protection in frontal crashes at offset angles and to unbelted passengers in any frontal high speed crash. NHTSA examined air bag data supplied by nine auto manufacturers in response to an information request issued by the agency in December 1997. The agency found that of 42 passenger side model year 1998 systems examined, 10 had decreased air bag volume. Eight of these ten decreased the width of the air bag. This demonstrates that air bags designed to meet the sled test may provide protection to a smaller area of the occupant compartment, or in a narrower set of collision angles.

The effectiveness of air bags decreases as the crash moves further away from direct frontal impacts—31 percent effective at 12 o'clock, 9 percent effective in 11 and 1 o'clock impacts and 5 percent effective in 10 and 2 o'clock impacts. If air bag designs provided no benefit in partial frontal impacts (10, 11, 1, and 2 o'clock), an estimated 319 lives would not be saved annually by air bags. In addition, the agency's analysis of limited test data of MY 1998 air bag vehicles versus pre-MY 1998 air bag vehicles estimated that 16 to 86 lives may not be saved in full frontal impacts by MY 1998 air bags that have been certified to the sled test. In total, 335 to 405 lives potentially would not be saved by vehicles designed to the sled test, rather than to the barrier test. Table E–3 shows that the net cost per fatality saved ranges from a savings of $3.4 million per fatality saved to a cost of $2.0 million per fatality saved.

In designing a low risk air bag, it will be more difficult for the manufacturers to meet all of the test conditions with an unbelted rigid barrier test than with a sled test. Many more sled tests than barrier tests can be run in a day and sled tests are less expensive to run than vehicle tests into a barrier. The development effort to design to the unbelted barrier test is more complex because many more factors have to be accounted for, including the angle test. The agency is not sure what would be the difference in vehicle costs between the two tests. If air bags are made smaller with the sled test, some minor savings in the air bag and sodium azide pellets would accrue. No additional cost has been added to Table E–3. However, since air-bag equipped vehicles have met the unbelted test in the past, there is little need to redesign air bags when suppression is the technology of choice.

TABLE E–3.—SUMMARY OF COSTS AND BENEFITS COMPARED TO AIR BAGS DESIGNED TO THE SLED TEST

| | Cost per vehicle (1997 dollars) | Annual total costs (billions) | Annual fatalities prevented (after 7% discount) | Lifetime property damage savings per vehicle | Net cost (net savings) per vehicle | Net cost (net savings) per discounted fatality saved (millions)** |
|---|---|---|---|---|---|---|
| Compliance Option #1 OOP Suppression*, Child Suppression. | $75–$162 | $1.16–$2.51 | 574–644 (414–465) | $21–$158 | $4–$53 | $0.1–$2.0M. |
| Compliance Option #2 Low Risk Deployment. | $22–$56 | $0.34–$0.86 | 561–638 (405–460) | $21–$158 | $1–$(102) | $(3.4)–$0.3. |
| Compliance Option #3 Dynamic OOP*, Child Suppression. | $24–$162 | $0.37–$2.51 | 563–638 (406–460) | $21–$158 | $2–$4 | $0.09–$0.1. |

* Note: OOP = out-of-position. All three options include offset barrier and frontal barrier tests. There would be additional unquantified minor costs between the sled test and the unbelted rigid barrier test.
** Net cost per discounted fatality saved is computed by taking the net cost per vehicle times 15.5 million vehicles divided by discounted fatalities prevented.

## VIII. Rulemaking Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to be significant under the Department's regulatory policies and procedures. NHTSA is placing in the public docket a Preliminary Economic Assessment (PEA) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized earlier in this document.

### *B. Regulatory Flexibility Act*

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities.

The proposed rule would directly affect motor vehicle manufacturers and indirectly affect air bag manufacturers and dummy manufacturers.

For passenger car and light truck manufacturers, NHTSA estimates that there are only about four small manufacturers in the United States. These manufacturers serve a niche market, and the agency believes that small manufacturers do not manufacture even 0.1 percent of total U.S. passenger car and light truck production per year. The agency notes that these manufacturers are already required to provide air bags and certify compliance to Standard No. 208's dynamic impact requirements. Since the proposal would add additional test requirements for air bags, it would increase compliance costs for these, as well as other, vehicle manufacturers.

The agency does not believe that there are any small air bag manufacturers. There are several manufacturers of dummies and/or dummy parts which are considered small businesses. While the proposed rule would not impose any requirements on these manufacturers, it would be expected to have a positive impact on these types of small businesses by increasing demand for dummies.

NHTSA notes that final stage vehicle manufacturers and alterers could also be affected by this proposal. However, since the agency believes that final stage manufacturers and alterers receive vehicles which are already equipped with air bags, the proposal would not have any significant effect on final stage manufacturers or alterers.

Small organizations and small governmental units would not be significantly affected since the potential cost impacts associated with this proposed action should only slightly affect the price of new motor vehicles.

For the reasons discussed above, the small entities which would most likely be affected by this proposal are small vehicle manufacturers and dummy manufacturers. The number of such manufacturers is so small that, regardless of whether the economic impact on them was significant or not, the proposed rule would not have a significant economic impact on a substantial number of small entities.

The agency believes, further, that the economic impact on these manufacturers would be small. While the small vehicle manufacturers would face additional compliance costs, the agency believes that air bag suppliers would likely provide much of the engineering expertise necessary to meet the new requirements, thereby helping to keep the overall impacts small. The agency also notes that, in the unlikely event that a small vehicle manufacturer did face substantial economic hardship, it could apply for a temporary exemption for up to three years. See 49 CFR Part 555. It could subsequently apply for a renewal of such an exemption. While the proposed requirements would increase the demand for dummies, thereby having a positive impact on dummy manufacturers, the agency does not believe that such increased demand would be sufficient to create a significant economic impact on the dummy manufacturers. However, the agency requests comments concerning the economic impact on small vehicle manufacturers and dummy manufacturers.

Additional information concerning the potential impacts of the proposed requirements on small entities is presented in the PEA.

### *C. National Environmental Policy Act*

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

### *D. Executive Order 12612 (Federalism)*

The agency has analyzed this proposed amendment in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that the proposed amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### *E. Unfunded Mandates Act*

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This assessment is included in the PEA.

### *F. Executive Order 12778 (Civil Justice Reform)*

This proposed rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

### *G. Paperwork Reduction Act*

The Department of Transportation is submitting the following information collection request (ICR) 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).

*For further information contact:* Complete copies of each request for collection of information may be obtained from Mr. Michael Robinson, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, SW, Room 6123, Washington, DC. Mr. Robinson's telephone number is (202) 366–9456. Please identify the relevant collection of information by referring to ''Phase-in Production Reporting Requirements for Advanced Air Bags.''

*Agency:* National Highway Traffic Safety Administration (NHTSA).

*Title:* Phase-in Production Reporting Requirements for Advanced Air Bags.

*Type of Request:* Routine.

*OMB Clearance Number:* 2127–New.

*Form Number:* This collection of information would use no standard forms.

*Affected Public:* The respondents are manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less. The agency estimates that there are about 21 such manufacturers.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:* NHTSA estimates that the total annual hour burden is 1260 hours.

*Estimated Costs:* NHTSA estimates the total annual cost burden, in dollars, to be $37,800.

*Summary of the Collection of Information:* This collection would require manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the advanced air bag requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) during the phase-in of those requirements. The phase-in would be completed in three years.

*Description of the Need for the Information and Proposed use of the Information:* The purpose of the reporting requirements would be to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less has complied with the advanced air bag requirements of Standard No. 208 during the phase-in of those requirements.

## IX. Request for Comments

Interested persons are invited to submit comments on this proposal. Two copies should be submitted to Docket Management at the address given at the beginning of this document.

In addition, for those comments of four or more pages in length, it is requested but not required that 10 additional copies, as well as one copy on computer disc, be sent to: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. This would aid the agency in expediting its review of all the comments. The copy on computer disc may be in any format, although the agency would prefer that it be in WordPerfect 8.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment 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. Comments received too late for consideration in regard to this action will be considered as suggestions for further rulemaking action. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

## List of Subjects

*49 CFR Part 571*

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

*49 CFR Part 585*

Motor vehicles, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 587*

Motor vehicle safety.

*49 CFR Part 595*

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Chapter V as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising S3, S4.5.1 introductory text, and S4.5.4, adding S6.6 through S6.7, revising S8.1.5 and S13, and adding S14 through S30.2.4, to read as follows:

### § 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S3. *Application.*

(a) This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. In addition, S9, *Pressure vessels and explosive devices,* applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash.

(b) Notwithstanding any language to the contrary, any vehicle manufactured after March 19, 1997 and before September 1, 2005 that is subject to a dynamic crash test requirement conducted with unbelted dummies may meet the requirements specified in S13 instead of the applicable unbelted requirement, unless the vehicle is certified to meet the requirements specified in S15, S17, S19, S21, S23, and S25.

(c) For vehicles which are certified to meet the requirements specified in S13 instead of the otherwise applicable dynamic crash test requirement conducted with unbelted dummies, compliance with S13 shall, for purposes of Standards No. 201, 203 and 209, be deemed as compliance with the unbelted frontal barrier requirements of S5.1 of this section.

(d) Wherever tolerances are specified, requirements shall be met at all values within the tolerances.

* * * * *

S4.5.1 *Labeling and owner's manual information.* The labels specified in S4.5.1 (b), (c), and (e) of this standard

are not required for vehicles that have a passenger side air bag meeting the criteria specified in S4.5.5 of this standard or which are certified to the requirements specified in S15, S17, S19, S21, S23, and S25 of this standard.

* * * * *

S4.5.4 *Passenger Air Bag Manual Cut-off Device.* Passenger cars, trucks, buses, and multipurpose passenger vehicles manufactured before September 1, 2005 and not certified to meet the requirements specified in S15, S17, S19, S21, S23, and S25 may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all the conditions in S4.5.4.1 through S4.5.4.4 are satisfied.

* * * * *

[Proposed Alternative One—Chest includes existing requirements for chest acceleration (S6.3) and chest deflection (S6.4) plus Combined Thoracic Index (proposed S6.6); Proposed Alternative Two—Chest includes existing requirements for chest acceleration and chest deflection]

S6.6 (This only applies to vehicles manufactured on or after September 1, 2005 and to vehicles manufactured before that time which are certified to the requirements specified in S15, S17, S19, S21, S23, and S25 of this standard.) Combined Thoracic Index (CTI) shall not exceed 1.0. The equation for calculating the CTI criterion is given by

$CTI = (A_{max}/A_{int}) + (D_{max}/D_{int})$

where $A_{int}$ and $D_{int}$ are intercept values defined as

$A_{int}$ = 85 g's for spine acceleration intercept, and $D_{int}$ = 102 mm (4.0 in.) for sternal deflection intercept.

Calculation of CTI requires measurement of upper spine triaxial acceleration filtered at SAE class 180 and sternal deflection filtered at SAE class 600. From the measured data, a 3-msec clip maximum value of the resultant spine acceleration ($A_{max}$) and the maximum chest deflection ($D_{max}$) shall be determined.

S6.7

[Proposed Alternative One—Neck]

The biomechanical neck injury predictor, Nij, shall not exceed a value of [the agency is considering values of 1.4 and 1.0] at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension ($N_{TE}$), tension-flexion ($N_{TF}$), compression-extension ($N_{CE}$), and compression-flexion ($N_{CF}$) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by

Nij = (Fz/Fzc) + (My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc = 3600 N (809 lbf) for tension
Fzc = 3600 N (809 lbf) for compression
Myc = 410 Nm (302 lbf-ft) for flexion about occipital condyles
Myc = 125 Nm (92 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed [the agency is considering values of 1.4 and 1.0] at any point in time. When calculating $N_{TE}$ and $N_{TF}$, all compressive loads shall be set to zero. Similarly, when calculating $N_{CE}$ and $N_{CF}$, all tensile loads shall be set to zero. In a similar fashion, when calculating $N_{TE}$ and $N_{CE}$, all flexion moments shall be set to zero. Likewise, when calculating $N_{TF}$ and $N_{CF}$, all extension moments shall be set to zero.

[Proposed Alternative Two—Neck]

*Neck injury criteria.* Using the six axis upper neck load cell (ref. Denton drawing C–1709) that is mounted between the bottom of the skull and the top of the neck as shown in drawing 78051–218, the peak forces and moments measured at the occipital condyles shall not exceed:

Axial Tension = 3300 N (742 lbf)
Axial Compression = 4000 N (899 lbf)
Fore-and-Aft Shear = 3100 N (697 lbf)
Flexion Bending Moment = 190 Nm (140 lbf-ft)
Extension Bending Moment = 57 Nm (42 lbf-ft)

SAE Class 1000 shall be used to filter the axial tension, axial compression, and fore-and-aft shear. SAE Class 600 shall be used to filter the measured moment and fore-and-aft shear used to compute the flexion bending moment and extension bending moment at the occipital condyles.

* * * * *

S8.1.5 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position.

* * * * *

S13 *Alternative unbelted test available, under S3(b) of this standard, for certain vehicles manufactured before September 1, 2005.*

* * * * *

S14 *Advanced air bag requirements for passenger cars and for trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service.*

S14.1 *Vehicles manufactured on or after September 1, 2002 and before September 1, 2005.*

(a) For vehicles manufactured on or after September 1, 2002 and before September 1, 2005, a percentage of the manufacturer's production, as specified in S14.1.1, shall meet the requirements specified in S15, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard). Where manufacturer options are specified, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

(b) Manufacturers which manufacture two or fewer carlines, as that term is defined at 49 CFR 583.4, may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2003 and before September 1, 2005 shall meet the requirements specified in S15, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard). Where manufacturer options are specified, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

(c) Each vehicle that is manufactured in two or more stages or that is altered (within the meaning of § 567.7 of this chapter) after having previously been certified in accordance with part 567 of this chapter is not subject to the requirements of S14.1.

S14.1.1 *Phase-in Schedule.*

S14.1.1.1 *Vehicles manufactured on or after September 1, 2002 and before September 1, 2003.* Subject to S14.1.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2002 and before September 1, 2003, the amount of vehicles complying with S15, S17, S19, S21, S23 and S25 shall be not less than 25 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2000 and before September 1, 2003, or

(b) The manufacturer's production on or after September 1, 2002 and before September 1, 2003.

S14.1.1.2 *Vehicles manufactured on or after September 1, 2003 and before September 1, 2004.* Subject to S14.1.2(b), for vehicles manufactured by a manufacturer on or after September 1, 2003 and before September 1, 2004, the amount of vehicles complying with S15, S17, S19, S21, S23 and S25 shall be not less than 40 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2001 and before September 1, 2004, or

(b) The manufacturer's production on or after September 1, 2003 and before September 1, 2004.

S14.1.1.3 *Vehicles manufactured on or after September 1, 2004 and before September 1, 2005.* Subject to S14.1.2(c), for vehicles manufactured by a manufacturer on or after September 1, 2004 and before September 1, 2005, the amount of vehicles complying with S15, S17, S19, S21, S23 and S25 shall be not less than 70 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2002 and before September 1, 2005, or

(b) The manufacturer's production on or after September 1, 2004 and before September 1, 2005.

S14.1.2 *Calculation of complying vehicles.*

(a) For the purposes of complying with S14.1.1.1, a manufacturer may count a vehicle it if is manufactured on or after [the date 30 days after publication of the final rule would be inserted], but before September 1, 2003.

(b) For purposes of complying with S14.1.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after [the date 30 days after publication of the final rule would be inserted], but before September 1, 2004, and

(2) Is not counted toward compliance with S14.1.1.1.

(c) For purposes of complying with S14.1.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after [the date 30 days after publication of the final rule would be inserted], but before September 1, 2005, and

(2) Is not counted toward compliance with S14.1.1.1 or S14.1.1.2.

S14.1.3 *Vehicles produced by more than one manufacturer.*

S14.1.3.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.1.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S14.1.3.2.

(a) A vehicle which is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S14.1.3.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S14.1.3.1.

S14.2 *Vehicles manufactured on or after September 1, 2005.* Each vehicle shall meet the requirements specified in S15, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard). Where manufacturer options are specified, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

S14.3 *Vehicle integrity requirements.* Each vehicle certified to the requirements of S15, S17, S19, S21, S23, and S25 of this standard shall meet the following vehicle integrity criteria during the crash and/or at the conclusion of each crash test, as specified, that is part of a requirement under this standard to which the vehicle is certified (this includes the crash tests that are part of requirements other than those identified earlier in this paragraph):

(a) The latching mechanism of each door shall hold the door closed throughout the test.

(b) After the impact, it must be possible, without the use of tools, to open at least one door, if there is one, per row of seats and, where there is no such door, to move the seats or tilt their backrests as necessary to allow the evacuation of all the occupants; this is, however, only applicable to vehicles having a roof of rigid construction.

S15 *Rigid barrier test requirements using 5th percentile adult female dummies.*

S15.1. Each vehicle shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S16 of this standard with the anthropomorphic test dummy unbelted.

S15.2 Each vehicle shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S16 of this standard with the anthropomorphic test dummy restrained by the Type 2 seat belt assembly.

S15.3 *Injury criteria (5th percentile adult female dummy).*

S15.3.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S15.3.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 1,000 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t1 and t2 are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

[Proposed Alternative One—Chest includes requirements for chest acceleration (proposed S15.3.3), chest deflection (proposed S15.3.4) and Combined Thoracic Index (proposed S15.3.6; Proposed Alternative Two—Chest includes requirements for chest acceleration and chest deflection]

S15.3.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S15.3.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 62 mm (2.5 inches).

S15.3.5 The force transmitted axially through each upper leg shall not exceed 6805 N (1530 pounds).

S15.3.6 Combined Thoracic Index (CTI) shall not exceed 1.0. The equation for calculating the CTI criterion is given by

$CTI = (A_{max}/A_{int}) + (D_{max}/D_{int})$

where $A_{int}$ and $D_{int}$ are intercept values defined as

$A_{int}$ = 85 g's for spine acceleration intercept, and

$D_{int}$ = 83 mm (3.3 in.) for sternal deflection intercept.

Calculation of CTI requires measurement of upper spine triaxial acceleration filtered at SAE class 180 and sternal deflection filtered at SAE class 600. From the measured data, a 3-msec clip maximum value of the resultant spine acceleration ($A_{max}$) and the maximum chest deflection ($D_{max}$) shall be determined. S15.3.7

[Proposed Alternative One—Neck]

The biomechanical neck injury predictor, Nij, shall not exceed a value of [the agency is considering values of 1.4 and 1.0] at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension ($N_{TE}$), tension-flexion ($N_{TF}$), compression-extension ($N_{CE}$), and compression-flexion ($N_{CF}$) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by

Nij = (Fz/Fzc) + (My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc = 3200 N (719 lbf) for tension
Fzc = 3200 N (719 lbf) for compression
Myc = 210 Nm (155 lbf-ft) for flexion about occipital condyles
Myc = 60 Nm (44 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed [the agency is considering values of 1.4 and 1.0] at any point in time. When calculating $N_{TE}$ and $N_{TF}$, all compressive loads shall be set to zero. Similarly, when calculating $N_{CE}$ and $N_{CF}$, all tensile loads shall be set to zero. In a similar fashion, when calculating $N_{TE}$ and $N_{CE}$, all flexion moments shall be set to zero. Likewise, when calculating $N_{TF}$ and $N_{CF}$, all extension moments shall be set to zero.

[Proposed Alternative Two—Neck]

*Neck injury criteria.* Using the six axis upper neck load cell [a drawing incorporated by reference in Part 572 would be identified in the final rule] that is mounted between the bottom of the skull and the top of the neck as shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule], the peak forces and moments measured at the occipital condyles shall not exceed:

Axial Tension = 2080 N (468 lbf)
Axial Compression = 2520 N (567 lbf)
Fore-and-Aft Shear = 1950 N (438 lbf)
Flexion Bending Moment = 95 Nm (70 lbf-ft)
Extension Bending Moment = 28 Nm (21 lbf-ft)

SAE Class 1000 shall be used to filter the axial tension, axial compression, and fore-and-aft shear. SAE Class 600 shall be used to filter the measured moment and fore-and-aft shear used to compute the flexion bending moment and extension bending moment at the occipital condyles.

S16. *Test procedures for rigid barrier test requirements using 5th percentile adult female dummies.*

S16.1 *General provisions.* Crash testing to determine compliance with the requirements of S15 of this standard is conducted as specified in the following paragraphs (a) and (b).

(a) *Unbelted testing.* Place a Part 572 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard. No additional action, such as fastening a manual belt, is taken. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees from the perpendicular to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard. Determine whether the vehicle integrity criteria specified in S14.3 and the injury criteria specified in S15.3 of this standard are met.

(b) *Belted testing.* Place a Part 572 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard. Fasten the manual Type 2 seat belt assembly at each of these positions around the dummy occupying the position, in accordance with S16.3.10 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees from the perpendicular to the line of travel of the vehicle under the applicable conditions of S16.3 of this standard. Determine whether the vehicle integrity criteria specified in S14.3 and the injury criteria specified in S15.3 of this standard are met.

S16.2 *Test conditions.*

S16.2.1 The vehicle including test devices and instrumentation, is loaded as follows:

(a) *Passenger cars.* A passenger car is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the weight of the necessary anthropomorphic test devices.

(b) *Multipurpose passenger vehicles, trucks, and buses.* A multipurpose passenger vehicle, truck, or bus is loaded to its unloaded vehicle weight plus 136 kg (300 pounds) or its rated cargo and luggage capacity weight, whichever is less, secured in the load carrying area and distributed as nearly as possible in proportion to the gross axle weight ratings, plus the weight of the necessary anthropomorphic test devices. For the purposes of S16.2.1, unloaded vehicle weight does not include the weight of the work-performing accessories. Vehicles are tested to a maximum unloaded vehicle weight of 2,495 kg (5500 pounds).

(c) *Fuel system capacity.* With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the vehicle's fuel tank in an amount which is equal to not less than 92 and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

(d) *Vehicle test attitude.* Determine the distance between a level surface and a standard reference point on the test vehicle's body, directly above each wheel opening, when the vehicle is in its ''as delivered'' condition. The ''as delivered'' condition is the vehicle as received at the test site, with 100 percent of all fluid capacities and all tires inflated to the manufacturer's specifications as listed on the vehicle's tire placard. Determine the distance between the same level surface and the same standard reference points in the vehicle's ''fully loaded condition.'' The ''fully loaded condition'' is the test vehicle loaded in accordance with S16.2.1(a) or (b) of this standard, as applicable. The load placed in the cargo area shall be centered over the longitudinal centerline of the vehicle. The pretest vehicle attitude shall be equal to either the as delivered or fully loaded attitude or between the as delivered attitude and the fully loaded attitude.

S16.2.2 Adjustable seats are in the forwardmost adjustment position and if separately adjustable in a vertical direction, are at the uppermost position.

S16.2.3 Place adjustable seat backs at an angle of 18+/−2 degrees from vertical, if adjustable. Place any manually adjustable anchorages midway between extreme positions. If there is no midway position for an adjustable anchorage, place it in the next highest position. Place each adjustable head restraint in its highest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

S16.2.4 Adjustable steering controls are adjusted so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. In the event that the adjustable steering wheel cannot be placed in the center of its movement, the wheel is placed at the next lowest position.

S16.2.5 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position.

S16.2.6 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S16.2.7 Doors are fully closed and latched but not locked.

S16.2.8 The anthropomorphic test dummies used for crash testing shall be the 5th percentile adult female test dummy specified in Part 572 of this Chapter.

S16.2.9 The Part 572 5th percentile adult female dummy is clothed in formfitting cotton stretch garments with short sleeves and above the knee length pants. A size 8W shoe which meets the configuration and size specifications of MIL–S 13912 change ''P'' or its equivalent is placed on each foot of the test dummy.

S16.2.10 Limb joints are set at 1 g, barely restraining the weight of the limb when extended horizontally. Leg joints are adjusted with the torso in the supine position.

S16.2.11 Instrumentation does not affect the motion of dummies during impact.

S16.2.12 The stabilized temperature of the Part 572 5th percentile adult female test dummy is at any level between 20 degrees C and 22 degrees C.

S16.3 *Dummy Seating Positioning Procedures.* The Part 572 5th percentile adult female test dummy is positioned as follows.

S16.3.1 *Head.* The transverse instrumentation platform of the head shall be horizontal within ½ degree. To level the head of the dummy, the following sequences must be followed. First, adjust the position of the H point within the limits set forth in S16.3.5.1 of this standard to level the transverse instrumentation platform of the head of the test dummy. If the transverse instrumentation platform of the head is still not level, then adjust the pelvic angle of the test dummy within the limits specified in S16.3.5.2 of this standard. If the transverse instrumentation platform of the head is still not level, then adjust the neck bracket of the dummy the minimum amount necessary from the non-adjusted ''0'' setting to ensure that the transverse instrumentation platform of the head is horizontal within ½ degree. The test dummy shall remain within the limits specified in S16.3.5.1 and S16.3.5.2 of this standard after any adjustment of the neck bracket.

S16.3.2 *Arms.*

S16.3.2.1 The driver's upper arms shall be adjacent to the torso with the centerlines as close to a vertical plane as possible.

S16.3.2.2 The passenger's upper arms shall be in contact with the seat back and the sides of the torso.

S16.3.3 *Hands.*

S16.3.3.1 The palms of the driver test dummy shall be in contact with the outer part of the steering wheel rim at the rim's horizontal centerline. The thumbs shall be over the steering wheel rim and shall be lightly taped to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 9 N (2 pounds force) and not more than 22 N (5 pounds force), the tape shall release the hand from the steering wheel rim.

S16.3.3.2 The palms of the passenger test dummy shall be in contact with the outside of the dummy's thigh. The little finger shall be in contact with the seat cushion.

S16.3.4 *Upper torso.*

S16.3.4.1 In vehicles equipped with bench seats, the upper torso of the driver and passenger test dummies shall rest against the seat back. The midsagittal plane of the driver dummy shall be vertical and parallel to the vehicle's longitudinal centerline, and pass through the center of the steering wheel rim. The midsagittal plane of the passenger dummy shall be vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the driver dummy.

S16.3.4.2 In vehicles equipped with bucket seats, the upper torso of the driver and passenger test dummies shall rest against the seat back. The midsagittal plane of the driver and the passenger dummy shall be vertical and shall coincide with the longitudinal centerline of the bucket seat.

S16.3.5 *Lower Torso.*

S16.3.5.1 *H-point.* The H-point of the driver and passenger test dummies shall coincide within 13 mm (.5 inch) in the vertical dimension and 13 mm (.5 inch) in the horizontal dimension of a point 6 mm (.25 inch) below the position of the H-point determined using the equipment and procedures specified in SAE J826 (Apr 80) except that the length of the lower leg and thigh segments of the H-point machine shall be adjusted to 325 mm (12.8 inches) and 342 mm (13.5 inches), respectively, instead of the 50th percentile values specified in Table 1 of SAE J826.

S16.3.5.2 *Pelvic angle.* As determined using the pelvic angle gage (GM drawing 78051–532 incorporated by reference in Part 572, Subpart E of this chapter) which is inserted into the H-point gaging hole of the dummy, the angle measured from the horizontal on the 76 mm (3 inches) flat surface of the gage shall be 22½ degrees plus or minus 2½ degrees.

S16.3.6 *Legs.* The upper legs of the driver and passenger test dummies shall rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces shall be 483 mm (19 inches). To the extent practicable, the left leg of the driver dummy and both legs of the passenger dummy shall be in vertical longitudinal planes. To the extent practicable, the right leg of the driver dummy shall be in a vertical plane. Final adjustment to accommodate placement of feet in accordance with S16.3.7 of this standard for various passenger compartment configurations is permitted.

S16.3.7 *Feet.* The feet of the driver test dummy shall be positioned in accordance with S16.3.7.1(a) and S16.3.7.1(b) of this standard. The feet of the passenger test dummy shall be positioned in accordance with S16.3.7.2.1(a) and S16.3.7.2.1(b) of this standard or S16.3.7.2.2(a) and S16.3.7.2.2(b) of this standard, as appropriate.

S16.3.7.1 *Driver position feet placement.*

(a) Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the

pedal. If the heels cannot reach the floor, for adjustable seats lower the seat until the heels touch the floor. For non adjustable seats and for adjustable seats that do not permit dummy heel contact in the lowest adjustment position, adjust the lower limbs until the heels touch the floor. Check the H-point location in S16.3.5.1 to maintain the least deviation from the previous setting. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the lower leg and place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. Except as prevented by contact with a vehicle surface, place the right leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane without inducing torso movement.

(b) Place the left foot on the toeboard with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toeboard and the floor pan and not on the wheelwell projection. If the foot cannot be positioned on the toeboard, set it initially perpendicular to the lower leg and place it as far forward as possible with the heel resting on the floor pan. If necessary to avoid contact with the vehicle's brake or clutch pedal, rotate the test dummy's left foot about the lower leg. If there is still pedal interference, rotate the left leg outboard about the hip the minimum necessary to avoid the pedal interference. Except as prevented by contact with a vehicle surface, place the left leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane. For vehicles with a foot rest that does not elevate the left foot above the level of the right foot, place the left foot on the foot rest so that the upper and lower leg centerlines fall in a vertical plane.

S16.3.7.2 *Passenger position feet placement.*

S16.3.7.2.1 *Vehicles with a flat floor pan/toeboard.*

(a) Place the right and left feet on the vehicle's floor pan with the heels resting on the floor pan as close as possible to the intersection point with the toeboard. If the heels cannot reach the floor, for adjustable seats lower the seat until the heels touch the floor. For non adjustable seats and for adjustable seats that do not permit dummy heel contact in the lowest adjustment position, adjust the lower limbs until the heels touch the floor. Check the H-point location in S16.3.5.1 to maintain the least deviation from the previous setting.

(b) Place the right and left legs so that the upper and lower leg centerlines fall in vertical longitudinal planes.

S16.3.7.2.2 *Vehicles with wheelhouse projections in passenger compartment.*

(a) Place the right and left feet flat in the well of the floor pan/toeboard and not on the wheelhouse projection. If the feet cannot be placed flat on the toeboard, for adjustable seats lower the seat until the heels touch the floor. For non-adjustable seats and for adjustable seats that do not permit dummy heel contact in the lowest position, set them perpendicular to the lower leg centerlines.

(b) If it is not possible to maintain vertical and longitudinal planes through the upper and lower leg centerlines for each leg, place the left leg so that its upper and lower centerlines fall, as closely as possible, in a vertical longitudinal plane and place the right leg so that its upper and lower leg centerlines fall, as closely as possible, in a vertical plane. Adjust both legs so that the foot is in contact with the floor pan and/or toe board and both knee heights deviate by no more than 10 mm.

S16.3.8 *Manual belt adjustment for dynamic testing.* With the test dummy at its designated seating position as specified by the appropriate requirements of S16.3.1 through S16.3.7 of this standard, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 9 N (2 pound force) to 18 N (4 pound force) tension load to the lap belt. If the belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer in the owner's manual for the vehicle. If the belt system is not equipped with a tension-relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

S17 *Offset frontal deformable barrier requirements using 5th percentile adult female dummies.* Each vehicle shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S18 of this standard with the anthropomorphic test dummy restrained by the Type 2 seat belt assembly.

S18 *Test procedure for offset frontal deformable barrier requirements using 5th percentile adult female dummies.*

S18.1 *General provisions.* Crash testing to determine compliance with the requirements of S17 of this standard is conducted as follows. Place a Part 572 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard. Fasten the manual Type 2 seat belt assembly at each of these positions around the dummy occupying the position, in accordance with S16.3.8 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 40 km/h (25 mph), into a fixed offset deformable barrier under the conditions specified in S18.2 of this standard. Determine whether the vehicle integrity criteria specified in S14.3 and the injury criteria specified in S15.3 of this standard are met.

S18.2 *Test conditions.*

S18.2.1 *Offset frontal deformable barrier.* The offset frontal deformable barrier shall conform to the specifications set forth in Subpart B of Part 587 of this chapter.

S18.2.2 *General test conditions.* All of the test conditions specified in S16.2 of this standard apply.

S18.2.3 *Dummy seating and positioning.* The anthropomorphic test dummies are seated and positioned as specified in S16.3 of this standard.

S18.2.4 *Impact configuration.* The test vehicle shall impact the barrier specified in Subpart B of Part 587, with the longitudinal line of the vehicle parallel to the line of travel, and perpendicular to the barrier face. The test vehicle shall be aligned so that the vehicle strikes the barrier with 40 percent of the vehicle's width engaging the barrier face for any of the following conditions: the right edge of the barrier face is offset to the left of the vehicle's longitudinal centerline by 10 percent of the vehicle's width +/−20 mm (0.8 inch), or the left edge of the barrier face is offset to the right of the vehicle's longitudinal centerline by 10 percent of the vehicle's width +/−20 mm (0.8 inch). The vehicle width is defined as the maximum dimension measured across the widest part of the vehicle, excluding exterior mirrors, flexible mud flaps and marker lamps, but including bumpers, molding, sheet metal protrusions, and dual wheels, as standard equipment.

S19 *Requirements using rear facing child restraints.*

S19.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S19.2 or S19.3, under the test procedures specified in S20.

S19.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S19.2.1 through S19.2.2.

S19.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag after each of the static tests (using the 12 month old CRABI child dummy in a rear facing infant restraint) specified in S20.2, activation of the air bag after each of the static tests (using a 5th percentile adult female dummy) specified in S20.3, deactivation of the air bag throughout the rough road tests (using a 12 month old child dummy in a rear facing infant restraint) specified in S20.4, and activation of the air bag throughout the rough road tests (using a 5th percentile adult female dummy) specified in S20.5.

S19.2.2 The vehicle shall be equipped with a telltale light on the instrument panel which is illuminated whenever the passenger air bag is deactivated and not illuminated whenever the passenger air bag is activated. The telltale:

(a) Shall be clearly visible from all front seating positions;

(b) Shall be yellow;

(c) Shall have the identifying words ''PASSENGER AIR BAG OFF'' on the telltale or within 25 mm of the telltale; and

(d) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

S19.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S19.4 of this standard when the passenger air bag is statically deployed in accordance with the procedures specified in S20 of this standard.

S19.4 *Injury criteria (12 month old CRABI dummy).*

S19.4.1 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 660 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and $t^1$ and $t^2$ are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

S19.4.2 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 40 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S19.4.3

[Proposed Alternative One—Neck]

The biomechanical neck injury predictor, Nij, shall not exceed a value of [the agency is considering values of 1.4 and 1.0] at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension ($N_{TE}$), tension-flexion ($N_{TF}$), compression-extension ($N_{CE}$), and compression-flexion (NCF) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by

Nij = (Fz/Fzc) + (My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc = 2200 N (495 lbf) for tension
Fzc = 2200 N (495 lbf) for compression
Myc = 85 Nm (63 lbf-ft) for flexion about occipital condyles
Myc = 25 Nm (18 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed [the agency is considering values of 1.4 and 1.0] at any point in time. When calculating $N_{TE}$, and $N_{TF}$, all compressive loads shall be set to zero. Similarly, when calculating $N_{CE}$ and $N_{CF}$, all tensile loads shall be set to zero. In a similar fashion, when calculating $N_{TE}$ and $N_{CE}$, all flexion moments shall be set to zero. Likewise, when calculating $N_{TF}$ and $N_{CF}$, all extension moments shall be set to zero.

[Proposed Alternative Two—Neck]

*Neck injury criteria.* Using the six axis upper neck load cell [a drawing incorporated by reference in Part 572 would be identified in the final rule] that is mounted between the bottom of the skull and the top of the neck as shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule], the peak forces and moments measured at the occipital condyles shall not exceed:

Axial Tension = 1150 N (259 lbf)
Axial Compression = 1390 N (312 lbf)
Fore-and-Aft Shear = 1080 N (243 lbf)
Flexion Bending Moment = 39 Nm (29 lbf-ft)
Extension Bending Moment = 12 Nm (9 lbf-ft)

SAE Class 1000 shall be used to filter the axial tension, axial compression, and fore-and-aft shear. SAE Class 600 shall be used to filter the measured moment and fore-and-aft shear used to compute the flexion bending moment and extension bending moment at the occipital condyles.

S20 *Test procedure for S19.*

S20.1 *General provisions.*

S20.1.1 Tests specifying the use of a rear facing child restraint are conducted using any rear facing child restraint (including convertible types) which was manufactured for sale in the United States between two years and ten years prior to the date the model year carline of which the vehicle is a part was (or will be) first offered for sale to a consumer. The rear facing child restraint may be unused or used; if used, there must not be any visible damage prior to the test.

S20.1.2 Tests are conducted with the engine operating.

S20.2 *Static tests of automatic suppression feature which must result in deactivation of the passenger air bag.*

S20.2.1 *Test one—belted rear facing child restraint, facing rear.*

S20.2.1 Place the right front passenger vehicle seat in any position, i.e., any seat track location, any seat height, any seat back angle.

S20.2.1.2 Install the Part 572 12-month old CRABI dummy in any rear facing child restraint in accordance with the manufacturer's instructions provided with the seat pursuant to Standard No. 213.

S20.2.1.3 Install the rear facing child restraint in the right front passenger seat of the vehicle in accordance, to the extent possible, with the child restraint manufacturer's instructions provided on the seat pursuant to Standard No. 213 and with the instructions in the vehicle owner's manual. Cinch the vehicle belts to any level to secure the rear facing child restraint.

S20.2.1.4 Place the rear facing child restraint handle at any angle.

S20.2.1.5 Place any towel or blanket, with any weight up to 1 kg (2.2 pounds), on or over the rear facing child restraint in any manner.

S20.2.1.6 Start the vehicle engine and then close all vehicle doors.

S20.2.1.7 Monitor the telltale light to check whether the air bag is deactivated, i.e., the light must be illuminated.

S20.2.2 *Test two—unbelted rear facing child restraint.*

S20.2.2.1 Place the right front passenger vehicle seat in any position, i.e., any seat track location, any seat height, any seat back angle.

S20.2.2.2 Install the Part 572 12-month old CRABI dummy in any rear facing child restraint in accordance with the manufacturer's instructions provided with the seat pursuant to Standard No. 213.

S20.2.2.3 Install the rear facing child restraint with the dummy on the right front passenger seat of the vehicle in any of the following positions (without using the vehicle's seat belts):

(a) In the same position as that specified in S20.2.1.3 of this standard,

(b) In the same position as specified in (a) of this section, but rotated 180 degrees so that the dummy is facing the front of the vehicle;

(c) In the same position as specified in (a) of this section, but rotated 90 degrees so that the dummy is facing the driver position and the side of the child restraint is in contact with the front passenger seat back;

(d) In the same position as specified in (a) of this section, but rotated 90 degrees so that the dummy is facing the passenger door and the side of the child restraint is in contact with the front passenger seat back;

(e) In a position 127 mm (5 inches) forward of the position specified in (a) of this section, with the orientation specified in (c) of this section (if the child restraint is not stable, move it forward toward the edge of the seat until it can rest in equilibrium);

(f) In the same position specified in (e) of this section, but rotated 180 degrees so that the dummy is facing the passenger door.

S20.2.2.4 Place the rear facing child restraint handle at any angle.

S20.2.2.5 Place any towel or blanket, with any weight up to 1 kg (2.2 pounds), on or over the rear facing child restraint in any manner.

S20.2.2.6 Close all vehicle doors.

S20.2.2.7 Monitor the telltale light to check whether the air bag is deactivated, i.e., the light must remain illuminated for the entire time the child seat is positioned as described.

S20.3 *Static tests of automatic suppression feature which must result in activation of the passenger air bag.*

S20.3.1 Place the right front passenger vehicle seat in any position, i.e., any seat track location, any seat height, any seat back angle.

S20.3.2 Place a Part 572 5th percentile adult female test dummy at the right front seating position of a vehicle, in accordance with procedures specified in S16.3 of this standard, to the extent possible with the seat position that has been selected.

S20.3.3 Monitor the telltale light to check whether the air bag is activated for the entire time the 5th percentile adult female test dummy is positioned as described.

S20.4 *Rough road tests of automatic suppression feature, during which the passenger air bag must be deactivated.*

S20.4.1 Place the right front passenger vehicle seat in any position, i.e., any seat track location, any seat height, any seat back angle.

S20.4.2 Install the Part 572 12-month old CRABI dummy in any rear facing child restraint.

S20.4.3 Install the rear facing child restraint in the right front passenger seat of the vehicle in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat pursuant to Standard No. 213 and with the instructions in the vehicle owner's manual. Cinch the vehicle belts to any level to secure the rear facing child restraint.

S20.4.4 Drive the vehicle at any speed up to 40 km/h (25 mph) for any distance between 0.2 km (⅛ mile) and 0.4 km (¼ mile) over any of the following types of road surfaces:

(a) *Washboard surface.* A paved lane which consists of a series of uniform bumps with a height of 16 mm ± 5 mm (0.6 inches ± 0.2 inches) and spaced 100 mm ± 5 mm (4 inches ± 0.2 inches) from center to center, perpendicular to the line of travel across the full width of the lane;

(b) *Surface with dips.* A paved lane which consists of a series of uniform mounds with a height of 76 mm ± 5 mm (3 inches ± 0.2 inches) and spaced 1650 mm ± 10 mm (65 inches ± 0.4 inches) from center to center.

S20.4.5 Monitor the telltale light during the test to check whether the air bag remains deactivated throughout the test, i.e., the light must remain illuminated.

S20.5 *Rough road tests of automatic suppression feature, during which the passenger air bag must be activated.*

S20.5.1 Place a Part 572 5th percentile adult female test dummy in the right front passenger position of a vehicle, in accordance with procedures specified in S16.3 of this standard.

S20.5.2 Drive the vehicle at any speed up to 40 km/h (25 mph) for any distance between 0.2 km (⅛ mile) and 0.4 km (¼ mile) over any of the road surfaces specified in S20.4.4.

S20.5.3 Monitor the telltale light during the test to check whether the air bag remains activated throughout the test, i.e., the light must remain off.

S20.6 *Low risk deployment test.*

S20.6.1 Place the right front passenger vehicle seat in the full forward seat track position, the highest seat position (if adjustment is available), and any seat back angle.

S20.6.2 Install the Part 572 12-month old CRABI dummy in any rear facing child restraint in accordance with the manufacturer's instructions provided with the seat pursuant to Standard No. 213.

S20.6.3 Locate and mark the center point of the top of the rear facing child restraint. This will be referred to as ''Point A''.

S20.6.4 Install the rear facing child restraint in the right front passenger seat of the vehicle in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat pursuant to Standard No. 213 and with the instructions in the vehicle owner's manual.

S20.6.5 Locate a point on the air bag cover that is the geometric center of the air bag cover. This will be referred to as ''Point B''.

S20.6.6 Translate the rear facing child restraint system (parallel to the longitudinal axis of the vehicle) such that Point A on the child restraint system is lined up with Point B on the air bag cover to form a vertical plane parallel to the longitudinal axis of the vehicle.

S20.6.7 Cinch the vehicle belts to any level to secure the rear facing child restraint.

S20.6.8 Deploy the right front passenger air bag system. If the air bag contains a multistage inflator, any stage is fired.

S21 *Requirements using 3 year old child dummies.*

S21.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S21.2, S21.3, or S21.4 under the test procedures specified in S22, except that, at the option of the manufacturer, the vehicle may instead meet the requirements specified in S29.

S21.2 *Option 1—Automatic suppression feature that always suppresses the air bag when a child is present.* Each vehicle shall meet the requirements specified in S21.2.1 through S21.2.2.

S21.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests (using a 3-year-old child dummy) specified in S22.2, activation of the air bag after each of the static tests (using a 5th percentile adult female dummy) specified in S20.3, deactivation of the

air bag throughout the rough road tests (using a 3-year-old child dummy) specified in S22.3, and activation of the air bag throughout the rough road tests (using a 5th percentile adult female dummy) specified in S20.5.

S21.2.2 The vehicle shall be equipped with a telltale light on the instrument panel meeting the requirements specified in S19.2.2.

S21.3 *Option 2—Automatic suppression feature that suppresses the air bag when an occupant is out of position.*

S21.3.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which meets the requirements specified in S27.

S21.3.2 The vehicle shall be equipped with a telltale light on the instrument panel meeting the requirements specified in S19.2.2.

S21.4 *Option 3—Low risk deployment (Hybrid III 3-year-old child dummy).* Each vehicle shall meet the injury criteria specified in S21.5 of this standard when the passenger air bag is statically deployed in accordance with the low risk deployment test procedures specified in S22.4.

S21.5 *Injury criteria for Hybrid III 3-year-old child dummy.*

S21.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S21.5.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 900 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and $t_1$ and $t_2$ are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

[Proposed Alternative One—Chest includes requirements for chest acceleration (proposed S21.5.3), chest deflection (proposed S21.5.4) and Combined Thoracic Index (proposed S21.5.5; Proposed Alternative Two—Chest includes requirements for chest acceleration and chest deflection]

S21.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 50 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S21.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 42 millimeters (1.7 inches).

S21.5.5 Combined Thoracic Index (CTI) shall not exceed 1.0. The equation for calculating the CTI criterion is given by

$CTI = (A_{max}/A_{int}) + (D_{max}/D_{int})$

where $A_{int}$ and $D_{int}$ are intercept values defined as $A_{int}$ = 70 g's for spine acceleration intercept, and $D_{int}$ = 57 mm (2.2 in.) for sternal deflection intercept.

Calculation of CTI requires measurement of upper spine triaxial acceleration filtered at SAE class 180 and sternal deflection filtered at SAE class 600. From the measured data, a 3-msec clip maximum value of the resultant spine acceleration ($A_{max}$) and the maximum chest deflection ($D_{max}$) shall be determined.

S21.5.6

[Proposed Alternative One—Neck]

The biomechanical neck injury predictor, Nij, shall not exceed a value of [the agency is considering values of 1.4 and 1.0] at any point in time. The following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension ($N_{TE}$), tension-flexion ($N_{TF}$), compression-extension ($N_{CE}$), and compression-flexion ($N_{CF}$) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by

Nij = (Fz/Fzc) + (My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc = 2500 N (562 lbf) for tension
Fzc = 2500 N (562 lbf) for compression
Myc = 100 Nm (74 lbf-ft) for flexion about occipital condyles
Myc = 30 Nm (22 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed [the agency is considering values of 1.4 and 1.0] at any point in time. When calculating $N_{TE}$ and $N_{TF}$, all compressive loads shall be set to zero. Similarly, when calculating $N_{CE}$ and $N_{CF}$, all tensile loads shall be set to zero. In a similar fashion, when calculating $N_{TE}$ and $N_{CE}$, all flexion moments shall be set to zero. Likewise, when calculating $N_{TF}$ and $N_{CF}$, all extension moments shall be set to zero.

[Proposed Alternative Two—Neck]

*Neck injury criteria.* Using the six axis upper neck load cell [a drawing incorporated by reference in Part 572 would be identified in the final rule] that is mounted between the bottom of the skull and the top of the neck as shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule], the peak forces and moments measured at the occipital condyles shall not exceed:

Axial Tension = 1270 N (286 lbf)
Axial Compression = 1540 N (346 lbf)
Fore-and-Aft Shear = 1200 N (270 lbf)
Flexion Bending Moment = 46 Nm (34 lbf-ft)
Extension Bending Moment = 14 Nm (10 lbf-ft)

SAE Class 1000 shall be used to filter the axial tension, axial compression, and fore-and-aft shear. SAE Class 600 shall be used to filter the measured moment and fore-and-aft shear used to compute the flexion bending moment and extension bending moment at the occipital condyles.

S22 *Test procedure for S21.*

S22.1 *General provisions.*

S22.1.1 Tests specifying the use of a forward-facing child seat or booster seat are conducted using any such seat recommended for a child weighing 34 pounds which was manufactured for sale in the United States between two years and ten years prior to the date the model year carline of which the vehicle is a part was (or will be) first offered for sale to a consumer. The seat may be unused or used; if used, there must not be any visible damage.

S22.1.2 Tests are conducted with the engine operating.

S22.2 *Static tests of automatic suppression feature which must result in deactivation of the passenger air bag.*

S22.2.1 *Test one—child in a forward-facing child seat or booster seat.*

S22.2.1.1 Install any forward-facing child seat or booster seat in the right front passenger seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat pursuant to Standard No. 213 and with the instructions in the vehicle owner's manual.

S22.2.1.2 Position the Part 572 Hybrid III 3-year-old child dummy seated in the forward-facing child seat or booster seat such that the dummy's lower torso is centered on the forward-facing child seat or booster seat cushion and the dummy's spine is parallel to the forward-facing child seat or booster seat back or, if there is no booster seat back, the vehicle seat back. The lower arms are placed at the dummy's side.

S22.2.1.3 Attach all appropriate forward-facing child seat or booster seat belts, if any, and tighten them as specified in S6.1.2 of Standard No. 213.

S22.2.1.4 Attach all appropriate vehicle belts and tighten them as specified in S6.1.2 of Standard No. 213.

S22.2.1.5 Place the right front passenger vehicle seat in any position, i.e., any seat track location, any seat height, any seat back angle.

S22.2.1.6 Start the vehicle engine and then close all vehicle doors.

S22.2.1.7 Monitor telltale light to check whether the air bag is deactivated.

S22.2.2 *Test two—unbelted child.*

S22.2.2.1 Place the right front passenger vehicle seat in any position, i.e., any seat track location, any seat height, any seat back panel.

S22.2.2.2 Place the Part 572 Hybrid III 3-year old child dummy on the right front passenger seat, or on the floor in front of the right front passenger seat, as appropriate, in any of the following positions (without using a forward-facing child seat or booster seat or the vehicle's seat belts):

(a) *Sitting on seat with back against seat:*

(1) Position the dummy in the seated position and place it on the right front passenger seat;

(2) The upper torso of the dummy rests against the seat back. In the case of vehicles equipped with bench seats, the midsagittal plane of the dummy is vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, the midsagittal plane of the dummy is vertical and coincides with the longitudinal centerline of the bucket seat. The dummy's femurs are against the seat cushion.

(3) Allow the lower legs of the dummy to extend off the surface of the seat. If positioning the dummy's lower legs is prevented by contact with the instrument panel, rotate the lower leg toward the floor.

(4) Position the dummy's upper arms down until they contact the seat.

(b) *Sitting on seat with back not against seat:*

(1) Position the dummy in the seated position and place the dummy in the right front passenger seat.

(2) In the case of vehicles equipped with bench seats, the midsagittal plane of the dummy is vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, the midsagittal plane of the dummy is vertical and coincides with the longitudinal centerline of the bucket seat. The horizontal distance from the dummy's back to the seat back is no less than 25 mm (1 inch) and no more than 150 mm (6 inches), as measured from the dummy's mid-sagittal plane at the mid-sternum level.

(3) Lower the dummy's upper legs and dummy's femurs against the seat cushion.

(4) Allow the lower limbs of the dummy to extend off the surface of the seat.

(5) Rotate the dummy's lower arms until the dummy's hands come to rest on the seat.

(c) *Sitting on seat edge with hands on the instrument panel* (This test is conducted with the seat in any seat track positions that permit the dummy's hands to be placed on the instrument panel.):

(1) Position the dummy in the seated position and place it on the right front passenger seat with the dummy's legs positioned 90 degrees (i.e., right angle) from the horizontal.

(2) Position the dummy forward in the seat such that the lower legs rest against the front of the seat with the spine in the vertical direction. If the dummy's feet contact the floorboard, rotate the lower legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy spine vertical.

(3) Extend the dummy's arms directly in front of the dummy parallel to the floor of the vehicle.

(4) Lower the dummy's arms such that they contact the instrument panel.

(d) *Sitting on seat edge, spine vertical, hands by the dummy's side:*

(1) Position the dummy in the seated position and place it on the right front passenger seat with the dummy's legs positioned 90 degrees (i.e., right angle) from the horizontal.

(2) Position the dummy forward in the seat such that the lower legs rest against the front of the seat with the spine in the vertical direction. If the dummy's feet contact the floorboard, rotate the lower legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy spine vertical.

(3) Extend the dummy's arms directly in front of the dummy parallel to the floor of the vehicle.

(4) Lower the dummy's arms such that they contact the seat.

(e) *Sitting back in the seat and leaning on the right front passenger door:*

(1) Position the dummy in the seated position and place the dummy in the right front passenger seat.

(2) Place the dummy's lower torso on the outboard portion of the seat with the dummy's back against the seat back and the dummy's upper legs resting on the seat cushion.

(3) Allow the lower legs of the dummy to extend off the surface of the seat. If positioning the dummy's lower legs is prevented by contact with the instrument panel, rotate the lower leg toward the floor.

(4) Position the dummy's upper arms against the seat back by rotating the dummy's upper arms toward the seat back until they make contact.

(5) Rotate the dummy's lower arms down until they contact the seat.

(6) Lean the dummy against the outboard door.

(f) *Standing on seat, facing forward:*

(1) Position the dummy in the standing position. The arms are at any position.

(2) Center the dummy on the right front passenger seat cushion facing the front of the vehicle while placing the heels of the dummy feet in contact with the seat back.

(3) Rest the dummy against the seat back.

(g) *Standing on seat, facing rearward:*

(1) Position the dummy in the standing position. The arms are at any position.

(2) Center the dummy on the right front passenger seat cushion facing the rear of the vehicle while placing the toes of the dummy feet in contact with the seat back.

(3) Rest the dummy against the seat back.

(h) *Kneeling on seat, facing forward:*

(1) Place the dummy in a kneeling position by rotating the dummy's lower legs 90 degrees behind the dummy (from the standing position).

(2) Place the kneeling dummy in the right front passenger seat with the dummy facing the front of the vehicle. Position the dummy such that the dummy toes are in contact with the seat back. The arms are at any position.

(i) *Kneeling on seat, facing rearward:*

(1) Place the dummy in a kneeling position by rotating the dummy's lower legs 90 degrees behind the dummy (from the standing position).

(2) Place the kneeling dummy in the right front passenger seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head is in contact with the seat back. The arms are at any position.

(j) *Standing on floor* (This test is only conducted with the seat in its rearmost track position.):

(1) Position the dummy in the standing position.

(2) Place the dummy standing on the floor in front of the right front passenger seat, facing forward and with the dummy's midsaggital plane parallel to the longitudinal plane through the centerline of the vehicle and including the geometric center of the air bag cover, in any position from the one where the dummy contacts the instrument panel rearwards to the one where the dummy contacts the seat. The arms are at any position.

(k) *Lying on seat* (This test is only conducted with the seat in the position specified.):

(1) Lay the dummy on the right front passenger seat such that the following criteria are met:

(A) The mid-sagittal plane of the dummy is horizontal,

(B) The dummy's spine is perpendicular to the vehicle longitudinal axis,

(C) Upper arms are parallel to dummy spine,

(D) A plane passing through the two shoulder joints of the dummy is vertical and intersects the geometric center of the seat bottom (the seat bottom is the plan view part of the seat from the forward most part of the seat back to the forward most part of the seat),

(E) The anterior of the dummy is facing the vehicle front, and

(F) Leg position is not set and can be articulated to fit above conditions.

(2) Adjustable seats are in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

(3) Position the dummy so that the top of dummy head is within 10 mm of the vehicle side door structure.

(4) Rotate upper legs toward chest of dummy and rotate lower legs against the upper legs.

(5) Place dummy upper left arm parallel with the vehicle transverse plane and the lower arm 90° to the upper arm. Rotate lower arm down about the elbow joint until movement is obstructed. Final position should resemble a fetal position.

(l) *Low risk deployment test position 1.* The procedure for determining this position is set forth in S22.4.2.

(m) *Low risk deployment test position 2.* The procedure for determining this position is set forth in S22.4.3.

(n) *Sitting on seat edge, head contacting the mid-face of the instrument panel.*

(1) Locate and mark the center point of the dummy's rib cage or sternum plate. (The vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

(2) Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point B''.

(3) Locate the horizontal plane that passes through Point B. This will be referred to as ''Plane 1''.

(4) ''Plane 2'' to defined as the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis.

(5) Move the passenger seat to the full rearward seating position.

(6) Place the dummy in the front passenger seat such that:

(A) Point A is located in Plane 2.

(B) A vertical plane through the shoulder joints of the dummy is at 90° to the longitudinal axis of the vehicle.

(C) The lower legs are positioned 90° (right angle) from horizontal.

(D) The dummy is positioned forward in the seat such the lower legs rest against the front of the seat and such that the dummy's upper spine plate is 0° forward (toward front of vehicle) of the vertical position.

(7) Rotate dummy's torso by applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints. Continue applying force until head C.G. is in Plane 1, or spine angle at the upper spine plate is 45°, whichever produces the greatest rotation.

(8) Move seat forward until contact with the forward structure of the vehicle, or seat is full forward, whichever occurs first.

(9) To keep dummy in-position, a thread with a maximum breaking strength of 311 N (70 pounds) that does not interfere with the suppression device may be used to hold dummy.

(o) *Kneeling on the floor.*

(1) Locate and mark the center point of the dummy's chest/rib plate. (The vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A''.

(2) Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point B''.

(3) Determine the height of this point above the floorboard of the vehicle. This height defines a horizontal plane that passes through Point B. This will be referred to as ''Plane 1''.

(4) A second plane, ''Plane 2'', to be defined as a vertical plane which passes through Point B.

(5) Move the passenger seat to the full rearward seating position.

(6) Remove the dummy lower legs at the knee joint.

(7) Center the dummy laterally so that Point A is coincident with Plane 2 and the upper spine plate is in a vertical position.

(8) With the use of spacers (wooden or foam blocks, etc.) position the dummy in a seated position with the H-point located 165 mm ± 10 mm (6.5 inches ± 0.4 inches) above the floor of the vehicle. Maintain the upper spine plate orientation.

(9) Position the upper leg 90° to the spine.

(10) Move the dummy forward until contact is made with the forward structure of the vehicle. If necessary, the upper torso can be tethered with a thread with a maximum breaking strength of 311 N (70 pounds). Care should be taken that any such tether is not situated anywhere within the deployment envelope of the air bag.

(11) Position the arms parallel to the spine/torso of the dummy.

(p) *Sitting on seat edge, head contacting the lower-face of the instrument panel.*

(1) Locate and mark the center point of the dummy's rib cage or sternum plate. (The vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

(2) Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point B''.

(3) Locate the horizontal plane that passes through Point B. This will be referred to as ''Plane 1''.

(4) ''Plane 2'' is defined as the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis.

(5) Move the passenger seat to the full rearward seating position.

(6) Place the dummy in the front passenger seat such that:

(A) Point A is located in Plane 2.

(B) A vertical plane through the shoulder joints of the dummy is at 90° to the longitudinal axis of the vehicle.

(C) The lower legs are positioned 90° (right angle) from horizontal.

(D) The dummy is positioned forward in the seat such that the lower legs rest

against the front of the seat and such that the dummy's upper spine plate is 0 degrees ±2 degrees forward (toward front of vehicle) of the vertical position.

(7) Rotate dummy's torso by applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints. Continue applying force until head C.G. is in Plane 1, or spine angle at the upper spine plate is 75 degrees ±2 degrees, whichever produces the greatest rotation.

(8) Move seat forward until contact with the forward structure of the vehicle, or seat is full forward, whichever occurs first.

(9) To keep dummy in-position, a thread with a maximum breaking strength of 311 N (70 pounds) that does not interfere with the suppression device may be used to hold dummy.

S22.2.2.3 Close all vehicle doors.

S22.2.2.4 Monitor the telltale light to check whether the air bag is deactivated, i.e., the light must be illuminated.

S22.3 *Rough road tests of automatic suppression feature, during which the passenger air bag must be deactivated.*

S22.3.1 Following completion of any of the tests specified in S22.2, and without changing the position of the vehicle seat or the dummy, drive or move the vehicle at any speed up to 40 km/h (25 mph) for any distance over any of the types of road surfaces specified in S20.4.4. (The vehicle may be moved by any external source to protect the driver from a dummy that could fall over.)

S22.3.2 Monitor the telltale light during the test to check whether the air bag remains deactivated throughout the test, i.e., the light must remain illuminated.

S22.4 *Low risk deployment test (Hybrid III 3-year-old child dummy).*

S22.4.1 Position the dummy according to any of the following positions: Position 1 (S22.4.2) or Position 2 (S22.4.3).

S22.4.2 *Position 1.*

S22.4.2.1 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

S22.4.2.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This is referred to as ''Point B.''

S22.4.2.3 Locate the horizontal plane that passes through Point B. This will be referred to as ''Plane 1.''

S22.4.2.4 Locate the vertical plane parallel to the vehicle longitudinal axis and passing through Point B. This will be referred to as ''Plane 2.''

S22.4.2.5 Move the passenger seat to the full rearward track seating position. Place the seat back in the nominal upright position as specified by the vehicle manufacturer.

S22.4.2.6 Place the dummy in the front passenger seat such that:

S22.4.2.6.1 Point A is located in Plane 2.

S22.4.2.6.2 A vertical plane through the dummy shoulder joints is at 90 degrees to the longitudinal axis of the vehicle.

S22.4.2.6.3 The lower legs are positioned 90 degrees to the upper legs.

S22.4.2.6.4 The dummy is positioned forward in the seat such that the dummy's upper spine plate is 0 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position, and the lower legs rest against the front of the seat.

S22.4.2.7 Move the dummy forward until the upper torso or head of the dummy makes contact with the forward structure of the vehicle.

S22.4.2.8 Once contact is made, as outlined in paragraph S22.4.2.7, the dummy is then raised vertically until Point A lies within Plane 1 (the vertical height to the center of the air bag) or until a minimum clearance of 6 mm (0.25 inches) between the dummy head and the windshield is attained.

S22.4.2.9 Position the upper arm parallel to the spine and rotate the lower arm forward (at the elbow joint) sufficiently to prevent contact with or support from the seat.

S22.4.2.10 Position the lower limbs of the dummy so that the feet rest flat on the floorboard (or the feet are positioned parallel to the floorboard) of the vehicle.

S22.4.2.11 Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy.

S22.4.2.11.1 The stature of the 3 year old child dummy is such that an upright standing posture is often possible. If additional height is required, the dummy is raised with the use of spacers (foam blocks, etc.) placed on the floor of the vehicle.

S22.4.2.11.2 If necessary, the upper torso is tethered with a thread with a maximum breaking strength of 311 N (70 pounds). Care should be taken that any such tether is not situated in the air bag deployment envelope.

S22.4.2.12 In calculation of the injury criteria as specified in paragraph S21.5, data are truncated prior to dummy interaction with vehicle components after the dummy's head is clear of the air bag.

S22.4.3 *Position 2.*

S22.4.3.1 Locate and mark the center point of the dummy's chest/rib plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

S22.4.3.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point B.'' Locate the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis. This will be referred to as ''Plane 2.''

S22.4.3.3 Move the passenger seat to the full rearward seating position.

S22.4.3.4 Place the dummy in the front passenger seat such that:

S22.4.3.4.1 Point A is located in Plane 2.

S22.4.3.4.2 A vertical plane through the shoulder joints of the dummy is at 90 degrees to the longitudinal axis of the vehicle.

S22.4.3.4.3 The lower legs are positioned 90 degrees (right angle) from horizontal.

S22.4.3.4.4 The dummy is positioned forward in the seat such that the lower legs rest against the front of the seat and such that the dummy's upper spine plate is 0 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position. Note: For some seats, it may not be possible to fully seat the dummy with the lower legs in the prescribed position. In this situation, rotate the lower legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy's upper spine plate is 0 degrees ± 2 degrees forward (toward the front of vehicle) of the vertical position.

S22.4.3.5 Move the seat forward, while maintaining the upper spine plate orientation until some portion of the dummy contacts the forward structure of the vehicle.

S22.4.3.5.1 If contact has not been made with the forward structure of the vehicle at the full forward seating position of the seat, slide the dummy forward on the seat until contact is made. Maintain the upper spine plate orientation.

S22.4.3.5.2 Once contact is made, rotate the dummy forward until the head and/or upper torso are in contact with the instrument panel of the vehicle. Rotation is achieved by applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints.

S22.4.3.5.3 The upper legs are rotated downward and the lower legs and feet are rotated rearward (toward the rear of vehicle) so as not to impede the rotation of the head/torso into the forward structures of the vehicle.

S22.4.3.5.4 The legs are repositioned so that the feet rest flat on (or parallel to) the floorboard with the ankle joint positioned as nearly as possible to the midsaggital plane of the dummy.

S22.4.3.5.5 If necessary, the upper torso is tethered with a thread with a maximum breaking strength of 311 N (70 pounds) and/or wedge under the dummy's pelvis. Care should be taken that any such tether is not situated anywhere within the deployment envelope of the air bag. Note: If contact with the dash cannot be made by sliding the dummy forward in the seat, then place the dummy in the forward-most position on the seat which will allow the head/upper torso to rest against the instrument panel of the vehicle.

S22.4.3.6 Position the upper arms parallel to the upper spine plate and rotate the lower arm forward sufficiently to prevent contact with or support from the seat.

S22.4.3.7 In calculation of the injury criteria as specified in paragraph S21.5, data are truncated prior to dummy interaction with vehicle components after the dummy's head is clear of the air bag.

S22.4.4 Deploy the right front passenger air bag system. If the air bag contains a multistage inflator, any stage is fired that may deploy in crashes below 32 km/h (20 mph) [the agency is also considering a range of speeds above and below this value], under the test procedure specified in S22.5.

S22.4.5 Determine whether the injury criteria specified in S21.5 of this standard are met.

S22.5 *Test procedure for determining stages of air bags subject to low risk deployment test requirement.* In the case of an air bag with a multistage inflator, any stage(s) that fire in any of the following tests are subject to the low risk deployment test requirement.

S22.5.1 *Rigid barrier test.* Impact the vehicle traveling longitudinally forward at any speed, up to and including 32 km/h (20 mph) [the agency is also considering a range of speeds above and below this value], into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees from the perpendicular to the line of travel of the vehicle under the applicable conditions of S8 of this standard.

S22.5.2 *Offset frontal deformable barrier test.* Impact the vehicle traveling longitudinally forward at any speed, up to and including 32 km/h (20 mph) [the agency is also considering a range of speeds above and below this value], into a fixed offset deformable barrier under the conditions specified in S18.2 of this standard.

S22.5.3 *Pole test.* Impact the vehicle traveling longitudinally forward at any speed, up to and including 32 km/h (20 mph) [the agency is also considering a range of speeds above and below this value], into a fixed cylindrical pole with a diameter of 255 ± 15 mm (10 ± 0.6 inches), under the applicable conditions of S8 of this standard. The vehicle impact point is at any point on the front of the vehicle that is within the middle 80 percent of the width of the vehicle.

S23 *Requirements using 6 year old child dummies.*

S23.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S23.2, S23.3, or S23.4, under the test procedures specified in S24, except that, at the option of the manufacturer, the vehicle may instead meet the requirements specified in S27 or S29.

S23.2 *Option 1—Automatic suppression feature that always suppresses the air bag when a child is present.* Each vehicle shall meet the requirements specified in S23.2.1 through S23.2.2.

S23.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag as part of each of the static tests specified in S24.2, activation of the air bag after each of the static tests (using a 5th percentile adult female dummy) specified in S20.3, deactivation of the air bag throughout the rough road tests (using a 6-year-old child dummy) specified in S24.3, and activation of the air bag throughout the rough road tests (using a 5th percentile adult female dummy) specified in S20.5.

S23.2.2 The vehicle shall be equipped with a telltale light on the instrument panel meeting the requirements specified in S19.2.2.

S23.3 *Option 2—Automatic suppression feature that suppresses the air bag when an occupant is out of position.*

S23.3.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which meets the requirements specified in S27.

S23.3.2 The vehicle shall be equipped with a telltale light on the instrument panel meeting the requirements specified in S19.2.2.

S23.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S23.5 of this standard when the passenger air bag is statically deployed in accordance with the procedures specified in S24 of this standard.

S23.5 *Injury criteria (Hybrid III 6-year old child dummy).*

S23.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S23.5.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 1,000 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and $t_1$ and $t_2$ are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

[Proposed Alternative One—Chest includes requirements for chest acceleration (proposed S23.5.3), chest deflection (proposed S23.5.4) and Combined Thoracic Index (proposed S23.5.5; Proposed Alternative Two—Chest includes requirements for chest acceleration and chest deflection]

S23.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S23.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation [a drawing incorporated by reference in Part 572 would be identified in the final rule] shall not exceed 47 mm (1.9 inches).

S23.5.5 Combined Thoracic Index (CTI) shall not exceed 1.0. The equation for calculating the CTI criterion is given by

$$CTI=(A_{max}/A_{int}) + (D_{max}/D_{int})$$

where $A_{int}$ and $D_{int}$ are intercept values defined as $A_{int}$ = 85 g's for spine acceleration intercept, and $D_{int}$ = 63 mm (2.5 in.) for sternal deflection intercept.

Calculation of CTI requires measurement of upper spine triaxial acceleration filtered at SAE class 180 and sternal deflection filtered at SAE class 600. From the measured data, a 3-msec clip maximum value of the resultant spine acceleration ($A_{max}$) and the maximum chest deflection ($D_{max}$) shall be determined.

S23.5.6

[Proposed Alternative One—Neck]

The biomechanical neck injury predictor, Nij, shall not exceed a value of [the agency is considering values of 1.4 and 1.0] at any point in time. The

following procedure shall be used to compute Nij. The axial force (Fz) and flexion/extension moment about the occipital condyles (My) shall be used to calculate four combined injury predictors, collectively referred to as Nij. These four combined values represent the probability of sustaining each of four primary types of cervical injuries; namely tension-extension ($N_{TE}$), tension-flexion ($N_{TF}$), compression-extension ($N_{CE}$), and compression-flexion ($N_{CF}$) injuries. Axial force shall be filtered at SAE class 1000 and flexion/extension moment (My) shall be filtered at SAE class 600. Shear force, which shall be filtered at SAE class 600, is used only in conjunction with the measured moment to calculate the effective moment at the location of the occipital condyles. The equation for calculating the Nij criteria is given by

Nij=(Fz/Fzc) + (My/Myc)

where Fzc and Myc are critical values corresponding to:

Fzc=2900 N (652 lbf) for tension
Fzc=2900 N (652 lbf) for compression
Myc=125 Nm (92 lbf-ft) for flexion about occipital condyles
Myc=40 Nm (30 lbf-ft) for extension about occipital condyles

Each of the four Nij values shall be calculated at each point in time, and all four values shall not exceed [the agency is considering values of 1.4 and 1.0] at any point in time. When calculating $N_{TE}$ and $N_{TF}$, all compressive loads shall be set to zero. Similarly, when calculating $N_{CE}$ and $N_{CF}$, all tensile loads shall be set to zero. In a similar fashion, when calculating $N_{TE}$ and $N_{CE}$, all flexion moments shall be set to zero. Likewise, when calculating $N_{TF}$ and $N_{CF}$, all extension moments shall be set to zero.

[Proposed Alternative Two—Neck]

*Neck injury criteria.* Using the six axis upper neck load cell [a drawing incorporated by reference in Part 572 would be identified in the final rule] that is mounted between the bottom of the skull and the top of the neck as shown in drawing [a drawing incorporated by reference in Part 572 would be identified in the final rule], the peak forces and moments measured at the occipital condyles shall not exceed:

Axial Tension = 1490 N (335 lbf)
Axial Compression = 1800 N (405 lbf)
Fore-and-Aft Shear = 1400 N (315 lbf)
Flexion Bending Moment = 57 Nm ( 42 lbf-ft)
Extension Bending Moment = 17 Nm (13 lbf-ft)

SAE Class 1000 shall be used to filter the axial tension, axial compression, and fore-and-aft shear. SAE Class 600 shall be used to filter the measured moment and fore-and-aft shear used to compute the flexion bending moment and extension bending moment at the occipital condyles.

S24 *Test procedure for S23.*

S24.2 *Static tests of automatic suppression feature which must result in deactivation of the passenger air bag.*

S24.2.1 Except as provided in S24.2.2, all tests specified in S22 using the 3-year-old Hybrid III child dummy are conducted using the 6-year old Hybrid III child dummy. However, for tests specifying the use of a forward-facing child seat or booster seat any such seat recommended for a child weighing 52 pounds is used instead of a seat recommended for a child weighing 34 pounds.

S24.2.2 *Exceptions.*

S24.2.2.1 The tests specified in the following paragraphs of S22 are not conducted using the 6-year-old Hybrid III child dummy: S22.2.2.2(f), (g), (h), (i), (j), (k), (l) and (m).

S24.2.2.2 The test specified in S22.2.2.2(o) is conducted using the 6-year-old Hybrid III child dummy. However, in positioning the 6-year-old child dummy, the following procedures are used in place of those specified in S22.2.2.2(o)(7) and (8):

(1) Center the dummy laterally so that Point A is coincident with Plane 2 and the upper spine plate is 6 degrees ± 2 degrees forward of the vertical position.

(2) With the use of spacers (wooden blocks, etc.) position the dummy in a seated position with the H-point located 230 mm (9 inches) ± 15 mm (0.6 inches) above the floor of the vehicle. Maintain the upper spine plate orientation.

S24.3 *Road tests of automatic suppression feature, during which the passenger air bag must be deactivated.* All tests specified in S22 using the 3-year-old Hybrid III child dummy are conducted using the 6-year old Hybrid III child dummy.

S24.4 *Low risk deployment test (Hybrid III 6-year old child dummy).*

S24.4.1 Position the dummy according to any of the following positions: Position 1 (S24.4.2) or Position 2 (S24.4.3).

S24.4.2 *Position 1.*

S24.4.2.1 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

S24.4.2.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point B.''

S24.4.2.3 Locate the horizontal plane that passes through Point B. This will be referred to as ''Plane 1.''

S24.4.2.4 Locate the vertical plane parallel to the vehicle longitudinal axis and passing through Point B. This will be referred to as ''Plane 2.''

S24.4.2.5 Move the passenger seat to the full rearward track seating position. Place the seat back in the nominal upright position as specified by the vehicle manufacturer.

S24.4.2.6 Place the dummy in the front passenger seat such that:

S24.4.2.6.1 Point A is located in Plane 2.

S24.4.2.6.2 A vertical plane through the dummy shoulder joints is at 90 degrees to the longitudinal axis of the vehicle.

S24.4.2.6.3 The lower legs are positioned 90 degrees ± 2 degrees to the upper legs.

S24.4.2.6.4 The dummy is positioned forward in the seat such that the dummy's upper spine plate is 6 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position, and the lower legs rest against the front of the seat or the feet are resting flat on the floorboard of the vehicle.

S24.4.2.6.5 Mark this position, and remove the legs at the pelvic interface.

S24.4.2.7 Move the dummy forward until the upper torso or head of the dummy makes contact with the forward structure of the vehicle.

S24.4.2.8 Once contact is made, as outlined in paragraph S24.4.2.7, the dummy is then raised vertically until Point A lies within Plane 1 (the vertical height to the center of the air bag) or until a minimum clearance of 6 mm (0.25 inches) between the dummy head and windshield is attained.

S24.4.2.9 Position the upper arms parallel to the spine and rotate the lower arm forward (at the elbow joint) sufficiently to prevent contact with or support from the seat.

S24.4.2.10 Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy.

S24.4.2.10.1 If necessary, the upper torso is tethered with a thread with a maximum breaking strength of 311 N (70 pounds). Care should be taken that any such tether is not situated in air bag deployment envelope.

S24.4.2.11 In calculation of the injury criteria as specified in paragraph S23.5, data are truncated prior to dummy interaction with vehicle components after the dummy's head is clear of the air bag.

S24.4.3 *Position 2.*

S24.4.3.1 Locate and mark the center point of the dummy's chest/rib plate

(the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

S24.4.3.2 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point B.'' Locate the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis. This will be referred to as ''Plane 2.''

S24.4.3.3 Move the passenger seat to the full rearward seating position.

S24.4.3.4 Place the dummy in the front passenger seat such that:

S24.4.3.4.1 Point A is located in Plane 2.

S24.4.3.4.2 A vertical plane through the shoulder joints of the dummy is at 90 degrees to the longitudinal axis of the vehicle.

S24.4.3.4.3 The lower legs are positioned 90 degrees (right angle) from horizontal.

S24.4.3.4.4 The dummy is positioned forward in the seat such that the lower legs rest against the front of the seat and such that the dummy's upper spine plate is 6 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position. Note: For some seats, it may not be possible to fully seat the dummy with the lower legs in the prescribed position. In this situation, rotate the lower legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy's upper spine plate is 6 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position.

S24.4.3.5 Move the seat forward, while maintaining the upper spine plate orientation until some portion of the dummy contacts the forward structure of the vehicle.

S24.4.3.5.1 If contact has not been made with the forward structure of the vehicle at the full forward seating position of the seat, slide the dummy forward on the seat until contact is made. Maintain the upper spine plate orientation.

S24.4.3.5.2 Once contact is made, rotate the dummy forward until the head and/or upper torso are in contact with the dashboard of the vehicle. Rotation is achieved by applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints.

S24.4.3.5.3 The lower legs and feet are rotated rearward (toward rear of vehicle) so as not to impede the rotation of the head/torso into the forward structures of the vehicle.

S24.4.3.5.4 The legs are repositioned so that the feet rest flat on (or parallel to) the floorboard with the ankle joint positioned as nearly as possible to the midsaggital plane of the dummy.

S24.4.3.5.5 If necessary, the upper torso is tethered with a thread with a maximum breaking strength of 311 N (70 pounds) and/or wedge under the dummy's pelvis. Care should be taken that any such tether is not situated anywhere within the deployment envelope of the air bag. Note: If contact with the dash cannot be made by sliding the dummy forward in the seat, then place the dummy in the forward-most position on the seat which will allow the head/upper torso to rest against the dashboard of the vehicle.

S24.4.3.6 Position the upper arms parallel to the torso and rotate the lower arm forward sufficiently to prevent contact with or support from the seat.

S24.4.3.7 In calculation of the injury criteria as specified in paragraph S23.5 of this standard, data are truncated prior to dummy interaction with vehicle components after the dummy's head is clear of the air bag.

S24.4.4 Deploy the right front passenger air bag system. If the air bag contains a multistage inflator, any stage is fired that may deploy in crashes below 32 km/h (20 mph) [the agency is also considering a range of speeds above and below this value], under the test procedure specified in S22.5 of this standard.

S24.4.5 Determine whether the injury criteria specified in S23.5 of this standard are met.

S25 *Requirements using an out-of-position 5th percentile adult female dummy at the driver position.*

S25.1 Each vehicle shall, at the option of the manufacturer, meet the requirements specified in S25.2 or S25.3 of this standard, under the test procedures specified in S26 of this standard, except that, at the option of the manufacturer, the vehicle may instead meet the requirements specified in S29 of this standard.

S25.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S25.2.1 through S25.2.3.

S25.2.1 The vehicle shall be equipped with an automatic suppression feature for the driver air bag which results in deactivation of the air bag after each of the static tests (using a 5th percentile adult female dummy) specified in S26.2 and activation of the air bag after each of the static tests specified in S26.3 of this standard.

S25.2.2 The vehicle shall be equipped with an automatic suppression feature for the driver air bag which meets the requirements specified in S27 of this standard.

S25.2.3 The vehicle shall be equipped with a telltale light on the instrument panel which is illuminated whenever the driver air bag is deactivated and not illuminated whenever the driver air bag is activated. The telltale:

(a) Shall be clearly visible from all front seating positions;

(b) Shall be yellow;

(c) Shall have the identifying words ''DRIVER AIR BAG OFF'' on the telltale or within 25 mm (1 inch) of the telltale; and

(d) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

S25.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S15.3 of this standard when the passenger air bag is statically deployed in accordance with the procedures specified in S26 of this standard.

S26 *Test procedure for S25 of this standard.*

S26.1 *General provisions.* Tests are conducted with the engine operating.

S26.2 *Static tests of automatic suppression feature which must result in deactivation of the driver air bag.*

S26.2.1 Place the 5th percentile adult female dummy in the driver seating position. Position the dummy, the seat, and the steering wheel according to any of the following specifications:

(a) The specifications set forth in S26.4 for Driver Position 1;

(b) The specifications set forth in S26.4 for Driver Position 2.

S26.2.2 Close all vehicle doors.

S26.2.3 Monitor telltale light to check whether the air bag is deactivated, i.e., the light must be illuminated.

S26.3 *Static tests of automatic suppression feature which must result in activation of the driver air bag.*

S26.3.1 *Test one—5th percentile adult female dummy.*

S26.3.1.1 Place the driver seat in any position, i.e., any seat track location, any seat height, any seat back angle.

S26.3.1.2 Place a Part 572 5th percentile adult female test dummy at the driver seating position of a vehicle in any of the following positions (if the dummy's hands cannot reach the steering wheel for a particular seat location, the arms and hands are positioned alongside the side of dummy):

(a) In accordance with procedures specified in S16.3 of this standard, to the extent possible with the seat position that has been selected;

(b) In the same position as specified in S26.3.1.2(a) of this standard, except that the right arm is gripped to the steering wheel at any position;

(c) In the same position as specified in S26.3.1.2(a) of this standard, except that the left arm is gripped to the steering wheel at any position;

(d) In the same position as specified in S26.3.1.2(a) of this standard, except that the right and left arms are gripped to the steering wheel at any position.

S26.3.1.3 Close all vehicle doors.

S26.3.1.4 Monitor the telltale light to check whether the air bag is activated, i.e., the light must be off.

S26.3.2 *Test two—50th percentile adult male dummy.*

S26.3.2.1 Place the driver seat in any position, i.e., any seat track location, any seat height, any seat back angle.

S26.3.2.2 Place a Part 572 Hybrid III 50th percentile adult male test dummy at the driver seating position of a vehicle in any of the following positions (if the dummy's hands cannot reach the steering wheel for a particular seat location, the arms and hands are positioned alongside the side of dummy):

(a) In accordance with procedures specified in S10 of this standard, to the extent possible with the seat position that has been selected;

(b) In the same position as specified in S26.3.2.2(a) of this standard, except that the right arm is gripped to the steering wheel at any position;

(c) In the same position as specified in S26.3.2.2(a) of this standard, except that the left arm is gripped to the steering wheel at any position;

(d) In the same position as specified in S26.3.2.2(a) of this standard, except that the right and left arms are gripped to the steering wheel at any position.

S26.3.2.3 Close all vehicle doors.

S26.3.2.4 Monitor the telltale light to check whether the air bag is activated, i.e., the light must be off.

S26.4 *Low risk deployment test.*

S26.4.1 Position the dummy according to any of the following positions: Driver position 1 (S26.4.2) or Driver position 2 (S26.4.3).

S26.4.2 *Driver position 1.*

26.4.2.1 Adjust steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center.

S26.4.2.2 Locate the point on the air bag module cover that is the geometric center of the steering wheel. This will be referred to as ''Point B.''

S26.4.2.3 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

S26.4.2.4 Locate the horizontal plane that passes through Point B. This will be referred to as ''Plane 1.''

S26.4.2.5 Locate the vertical plane perpendicular to Plane 1 and parallel to the vehicle longitudinal axis which passes through Point B. This will be referred to as ''Plane 2.''

S26.4.2.6 Place the dummy in the front driver seat so that:

(a) Point A is located in Plane 2.

(b) Seat position is adjusted during placement to obtain the correct dummy orientation.

S26.4.2.7 The dummy is rotated forward until the dummy's upper spine plate angle is 6 degrees ± 2 degrees forward (toward the front of the vehicle) of the steering wheel angle.

S26.4.2.8 The height of the dummy is then adjusted so that the bottom of the chin is in the same horizontal plane as the top of the module cover (dummy height can be adjusted using the seat position and/or spacer blocks). If seat height prevents the bottom of chin from being in the same horizontal plane as the module cover, the dummy height is adjusted as close to the prescribed position as possible.

S26.4.2.9 Move dummy forward maintaining upper spine plate angle and dummy height until head or torso contact the steering wheel.

S26.4.2.10 If necessary, a thread with a maximum breaking strength of 311 N (70 pounds) is used to hold the dummy against the steering wheel. The thread is positioned so as to eliminate or minimize any contact with the deploying air bag.

S26.4.2.11 In calculation of the injury criteria as specified in paragraph S15.3, data are truncated prior to dummy interaction with vehicle components after the dummy's head is clear of the air bag.

S26.4.3 *Driver Position 2.*

S26.4.3.1 The driver's seat track is not specified and may be positioned to best facilitate the positioning of the dummy.

S26.4.3.2 Locate the point on the air bag module cover that is the geometric center of the steering wheel. This will be referred to as ''Point B.''

S26.4.3.3 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A.''

S26.4.3.4 Locate the horizontal plane that passes through Point B. This will be referred to as ''Plane 1.''

S26.4.3.5 Locate the vertical plane perpendicular to Plane 1 which passes through Point B. This will be referred to as ''Plane 2.''

S26.4.3.6 Place the dummy in the front driver seat so that:

(a) Point A is located in Plane 2.

(b) Seat position is adjusted during placement to obtain the correct dummy orientation.

S26.4.3.7 The dummy is rotated forward until the dummy's upper spine plate is 6 degrees ± 2 degrees forward (toward the front of the vehicle) of the steering wheel angle.

S26.4.3.8 The dummy is positioned so that the center of the chin is in contact with the uppermost portion of the rim of the steering wheel. The chin is not hooked over the top of the rim of the steering wheel. It is positioned to rest on the upper edge of the rim, without loading the neck. If the dummy head interferes with the vehicle upper interior before the prescribed position can be obtained, the dummy height is adjusted as close to the prescribed position as possible, while maintaining a 10 ± 2 mm clearance with the vehicle upper interior.

S26.4.3.9 To raise the height of the dummy to attain the required positioning, spacer blocks (foam, etc.) are placed on the driver's seat beneath the dummy. If necessary, a thread with a maximum breaking strength of 311 N (70 pounds) is used to hold the dummy against the steering wheel. The thread is positioned so as to eliminate or minimize any contact with the deploying air bag.

S26.4.3.10 In calculation of the injury criteria as specified in paragraph S15.3 of this standard, data are truncated prior to dummy interaction with vehicle components after the dummy's head is clear of the air bag.

S26.4.4 Deploy the driver air bag. If the air bag contains a multistage inflator, any stage is fired that may deploy in crashes below 32 km/h (20 mph) [the agency is also considering a range of speeds above and below this value], under the test procedure specified in S22.5 of this standard.

S26.4.5 Determine whether the injury criteria specified in S15.3 of this standard are met.

S27 *Option for automatic suppression feature that suppresses the air bag when an occupant is out-of-position.*

S27.1 Each vehicle shall, at each front outboard designated seating position, when tested under the conditions of S28 of this standard, comply with the requirements specified in S27.2.1(a) and S27.2.2(a) of this standard at the target locations specified in S28.3 of this standard when tested using the out of position occupant simulator described in S28.2 of this standard at any speed up to and

including 11 km/h (7 mph). Each vehicle shall, in addition, meet the requirements specified in S27.1.1(b) and S27.2.2(b) of this standard using the specified test dummies. If a manufacturer selects this option, it shall select the passenger side automatic suppression plane (S28.7.1 of this standard) and the driver side automatic suppression plane (S28.7.2 of this standard) by the time of certification of the vehicle and may not thereafter select different planes.

S27.2 *Performance Criterion.*

S27.2.1 *Passenger Side.*

(a) The air bag disabling device shall deactivate the passenger side air bag and illuminate a telltale within 10 ms after any portion of the out of position occupant simulator passes through the vertical plane specified in S28.7.1 of this standard.

(b) The injury criteria specified in S21.5 of this standard shall be met when the passenger side air bag is deployed toward the Hybrid III 3-year-old child dummy when that test device is located in any position where all portions of the head, neck and torso of the dummy are tangent to or behind the air bag suppression plane. If the air bag contains a multistage inflator, any stage is fired.

S27.2.2 *Driver Side.*

(a) The air bag disabling device shall deactivate the driver side air bag and illuminate a telltale within 10 ms after any portion of the out of position occupant simulator passes through the plane specified in S28.7.2 of this standard.

(b) The injury criteria specified in S15.3 of this standard shall be met when the driver side air bag is deployed toward the Hybrid III 5th percentile adult female dummy when that test device is located in any position where all portions of the head, neck and torso of the dummy are tangent to or behind the air bag suppression plane. If the air bag contains a multistage inflator, any stage is fired.

S28 *Test procedure for S27 of this standard.*

S28.1 *Target location and test conditions.* The vehicle shall be tested and the target areas specified in S28.3 of this standard located under the following conditions.

S28.1.1 *Vehicle test attitude.*

(a) The vehicle is supported off its suspension at an attitude determined in accordance with S28.1.1(b).

(b) Directly above each wheel opening, determine the vertical distance between a level surface and a standard reference point on the test vehicle's body under the conditions of S28.1.1(b)(1) through S28.1.1(b)(2).

(1) The vehicle is loaded to its unloaded vehicle weight.

(2) All tires are inflated to the manufacturer's specifications listed on the vehicle's tire placard.

S28.1.2 *Windows and Sunroofs.*

(a) Movable vehicle windows, including sunroofs, are placed in the fully open position.

(b) Any window rearward of the B-pillar and any window on the opposite side of the longitudinal centerline of the vehicle from the target area may be removed.

S28.1.3 *Convertible tops.* The top, if any, of convertibles and open-body type vehicles is in the closed passenger compartment configuration.

S28.1.4 *Doors.*

(a) The front side door on the same side of the longitudinal centerline of the vehicle as the target area is fully closed and latched but not locked.

(b) The front side door on the opposite side of the longitudinal centerline of the vehicle from the target area, and any door rearward of the B-pillar, including rear hatchbacks or tailgates, may be open or removed.

S28.1.5 *Steering wheel and seats.*

(a) The steering wheel may be placed in any position intended for use while the vehicle is in motion.

(b) The seats may be removed from the vehicle unless removal will impair operation of the air bag disabling system.

S28.2 *Out-of-Position Occupant Simulator.* The out of position occupant simulator used for testing is a hemisphere, with a diameter of 165 mm (6.5 inches) ± 5 mm (0.2 inch).

S28.3 *Occupant Simulator Aiming Zone.* The occupant simulator aiming zone is determined according to the following procedure. (See Figures 8 and 9.)

S28.3.1 *Passenger Side.*

(a) Locate the geometric center of the passenger side air bag cover. Identify this point as Point P.

(b) Locate the line that connects Point P and CG–F (for the front outboard passenger position) as described in S28.4(a). Identify this line as Line P.

(c) Locate a circle with a diameter of 500 mm ± 5 mm (20 inches ± 0.2 inch) centered on Line P on the plane described in S28.7.1 of this standard. Identify this circle as Circle T.

(d) Locate a transverse horizontal plane (Plane 1) 100 mm ± 5 mm (4 inches ± 0.2 inch) below the transverse horizontal plane tangent to the lower edge of the air bag cover.

(e) The area of the vehicle to be targeted by the out of position occupant simulator is that area of Circle T within the vehicle above the intersection of Plane 1 and the plane described in S28.7.1 of this standard.

S28.3.2 *Driver Side.*

(a) Locate the geometric center of the driver side air bag cover. Identify this point as Point D.

(b) Locate the line that connects Point D and CG–F (for the driver position) as described in S28.4(a) of this standard. Identify this line as Line D.

(c) Locate a circle with a diameter of 500 mm ± 5 mm (20 inches ± 0.2 inch) centered on Line D on the plane described in S28.7.2 of this standard. Identify this circle as Circle U.

(d) Locate a transverse horizontal plane (Plane 2) tangent to the lower edge of the air bag cover.

(e) The area of the vehicle to be targeted by the out of position occupant simulator is that area of Circle U within the vehicle above the intersection of Plane 2 and the plane described in S28.7.2 of this standard.

S28.4 *Location of head center of gravity for front outboard designated seating positions (CG–F).* For determination of head center of gravity, all directions are in reference to the seat orientation.

(a) *Location of CG–F.* For front outboard designated seating positions, the head center of gravity with the seat in its rearmost adjustment position (CG–F2) is located 160 mm ± 5 mm (6.3 inches ± 0.2 inch) rearward and 660 mm ± 15 mm (26 inches ± 0.6 inch) upward from the seating reference point.

S28.5 *Test configuration.*

(a) *Passenger Side.* The out of position occupant simulator is guided along a velocity vector originating at any point within the vehicle to any point within the target area specified in S28.3.1(e) of this standard, and passing through the plane described in S28.7.1 of this standard.

(b) *Driver Side.* The out of position occupant simulator is guided along a velocity vector originating at any point within the vehicle to any point within the target area specified in S28.3.2(e) of this standard, and passing through the plane described in S28.7.2 of this standard.

S28.6 *Multiple tests.*

A vehicle being tested may be tested multiple times.

S28.7 *Automatic suppression plane.*

S28.7.1 *Passenger Side.* The automatic suppression plane of a vehicle is the transverse vertical plane passing through the rearmost point at which the Hybrid III three year old child dummy test device may approach the passenger side air bag when it deploys while meeting the injury criteria specified in S21.5 of this standard. If the

air bag contains a multistage inflator, any stage is fired.

S28.7.2 *Driver Side.* The automatic suppression plane of a vehicle is located as follows:

(a) Locate the plane A tangent to the rear face of the steering wheel rim.

(b) Locate the plane B parallel to plane A and passing through the geometric center of the air bag cover.

(c) The automatic suppression plane is a plane parallel to plane B and passing through the point nearest to plane B where any portion of a 5th percentile adult female dummy may be located in the event of air bag deployment and meet the injury criteria specified in S15.3 of this standard. If the air bag contains a multistage inflator, any stage is fired.

S29 *Dynamic out-of-position test option.* At the option of the vehicle manufacturer, a pre-impact deceleration test as specified in S30, may be used in place of the tests specified in S21, S23, and S25 of this section. Each vehicle shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3, S21.5, and S23.5, and the vehicle integrity criteria specified in S14.3, in accordance with the test procedures specified in S30 of this standard.

S30 *Test procedure for pre-crash deceleration impact test.*

S30.1 *General Provisions.* The vehicle is impacted into a rigid barrier, perpendicular to the barrier face as follows. Place a Part 572 5th percentile adult female test dummy at the driver seating position and any of the following test dummies at the right front designated seating position: a Hybrid III 3-year-old child dummy or a Hybrid III 6-year old child dummy. The manual safety belts are not to be fastened in any position. Accelerate the vehicle to a velocity of 32 km/h (20 mph) [the agency is also considering a range of speeds above and below this value] and then decelerate the vehicle such that the vehicle achieves a barrier impact speed of 24 km ± 2 km (15 mph ± 1 mph) [the agency is also considering a range of speeds above and below this value] at impact. The deceleration is initiated 2.1 meters ± 200 mm (7 ft ± 0.66 ft) from the impact barrier.

*S30.2 Test Conditions.*

S30.2.1 *Pre-crash Deceleration Impact Conditions.* Impact a vehicle traveling longitudinally and decelerating to a speed of 24 km/h ± 2 km/h (15 mph ± 1 mph) [the agency is also considering a range of values above and below this value], into a fixed collision barrier that is perpendicular to the line of travel of the vehicle.

S30.2.2 *Loading.* The vehicle, including the test devices and instrumentation, is loaded as specified in S16.2 of this standard.

S30.2.3 *Dummy Seating and positioning.* The 5th percentile adult female dummy is seated and positioned as specified in S16.3 of this standard, except that prior to seating the dummy, two pieces of low friction material, i.e., a silk or acetate cloth material having a 75 denier warp and a 150 denier filling, and a 225 count with a 68 pick, having linear dimensions no less than 60 cm (23.6 inches) by 60 cm (23.6 inches), are placed on the seat. If the Hybrid III 3-year-old child dummy is used at the right front designated seating position, it is seated and positioned as specified in S30.2.3.1 of this standard. If the Hybrid III 6-year-old child dummy is used at the right front designated seating position, it is seated and positioned as specified in S30.2.3.2 of this standard.

S30.2.3.1 *Seating procedure for Hybrid III 3-year-old child dummy.*

S30.2.3.1.1 The passenger side automatic suppression plane of a vehicle is that specified in S28.7.1.

S30.2.3.1.2 Place two pieces of low friction material, i.e., a silk or acetate cloth material having a 75 denier warp and a 150 denier filling, and a 225 count with a 68 pick, having linear dimensions no less than 60 cm (23.6 inches) by 60 cm (23.6 inches), on the seat.

S30.2.3.1.3 Locate and mark the center point of the dummy's chest/rib plate. (The vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A''.

S30.2.3.1.4 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point B''. Locate the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis. This will be referred to as ''Plane 2''.

S30.2.3.1.5 Move the passenger seat to the full rearward seating position.

S30.2.3.1.6 Place the Hybrid III 3-year-old child dummy in the front passenger seat, on the low friction fabric sheets, such that:

(a) Point A is to be located in Plane 2.

(b) A vertical plane through the shoulder joints of the dummy shall be at 90 degrees to the longitudinal axis of the vehicle.

(c) The lower legs are positioned 90 degrees ± 2 degrees (right angle) from horizontal.

(d) The dummy is positioned forward in the seat such the lower legs rest against the front of the seat and such that the dummy's upper spine plate is 0 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position. Note: For some seats, it may not be possible to fully seat the dummy with the lower legs in the prescribed position. In this situation, rotate the lower legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy's upper spine plate is 0 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position.

S30.2.3.1.7 Move the seat forward, while maintaining the upper spine plate orientation until the seat is in the full forward seating position or any part of the head or torso of the dummy intersects a plane parallel to the Automatic Suppression Plane, located 300 mm ± 15 mm (12 inches ± 0.6 inch) rearward of the Automatic Suppression Plane, whichever occurs first.

S30.2.3.1.8 The legs should be repositioned so that the feet rest flat on (or parallel to) the floorboard with the ankle joint positioned as nearly as possible to the medial plane of the dummy.

S30.2.3.1.9 If necessary, the upper torso can be tethered with a thread with a maximum breaking strength of 311 N (70 pounds) and/or wedge under dummy's pelvis. Care should be taken that any such tether is not situated anywhere within the deployment envelope of the air bag.

S30.2.3.1.10 Position the upper arms parallel to the upper spine plate and rotate the lower arm forward sufficiently to prevent contact with or support from the seat.

S30.2.3.1.11 Sufficient slack should be maintained in the instrumentation wiring harness so that the dummy motion is not restricted by the harness.

S30.2.3.2 *Seating procedure for Hybrid III 6-year-old child dummy.*

S30.2.3.2.1 The passenger side automatic suppression plane of a vehicle is that specified in S28.7.1.

S30.2.3.2.2 Place two pieces of low friction material, i.e., a silk or acetate cloth material having a 75 denier warp and a 150 denier filling, and a 225 count with a 68 pick, having linear dimensions no less than 60 cm (23.6 inches) by 60 cm (23.6 inches), on the seat.

S30.2.3.2.3 Locate and mark the center point of the dummy's chest/rib plate. (The vertical mid-point on the mid-sagittal plane of the frontal chest plate of the dummy). This will be referred to as ''Point A''.

S30.2.3.2.4 Locate the point on the air bag module cover that is the geometric center of the air bag module cover. This will be referred to as ''Point

B''. Locate the vertical plane which passes through Point B and is parallel to the vehicle longitudinal axis. This will be referred to as ''Plane 2''.

S30.2.3.2.5 Move the passenger seat to the full rearward seating position.

S30.2.3.2.6 Place the dummy in the front passenger seat, on the low friction fabric sheets, such that:

(a) Point A is to be located in Plane 2.

(b) A vertical plane through the shoulder joints of the dummy shall be at 90 degrees ± 2 degrees to the longitudinal axis of the vehicle.

(c) The lower legs are positioned 90 degrees ± 2 degrees (right angle) from horizontal.

(d) The dummy is positioned forward in the seat such the lower legs rest against the front of the seat and such that the dummy's upper spine plate is 6 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position. Note: For some seats, it may not be possible to fully seat the dummy with the lower legs in the prescribed position. In this situation, rotate the lower legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy's upper spine plate is 6 degrees ± 2 degrees forward (toward front of vehicle) of the vertical position.

S30.2.3.2.7 Move the seat forward, while maintaining the upper spine plate orientation until the seat is in the full forward seating position or any part of the head or torso of the dummy intersects a plane parallel to the Automatic Suppression Plane, located 300 mm ± 15 mm (12 inches ± 0.6 inch) rearward of the Automatic Suppression Plane, whichever occurs first.

S30.2.3.2.8 The legs should be repositioned so that the feet rest flat on (or parallel to) the floorboard with the ankle joint positioned as nearly as possible to the midsagittal plane of the dummy.

S30.2.3.2.9 If necessary, the upper torso can be tethered with a thread with a maximum breaking strength of 311 N (70 pounds) and/or wedge under dummy's pelvis. Care should be taken that any such tether is not situated anywhere within the deployment envelope of the air bag.

S30.2.3.2.10 Position the upper arms parallel to the upper spine plate and rotate the lower arm forward sufficiently to prevent contact with or support from the seat.

S30.2.3.2.11 Sufficient slack should be maintained in the instrumentation wiring harness so that the dummy motion is not restricted by the harness.

S30.2.4 *Impact configuration.* The vehicle is accelerated to a speed of 32 km/h ± 2 km/h (20 mph ± 1.3 mph) [the agency is also considering a range of values above and below this value]. Pre-crash deceleration is initiated such that the vehicle impacts the barrier perpendicular to the barrier face at a velocity of 24 km/h ± 2 km/h (15 mph, ± 1 mph) [the agency is also considering a range of values above and below this value]. The deceleration is initiated 2.1 meters ± 200 mm (7 ft ± 0.66 ft) [the agency is also considering a range of values above and below this value] from the impact barrier. Vehicle deceleration is 0.8 ± 0.3 g's [the agency is also considering a range of values above and below this value] prior to barrier contact.

3. Figures 8 and 9 would be added immediately following Figure 7 to read as follows:

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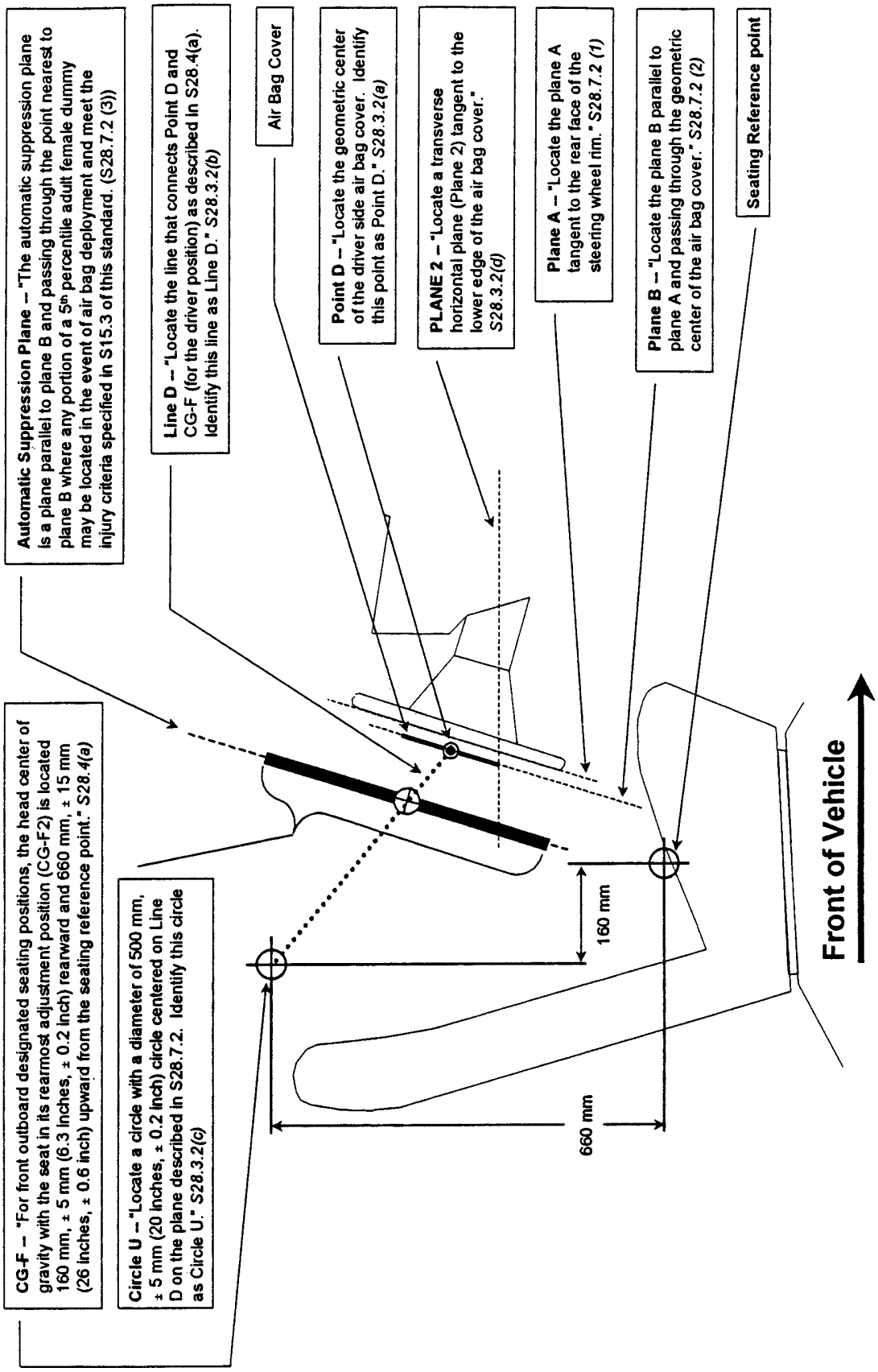


Figure 8, Driver Side OOP Occupant Simulator Aiming Zone (S28.3)
(right side view of vehicle)

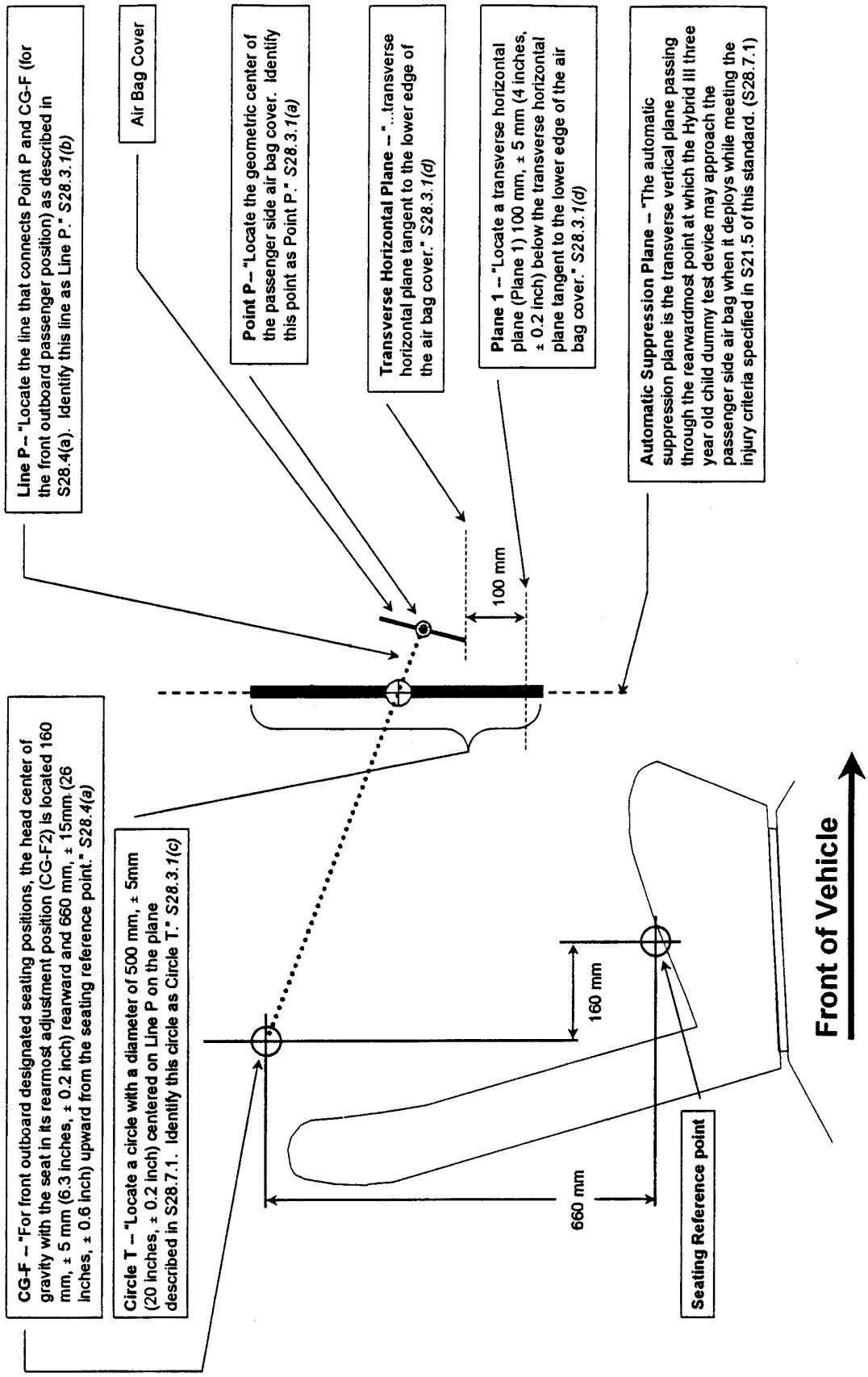


Figure 9, Passenger Side OOP Occupant Simulator Aiming Zone (S28.3)
(right side view of vehicle)

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4. Part 585 would be revised to read as follows:

## PART 585—ADVANCED AIR BAG PHASE-IN REPORTING REQUIREMENTS

Sec.
585.1 Scope.
585.2 Purpose.
585.3 Applicability.
585.4 Definitions.
585.5 Response to inquiries.
585.6 Reporting requirements.
585.7 Records.
585.8 Petition to extend period to file report.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

### § 585.1 Scope.

This part establishes requirements for manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the advanced air bag requirements of Standard No. 208, Occupant crash protection (49 CFR 571.208).

### § 585.2 Purpose.

This purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less has complied with the advanced air bag requirements of Standard No. 208.

### § 585.3 Applicability.

This part applies to manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less. However, this part does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

### § 585.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in section 571.3 of this chapter.

(c) Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

### § 585.5 Response to inquiries.

During the production years ending August 31, 2003, August 31, 2004, and August 31, 2005, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information regarding which vehicle make/models are certified as complying with the requirements of S14 of Standard No. 208.

### § 585.6 Reporting requirements.

(a) Phase-in selection reporting requirement. Within 60 days after the end of the production year ending August 31, 2003, each manufacturer choosing to comply with one of the phase-in schedules permitted by S14.1 of 49 CFR § 571.208 shall submit a report to the National Highway Traffic Safety Administration stating which phase-in schedule it will comply with until September 1, 2005. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the paragraph for the phase-in schedule selected;

(4) Be written in the English language; and

(5) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(b) General reporting requirements. Within 60 days after the end of the production years ending August 31, 2003, August 31, 2004, and August 31, 2005, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the advanced air bag requirements of Standard No. 208 for its passenger cars, trucks, buses and multipurpose passenger vehicles produced in that year. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the advanced air bag requirements of Standard No. 208 for the period covered by the report and the basis for that statement;

(5) Provide the information specified in Sec. 585.6(c);

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(c) Report content—(1) Basis for phase-in production goals. Each manufacturer shall provide the number of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less for sale in the United States must report the number of such vehicles manufactured during the current production year. However, manufacturers are not required to report any information with respect to those vehicles that are walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) Production. Each manufacturer shall report for the production year for which the report is filed the number of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less that meet the advanced air bag requirements of Standard No. 208.

(3) Vehicles produced by more than one manufacturer. Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S14.1.3.2 of Standard No. 208 shall:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

### § 585.7 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each passenger car, multipurpose passenger vehicle, truck

and bus for which information is reported under § 585.6(c)(2) until December 31, 2006.

**§ 585.8 Petitions to extend period to file report.**

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in § 585.6(b). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest.

## PART 587—DEFORMABLE BARRIERS

5. The authority citation for part 587 would be revised to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

6. The heading of part 587 would be revised to read as set forth above.

7. The heading ''Subpart A—General'' would be inserted immediately before section 587.1.

8. Section 587.1 would be revised to read as follows:

**§ 587.1 Scope.**

This part describes deformable impact barriers that are to be used for testing compliance of motor vehicles with motor vehicle safety standards.

9. Section 587.3 would be revised to read as follows:

**§ 587.3 Application.**

This part does not in itself impose duties or liabilities on any person. It is a description of tools that measure the performance of occupant protection systems required by the safety standards that incorporated it. It is designed to be referenced by, and become part of, the test procedures specified in motor vehicle safety standards such as Standard No. 208, Occupant Crash Protection, and Standard No. 214, Side Impact Protection.

### Subpart B—[Amended]

10. The heading ''Subpart B—Side Impact Moving Deformable Barrier'' would be inserted immediately after the end of section 587.3.

**§§ 587.7 through 587.10 [Reserved]**

11. Sections 587.7 through 587.10 would be reserved.

### Subpart C—[Amended]

12. The heading ''Subpart C—Offset Deformable Barrier'' would be inserted immediately after the end of section 587.10.

**§ 587.11 [Reserved]**

13. Section 587.11 would be reserved.

14. Sections 587.12 through 587.17 would be added to read as follows:

**§ 587.12 General description.**

The fixed offset deformable barrier is comprised of two elements: A fixed collision barrier and a deformable face (Figure 1). The base unit is a fixed barrier and must be adequate to not deflect or displace during the vehicle impact. The deformable face is 200 mm (7.8 inches) ± 15 mm (0.6 inch) off the ground, and consists of two separate layers of aluminum honeycomb and an aluminum covering.

**§ 587.13 Component And Material Specifications.**

The dimensions of the barrier are illustrated in Figure 1 of this part. The dimensions of the individual components of the barrier are listed separately below. All dimensions allow a tolerance of ± 2.5 mm (0.1 inch) unless otherwise specified.

(a) Main honeycomb block.

(1) *Dimensions.* The main section of the deformable face of the fixed barrier has the following dimensions. The height is 650 mm (25.6 inches) (in direction of honeycomb ribbon axis), the width is 1,000 mm (39.4 inches), and the depth is 450 mm (17.7 inches) (in direction of honeycomb cell axes).

(2) *Material.* The main section of the deformable face of the fixed barrier is constructed of the following material. The honeycomb is manufactured out of aluminum, 3003 (ISO 209, part 1), with a foil thickness of 0.076 mm (0.003 inches) ± 1 mm (0.040 inch) ± 0.004 mm (0.002 inch), an aluminum honeycomb cell size of 19.14 mm (0.75 inches), a density of 28.6 kg/m$^3$ (1.78 lb/ft$^3$) ± 2kg/m$^3$ (0.25 1b/ft$^3$) and a crush strength of 0.342 MPa (49.6 psi) + 0%–10%, in accordance with the certification procedure described in section 587.14.

(b) Bumper element.

(1) *Dimensions.* The bumper element of the deformable face of the fixed barrier has the following dimensions. The height is 330 mm (13 inches)(in direction of honeycomb ribbon axis), the width is 1,000 mm (39.4 inches), and the depth is 90 mm (3.5 inches)(in direction of honeycomb cell axes).

(2) *Material.* The bumper element of the deformable face of the fixed barrier is constructed of the following material. The honeycomb is manufactured out of aluminum 3003 (ISO 209, part 1), foil thickness of 0.076 mm(0.003 inch) ± 0.004 mm (0.0002 inch), cell size of 6.4 mm (0.25 inch) ± 1 mm (0.040 inch), density of 82.6 kg/m$^3$ (5.15 lb/ft$^3$) ± 3 kg/m$^3$ (0.19 lb/ft$^3$), and crush strength of 1.711 MPa (248 psi) + 0%–10%, in accordance with the certification procedure described in section 587.14.

(c) Backing sheet.

(1) *Dimensions.* The deformable barrier backing sheet has the following dimensions. The height is 800 mm (31.5 inches), the width is 1,000 mm (39.4 inches) inch), and the thickness is 2.0 mm (0.078 inch) ± 0.1 mm (0.004 inch).

(2) *Material.* The deformable barrier backing sheet is manufactured out of Aluminum 5251/5052.

(d) Cladding sheet.

(1) *Dimensions.* The cladding sheet of the main section of the deformable face of the fixed barrier has the following dimensions. The length is 1,700 mm (66.9 inches), the width is 1,000 mm (39.4 inches), and the thickness is 0.81 mm (0.03 inch) ± 0.07 mm (0.003 inch).

(2) *Material.* The cladding sheet of the main section of the deformable face of the fixed barrier is manufactured out of Aluminum 5251/5052.

(e) Bumper facing sheet.

(1) *Dimensions.* The bumper facing sheet has the following dimensions. The height is 330 mm(13 inches), the width is 1,000 mm(39.4 inches), and the thickness is 0.81 mm (0.03 inch) ± 0.07 mm (0.003 inch)

(2) *Material.* The bumper facing sheet is manufactured out of aluminum 5251/5052.

(f) Adhesive. The adhesive to be used throughout should be a two-part polyurethane.

**§ 587.14 Aluminum honeycomb certification.**

The following procedure is applied to materials for the frontal impact barrier, these materials having a crush strength of 0.342 MPa (49.6 psi) and 1.711 MPa (248 psi). (See Figure 1.)

(a) Sample locations. To ensure uniformity of crush strength across the whole of the barrier face, 8 samples are taken from 4 locations evenly spaced across the honeycomb block. For a block to pass certification, 7 of these 8 samples must meet the crush strength requirements of the following sections. Any part of the block may then be used for a barrier. The location of the samples depends on the size of the honeycomb block. First, four samples, each measuring 300 mm (11.8 inches) × 300 mm (11.8 inches) × 50 mm (1.97 inches)thick are cut from the block of barrier face material. (See Figure 2 for how to locate these samples on a typical

honeycomb block.) Each of these larger samples are cut into samples for certification testing (150 mm (5.9 inches) × 150 mm (5.9 inches) × 50 mm (1.97 inches)). Certification is based on the testing of two samples from each of the four locations.

(b) Sample size. Samples of the following size are used for testing. The length is 150 mm(5.9 inches) ± 6 mm (0.24 inch), the width is 150 mm (5.9 inches) ± 6 mm (0.24 inch), and the thickness is 50 mm (1.97 inches) ± 2 mm (0.078 inch). The walls of incomplete cells around the edge of the sample are trimmed as follows (See Figure 3). In the width ''W'' direction, the fringes must be no greater than 1.8 mm (0.07 inch); in the length (''L'') direction, half the length of one bonded cell wall (in the ribbon direction) must be left at either end of the specimen.

(c) Area measurement. The length of the sample is measured in three locations, 12.7 mm (0.5 inch) from each end and in the middle, and recorded as L1, L2, and L3 (Figure 3). In the same manner, the width is measured and recorded as W1, W2 and W3 (Figure 3). These measurements are taken on the centerline of the thickness. The crush area is then calculated as:

$$A = \frac{(L1 + L2 + L3)}{3} \times \frac{(W1 + W2 + W3)}{3}$$

(d) Crush rate and distance. The sample is crushed at a rate of not less than 5.1 mm/min (0.2 in/min) and not more than 7.6 mm/min (0.29 in/min). The minimum crush distance is 16.5 mm(0.65 inch). Force versus deflection data are to be collected in either analogue or digital form for each sample tested. If analogue data are collected then a means of converting this to digital must be available. All digital data must be collected at a rate consistent with SAE J211, 1995.

(e) Crush strength determination. Ignore all data prior to 6.4 mm (0.25 inch) of crush and after 16.5 mm (0.65 inch) of crush. Divide the remaining data into three sections or displacement intervals (n = 1,2,3) (see Figure 4) as follows. Interval one should be at 6.4–9.7 mm (0.25–0.38 inch) deflection, inclusive. Interval two should be at 9.7–13.2 mm (0.38–0.52 inch) deflection, exclusive. Interval three is 13.2–16.5 mm (0.52–0.65 inch) deflection, inclusive. Find the average for each section as follows: where m represents the number of data points measured in each of the three intervals. Calculate the crush strength of each section as follows:

$$F(n) = \frac{[F(n)1 + F(n)2 + F(n)m]}{m}; m = 1,2,3$$

where m represents the number of data points measured in each of the three intervals. Calculate the crush strength of each section as follows:

$$S(n) = \frac{F(n)}{A}; n = 1,2,3$$

(f) Sample crush strength specification. For a honeycomb sample to pass this certification, the following condition must be met. For the 0.342 MPa (49.6 psi) material, the strength be equal or greater than 0.308 MPa (45 psi) but less than or equal to 0.342 MPa (49.6 psi) for all three compression intervals. For the 1.711 MPa (248 psi) material the strength must be equal to or greater than 1.540 MPa (223 psi) but less than or equal to 1.711 MPa (248 psi) for each of the compression intervals.

(g) Block crush strength specification. Eight samples are to be tested, from four locations, evenly spaced across the block. For a block to pass certification, 7 of the 8 samples must meet the crush strength specification of the previous section. Any part of the block may then be used for a barrier.

(h)(1) The testing hardware must have a capacity of applying 13.3 kN (3,000 lb) over a stroke of at least 16.5 mm (0.65 inches), at a constant and known rate. The crush plates must be parallel (within 0.127 mm (0.005 inch)), be at least 165 mm × 165 mm (6.5 inch × 6.5 inch) in size, have a surface roughness approximately equivalent to 60 grit sandpaper, and be marked to ensure centering of the applied load on the sample.

(2) The hardware used for certifying aluminum honeycomb must be capable of applying sufficient load (13.3 kN (3,000 lb)), over at least a 16.5 mm (0.65 inch) stroke. The crush rate must be constant and known. To ensure that the load is applied to the entire sample, the top and bottom crush plates must be no smaller than 165 mm by 165 mm (6.5 inch × 6.5 inch). The engaging surfaces of the crush plates must also have a roughness approximately equivalent to 60 grit sandpaper. The bottom crush plate should be marked to ensure that the applied load is centered on the sample.

(3) The crush plate assemblies must have an average angular rigidity (about axes normal to the direction of crush) of at least 1017 Nm/deg (750 ft-lb/deg), over the range of 0 to 203 N m (0 to 150 ft-lb) applied torque.

**§ 587.15 Adhesive Bonding Procedure.**

Immediately before bonding, aluminum sheet surfaces to be bonded must be thoroughly cleaned using a suitable solvent, such as 1-1-1 Trichloroethane. This is to be carried out at least twice or as required to eliminate grease or dirt deposits. The cleaned surfaces must then be abraded using 120 grit abrasive paper. Metallic/silicon carbide abrasive paper is not to be used. The surfaces must be thoroughly abraded and the abrasive paper changed regularly during the process to avoid clogging, which may lead to a polishing effect. Following abrading, the surfaces must be thoroughly cleaned again, as above. In total, the surfaces must be solvent cleaned at least four times. All dust and deposits left as a result of the abrading process must be removed, as these will adversely affect bonding. The adhesive should be applied to one surface only, using a ribbed rubber roller. In cases where honeycomb is to be bonded to aluminum sheet, the adhesive should be applied to the aluminum sheet only. A maximum of 0.5 kg/m² (11.9 lb/ft²) be applied evenly over the surface, giving a maximum film thickness of 0.5 mm (0.02 inch).

**§ 587.16 Construction.**

(a) The main honeycomb block is bonded to the backing sheet with adhesive such that the cell axes are perpendicular to the sheet. The cladding is bonded to the front surface of the honeycomb block. The top and bottom surfaces of the cladding sheet must not be bonded to the main honeycomb block but should be positioned closely to it. The cladding sheet must be adhesively bonded to the backing sheet at the mounting flanges. The bumper element must be adhesively bonded to the front of the cladding sheet such that the cell axes are perpendicular to the sheet. The bottom of the bumper element must be flush with the bottom surface of the cladding sheet. The bumper facing sheet must be adhesively bonded to the front of the bumper element.

(b) The bumper element must then be divided into three equal sections by means of two horizontal slots. These slots must be cut through the entire depth of the bumper section and extend the whole width of the bumper. The slots must be cut using a saw; their width must be the width of the blade used and must not exceed 4.0 mm (0.16 inch).

(c) Clearance holes for mounting the barrier are to be drilled in the mounting flanges (shown in Figure 2.) The holes must be 20 mm (0.79 inch) in diameter. Five holes must be drilled in the top flange at a distance of 40 mm (1.57 inches) from the top edge of the flange and five holes in the bottom flange, 40

mm (1.6 inches) from the bottom edge of that flange. The holes must be spaced 100 mm, 300 mm (11.8 inches), 500 mm (19.7 inches), 700 mm (27.5 inches), 900 mm (35.4 inches) horizontally, from either edge of the barrier. All holes must be drilled to ± 1 mm (0.04 inch) of the nominal distances.

**§ 587.17 Mounting.**

(a) The deformable barrier must be rigidly fixed to the edge of a mass of not less than $7 \times 10^4$ kg (154,324 lbs) or to some structure attached thereto. The attachment of the barrier face must be such that the vehicle must not contact any part of the structure more than 75 mm (2.9 inches) from the top surface of the barrier (excluding the upper flange) during any stage of the impact. (A mass, the end of which is between 925 mm (36.4 inches) and 1000 mm (39.4 inches) high and at least 1000 mm (39.4 inches) deep, is considered to satisfy this requirement.) The front face of the surface to which the deformable barrier is attached must be flat and continuous over the height and width of the face and must be vertical ± 1 degree and perpendicular ± 1 degree to the axis of the run-up track. The attachment surface must not be displaced more than 10 mm (0.4 inch) during the test. If necessary, additional anchorage or arresting devices must be used to prevent displacement of the barrier. The edge of the deformable barrier must be aligned with the edge of the ridged barrier appropriate for the side of the vehicle to be tested.

(b) The deformable barrier must be fixed to the fixed barrier by means of ten bolts, five in the top mounting flange and five in the bottom. These bolts must be at least 8 mm (0.3 inch) in diameter. Steel clamping strips must be used for both the top and bottom mounting flanges (figures 1 and 2). These strips must be 60 mm (2.4 inches) high and 1000 mm (39.4 inches) wide and have thickness of at least 3 mm (0.12 inch). Five clearance holes of 20 mm (0.8 inch) diameter must be drilled in both strips to correspond with those in the mounting flange on the barrier (see section 587.16(c)). None of the fixtures must fail in the impact test.

15. Figures 1 through 5 would be added to Part 587.

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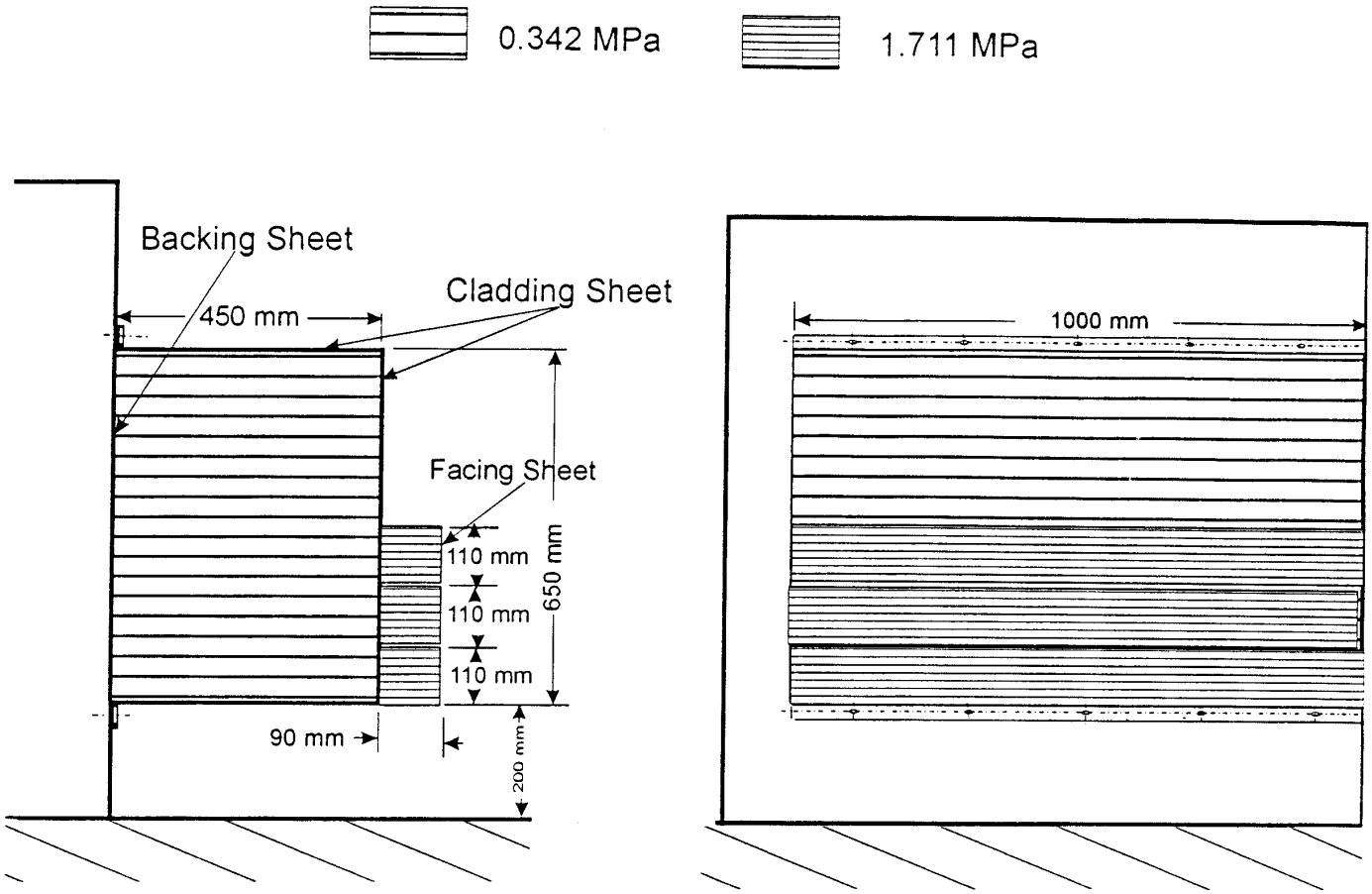
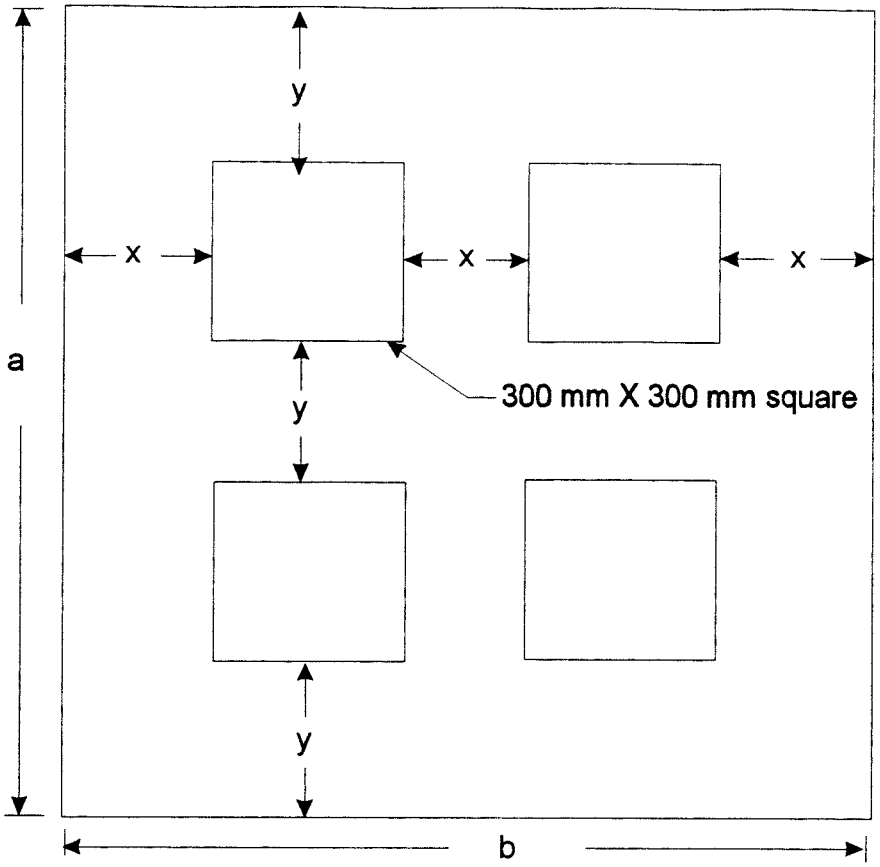
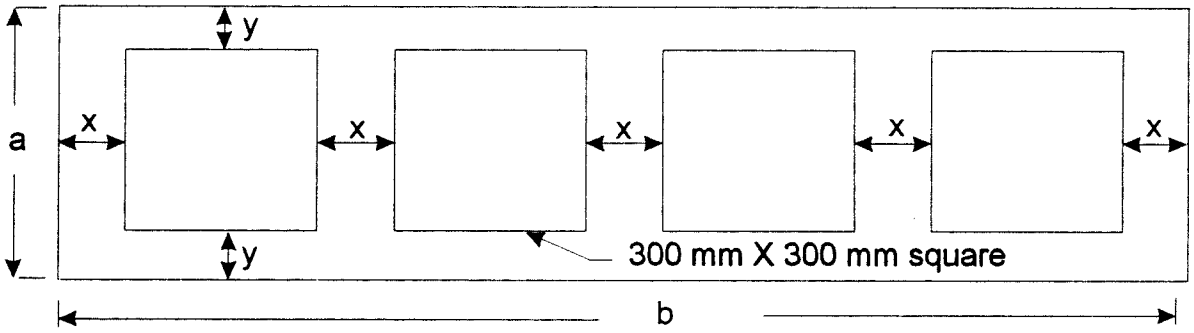



Figure 1 Offset Barrier




If a ≥ 900 mm: x = 1/3(b-600)mm and y = 1/3(a-600)mm (for a≤b)




If a < 900 mm: x = 1/5 (b - 1200) mm and y = 1/2 (a - 300) mm (for a≤ b)

Figure 2
Location of Samples for Certification

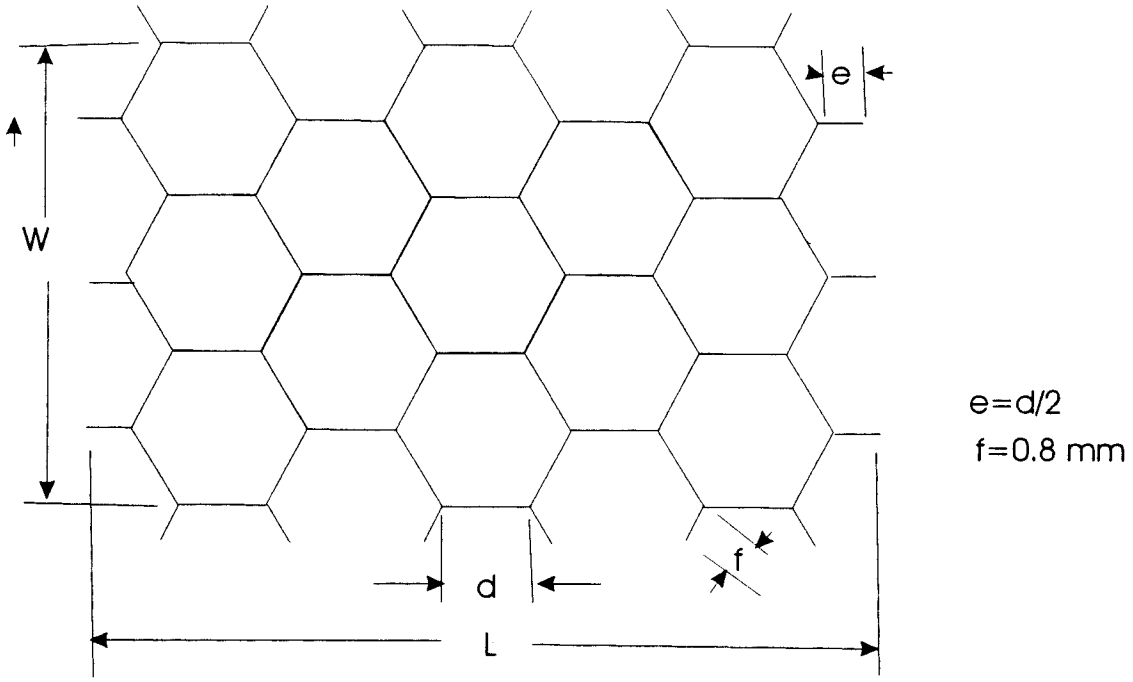



Figure 3 - Honeycomb Axes and Measured Dimensions

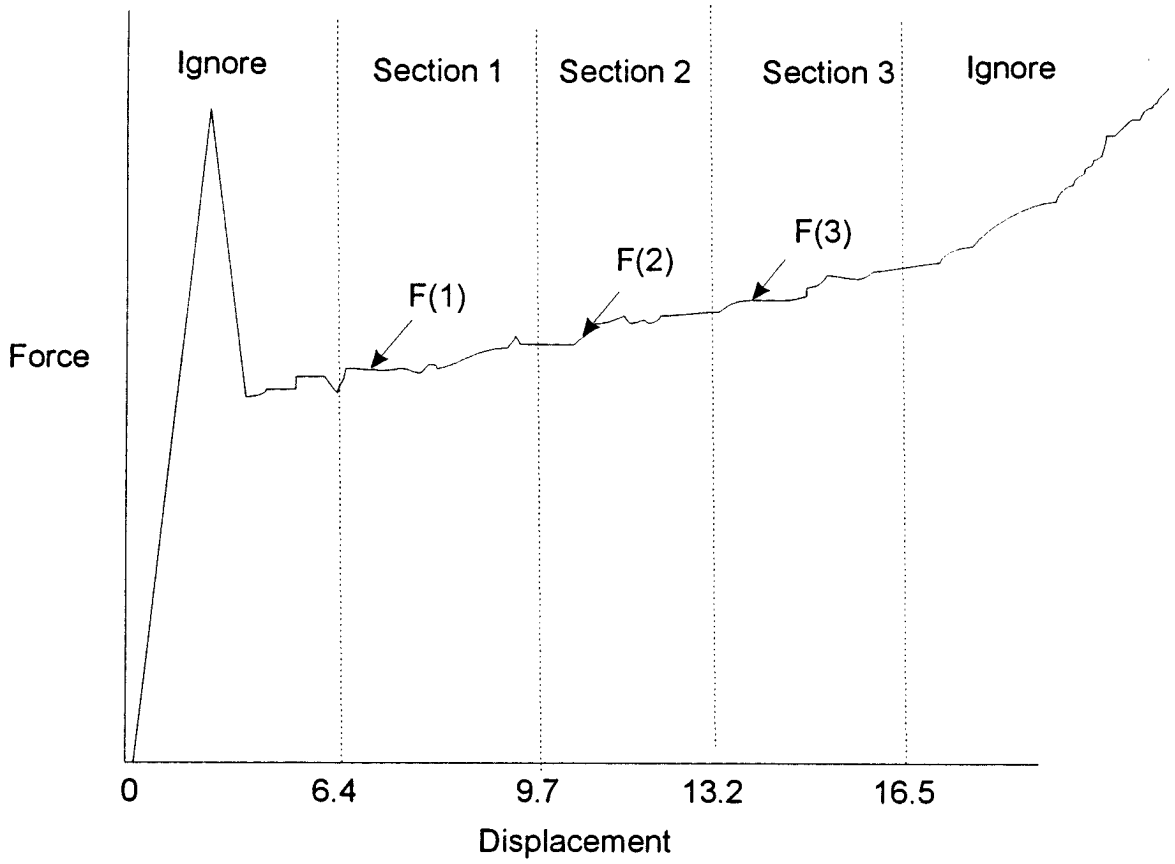



Figure 4
Crush Force and Displacement

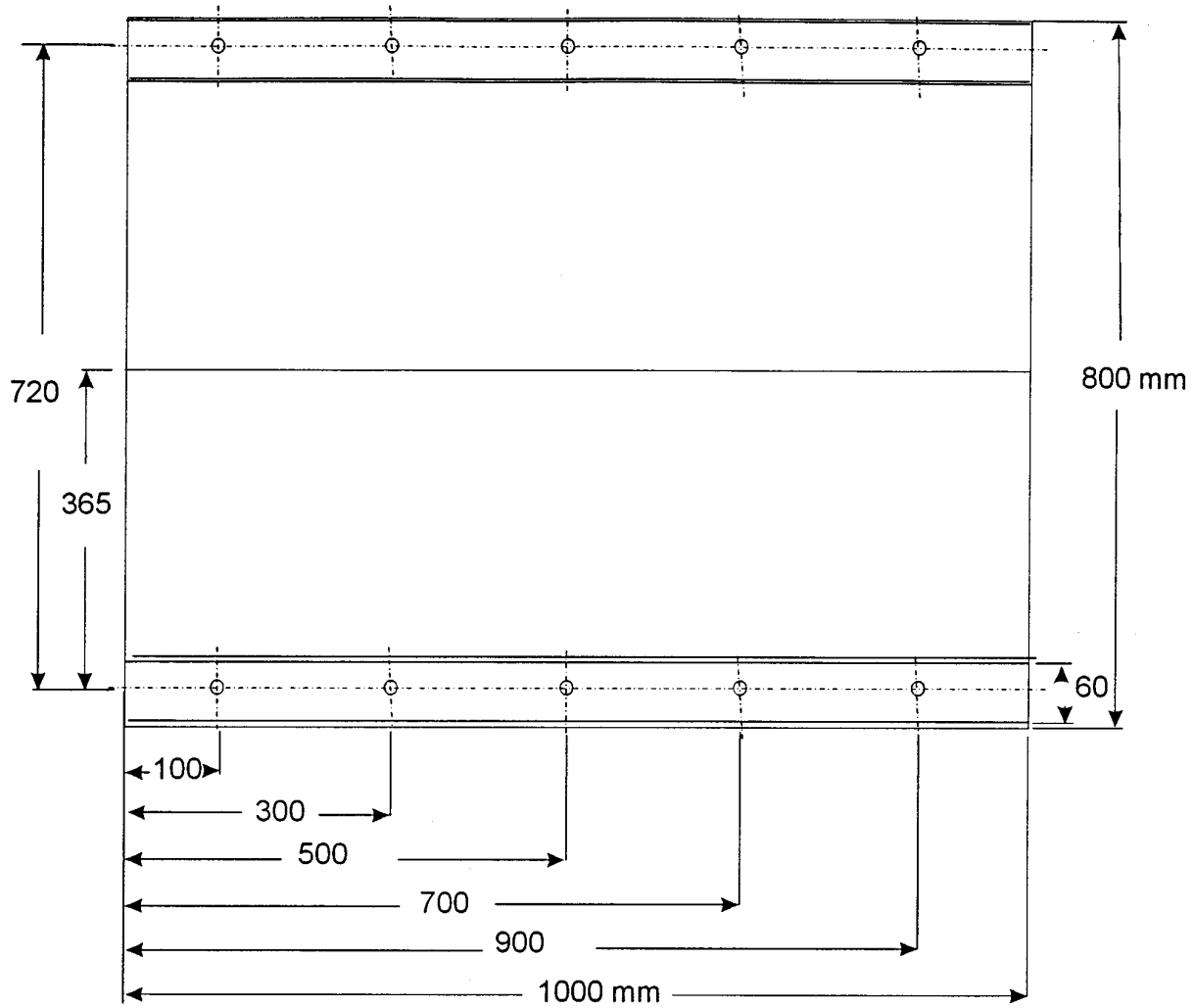



Figure 5
Positions of Holes for Barrier Mounting

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## PART 595—RETROFIT ON-OFF SWITCHES FOR AIR BAGS

16. The authority citation for part 595 would continue to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

17. Section 595.5 would be amended by revising paragraph (a) and adding paragraph (b)(6) to read as follows:

**§ 595.5 Requirements.**

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle manufactured before September 1, 2005 by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (6) of this section:

(b) * * *

(6) The vehicle was not certified to meet the advanced air bag requirements of Federal Motor Vehicle Safety Standard No. 208, i.e., the requirements specified in S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208.

Issued: September 1, 1998.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

## Appendix—Response to Petitions

**Note:** The following appendix will not appear in the Code of Federal Regulations.

NHTSA has received a number of petitions and recommendations which address air bag performance requirements. These include petitions for rulemaking concerning the adverse effects of air bags, recommendations from NTSB, and petitions for reconsideration of several regulatory actions addressing this problem on an interim basis.

In this appendix, NHTSA discusses and responds to those outstanding petitions and recommendations which address air bag performance requirements. In some cases, the agency presents its initial response to a petition; in other cases, the agency discusses how today's proposal for advanced air bags provides a further response to petitions for rulemaking which have already been granted. NHTSA notes that it will respond in other notices to any outstanding petitions addressing other types of air bag-related issues, e.g., consumer information requirements and retrofit on-off switches.

### A. Petitions Requesting That New Test Requirements Be Added to Standard No. 208

*1. August 1996 Petition From AAMA*

As part of AAMA's August 1996 petition requesting that an unbelted sled test be allowed as an alternative to the existing unbelted barrier crash test to facilitate quick depowering of air bags, that organization also petitioned the agency to propose driver and passenger out-of-position occupant test requirements, based on the latest ISO test practices, as a way of testing the injury potential of air bags for those occupants. AAMA recommended that the agency use the Hybrid III 5th percentile adult female dummy at the driver position and an appropriate child dummy at the passenger position. AAMA stated that additional work was needed to more fully develop the ISO protocol to a level appropriate for an amendment to Standard No. 208.

Today's proposal for advanced air bags includes out-of-position occupant requirements based on the ISO test procedures, using the Hybrid III 5th percentile adult female dummy and several child dummies. This notice is therefore in further response to AAMA's petition.

*2. September 1996 Petition From Anita Glass Lindsey*

On September 1, 1996, Anita Glass Lindsey submitted a petition to amend Standard No. 208 to specify use of a 5th percentile adult female test dummy in testing vehicles for compliance with the standard's air bag requirements. NHTSA granted the petition in the preamble its NPRM concerning depowering. 62 FR 807, 827; January 6, 1997. The agency stated that it contemplated initiating a new rulemaking proceeding to propose the adoption of a 5th percentile adult female dummy and to specify injury criteria and limits, including neck injury criteria and limits, suitable for that dummy.

Today's proposal for advanced air bags proposes the adoption of the Hybrid III 5th percentile adult female dummy and related test requirements and injury criteria. The notice is therefore in further response to Ms. Lindsey's petition.

*3. September 1996 NTSB Safety Recommendations*

On September 17, 1996, the National Transportation Safety Board (NTSB) issued a number of safety recommendations to NHTSA for reducing the problem of child fatalities caused by air bags. These recommendations are as follows:

1. Immediately evaluate passenger air bags based on all available sources, including NHTSA's recent crash testing, and then publicize the findings and modify performance and testing requirements, as appropriate, based on the findings of the evaluation.

2. Immediately revise Federal Motor Vehicle Safety Standard 208, *Occupant Crash Protection,* to establish performance requirements for passenger air bags based on testing procedures that reflect actual accident environments, including pre-impact braking, out-of-position child occupants (belted and unbelted), properly positioned belted child occupants, and with the seat track in the forward-most position.

3. Evaluate the effect of higher deployment thresholds for passenger air bags in combination with the recommended changes in air bag performance certification testing, and then modify the deployment thresholds based on the findings of the evaluation.

4. Establish a timetable to implement intelligent air bag technology that will moderate or prevent the air bag from deployment if full deployment would pose an injury hazard to a belted or unbelted occupant in the right front seating position, such as a child who is seated too close to the instrument panel, a child who moves forward because of pre-impact braking, or a child who is restrained in a rear-facing child restraint system.

5. Determine the feasibility of applying technical solutions to vehicles not covered by NHTSA's proposed rulemaking of August 1, 1996, to prevent air bag-induced injuries to children in the passenger position.

Today's proposal for advanced air bags is responsive to these recommendations.

*4. November 1996 Petitions From Public Citizen and the Center for Auto Safety*

On November 8, 1996, the Center for Auto Safety (CFAS) petitioned the agency to amend Standard No. 208 to specify that a vehicle's air bags must not deploy in a crash if the vehicle's change of velocity is less than 12 mph. CFAS noted that many of the crashes resulting in air bag fatalities, especially those of children, involved very low changes in vehicle velocity.

On November 20, 1996, CFAS and Public Citizen petitioned the agency to begin rulemaking to require dual inflation air bags. In low-speed crashes, these bags would inflate more slowly, and thus less aggressively, than then-current air bags. In higher-speed crashes, they would inflate at the same rate as then-current air bags. The petitioners asserted that their proposal is the best solution in the near future and is superior to depowering, since depowering involves ''some trade-off in safety protection and will not add significant protection for unrestrained children.''

NHTSA considered and discussed these petitions during its depowering rulemaking. The agency believes that higher deployment thresholds and dual or multiple level inflators are among the available alternatives for reducing adverse effects of air bags. However, NHTSA is not proposing to require either alternative because it believes such a requirement would be unnecessarily design-restrictive, given the other available alternatives.

Moreover, the agency believes that neither a requirement for higher deployment thresholds alone nor a requirement for dual or multiple level inflators would be a sufficient longer term approach for the agency to adopt. NHTSA is concerned that a requirement for higher deployment thresholds would discourage the use of multiple level inflators, which the agency believes offer greater potential benefits. A requirement for multiple level inflators would be inadequate because it would not measure injury risk, e.g., the possibility that even the lower inflation level might cause fatalities to out-of-position occupants.

*5. February 1997 Petition From Parents for Safer Air Bags*

On February 28, 1997, Parents for Safer Air Bags petitioned NHTSA to (1) investigate the effect of temperature on air bag inflation and (2) incorporate performance requirements in Standard No. 208 that require compliance with the standard at −40° C (−40° F) and at 82° C (180° F).

That organization stated that it had been advised by engineering experts that temperature can materially affect air bag pressure. It supplied a graph showing how inflator performance typically varies by temperature in a tank test. It expressed concern that an occupant in Minnesota in the winter may ''bottom out'' as a result of excessive depowering while an occupant in Arizona in the summer may be struck with excessive bag punch even with depowering.

The Parents' Coalition stated that it had been advised that the most effective test protocol to insure proper air bag performance in variant climatic conditions is a static deployment with pendulum loading that simulates occupant acceleration and tests for bottom out and rebound. The petitioner stated that the air bag inflator and module should be cooled to −40° F. (and heated to 180° F.) and then tested at those temperatures.

NHTSA agrees that temperature will have an effect on any gas. Since air bag inflation is dependent on gas, temperature may have an effect on inflation characteristics. Therefore, the agency agrees that the vehicle manufacturers need to take account of temperature issues as they design their air bags. The agency notes, however, that few if any people would operate their vehicles at the extreme temperatures cited by the petitioner. Moreover, to the extent that an inflator was at an extreme temperature at the beginning of a trip, the temperature would likely move close to the occupant compartment's operating temperature after a few minutes.

The agency believes that the relevant issues to consider in responding to the Parents' Coalition petition are whether this is an issue which needs to be addressed by Federal regulation and, if so, what type of regulation. NHTSA has tentatively concluded that there is not a demonstrated need to include temperature requirements in Standard No. 208, but it is requesting comments on this issue.

NHTSA notes that, in issuing today's proposal for advanced air bags, the agency has tentatively concluded that a substantial number of additional performance requirements need to be added to Standard No. 208 to ensure that the vehicle manufacturers design their air bags to provide appropriate protection under a wider variety of circumstances. However, in the context of a statutory scheme requiring the agency to issue performance requirements (as opposed to one requiring design requirements or government approval), it is neither appropriate nor possible for the agency to address every real world variable that can affect safety. Ultimately, the vehicle manufacturers must be expected to design their vehicles not only so they meet the performance requirements specified by the Federal motor vehicle safety standards, but also in light of the full range of real world conditions their vehicles will experience.

Based on an examination of available data, NHTSA is not aware of a need to add temperature requirements to Standard No. 208. The agency has evaluated its Special Crash Investigations of air bag fatalities and serious injuries, and has been unable to find any relationship between temperature and air-bag-induced injuries.

NHTSA also believes that it would be relatively difficult to develop temperature requirements that would be appropriate for Standard No. 208. The agency does not believe that a pendulum test, by itself, would be desirable because it would not measure injury criteria.

However, the agency believes that manufacturers can, and should, consider temperature performance as they design their air bags. They are in a position to know how significant temperature variation is to the performance of a particular air bag design, and can conduct the kinds of testing that are suited to each such design.

As indicated above, while the agency has tentatively concluded that there is not a need to include temperature requirements in Standard No. 208, it is requesting comments on this issue. The agency is particularly interested in receiving comments from air bag manufacturers and vehicle manufacturers concerning what testing and other steps they have taken to ensure that air bag performance is appropriate under varying temperature conditions, the steps they have taken in the context of depowering their air bags (e.g., how they may have addressed the possibility that depowered air bags might be more likely to ''bottom out'' in cold temperatures), and how they plan to address the issue in the context of advanced air bag designs.

*6. April 1998 Petition From CFAS, Consumer Federation of America, Parents for Safer Air Bags, and Public Citizen*

On April 20, 1998, CFAS, Consumer Federation of America, Parents for Safer Air Bags, and Public Citizen submitted a joint petition requesting that the agency upgrade Standard No. 208 to include testing of the ''family of dummies'' in (1) barrier tests up to and including 30 mph (belted and unbelted), (2) moderate speed off-set deformable barrier tests (belted and unbelted), and (3) static tests with out-of-position dummies. The petitioners stated that this comprehensive set of tests would ensure that air bag systems are safe and effective in ''real world'' crash conditions, not just in the ''single crash scenario'' in the present standard.

The petitioners argued that the present requirements in Standard No. 208 are under-inclusive, since they require testing only of the properly positioned, average-sized adult male dummy in a 30 mph collision. They stated that the standard omits testing of child sized dummies, small women dummies, out-of-position dummies, and dummies of any size and position in low-speed collisions. The petitioners also stated that the standard omits off-set crashes into a deformable barrier—tests that reveal the ability of the crash sensor to promptly detect the crash event and deploy the bag before the occupant has had time to move dangerously close to the air bag.

According to the petitioners, these gaps in Standard No. 208 have allowed air bag systems to enter the market that have caused severe and fatal injuries to child passengers and small women drivers in minor collisions. The petitioners believe that the solution is the upgrading of Standard No. 208's air bag performance requirements, as summarized earlier in this section.

The petitioners also emphasized that they believe the unbelted 30 mph barrier test should be reinstated. Noting that some automobile manufacturers are urging permanent elimination of that test in favor of the current sled test option, the petitioners stated that the agency should reject this recommendation due to the serious inadequacies of the sled test. Among other things, the petitioners stated that the sled test (1) uses a ''fictitious'' 125 millisecond crash pulse that fails to account for the fact that some vehicles have a much faster crash pulse; (2) does not allow observation of how the vehicle crushes; (3) does not allow observation of the occupant's interaction with the vehicle structure in an actual crash (the so-called occupant ''kinematics''); and (4) fails to test the effectiveness of the vehicle's crash sensors.

NHTSA notes that it received this petition as it was nearing completion of its proposal for advanced air bags. Nonetheless, the agency has carefully analyzed the petition. The agency believes that while not identical, today's proposal is essentially consistent with the approach recommended by the petitioners. Accordingly, the agency has decided to grant the petition and views today's proposal as responsive to the petition.

NHTSA notes that it agrees with the petitioners that the current requirements of Standard No. 208 are under-inclusive and need to be upgraded. However, the agency believes it is incorrect to characterize the standard's longstanding barrier test requirements as ''a single crash scenario.'' Given that the current standard specifies that vehicles must be able to comply with the barrier test at different speeds, different angles, and with both belted and unbelted dummies,[23] the standard simulates a wide variety of real world crash scenarios. However, the agency agrees that the standard needs to be upgraded so that it directly addresses a number of crash scenarios not simulated by the barrier test, such as ones involving out-of-position occupants.

**B. Petition Requesting Extension of the Provision Allowing On-Off Switches for Vehicles Without Rear Seats or With Small Rear Seats**

On January 6, 1997, NHTSA published a final rule in the **Federal Register** (62 FR 798) extending until September 1, 2000 the time period during which vehicle manufacturers are permitted to offer manual on-off switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. The agency extended the option from an earlier date so that manufacturers would have more time to implement better, automatic solutions.

GM requested the agency to reconsider its position regarding this ''sunset'' date. That company essentially argued that there is still

[23] As discussed elsewhere in this notice, the standard currently includes an unbelted sled test option that may be selected as an alternative to the unbelted barrier test.

considerable uncertainty as to whether such automatic solutions will be available by September 1, 2000.

NHTSA has decided to grant GM's petition. In today's proposal for advanced air bags, the agency is proposing, among other things, to require automatic means for ensuring that passenger air bags do not pose a risk to children in rear facing infant seats. In developing this proposal, the agency has considered the lead time needed to implement these solutions. The agency has therefore tentatively concluded that it should extend the date for this ''sunset'' so that the temporary amendment would expire as the upgraded performance requirements are phased in.

During the proposed phase-in, manual on-off switches would not be available for any vehicles certified to the upgraded requirements, but would be available for other vehicles if those vehicles do not have rear seats or have rear seats that are too small to accommodate rear facing infant seats.

**C. Petitions Requesting a Permanent Option of Using Unbelted Sled Test Instead of Unbelted Barrier Test**

As discussed earlier in this notice, NHTSA is proposing to amend Standard No. 208 to improve occupant protection for occupants of different sizes, belted and unbelted, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by current air bag designs. The current standard provides vehicle manufacturers with the flexibility necessary to introduce advanced air bags, but does not require them to do so.

Partially because Standard No. 208 has always provided the flexibility to address the problem of out-of-position occupants, the agency specified in its depowering rulemaking that the alternative sled test was a temporary measure, instead of a permanent one. NHTSA explained that there is no need to permanently reduce Standard No. 208's performance requirements to enable manufacturers to choose alternatives to the current single inflation level air bags and thus avoid the adverse effects of those air bags. Those requirements permit manufacturers to install air bags that adapt deployment based on one or more factors such as crash severity, belt use, and occupant size, weight or position, or that inflate in a manner that is not seriously harmful to out-of-position occupants.

NHTSA decided to make the alternative sled test available until advanced air bags could be introduced. It specified that the alternative sled test would ''sunset'' on September 1, 2001, based on its judgment in the Spring of 1997 that vehicle manufacturers could install some types of advanced air bags in their fleets by that date. The agency recognized, however, that there was uncertainty as to how quickly advanced air bags could be incorporated into the entire fleet. Accordingly, the agency indicated that it would revisit the sunset date, to the extent appropriate, in its future rulemaking on advanced air bags. See 62 FR 12968, March 19, 1997.

NHTSA received four petitions requesting that the agency eliminate the sunset date for the alternative unbelted sled test. The petitions were submitted by AAMA, AIAM, Ford, and IIHS.

The agency notes that the sunset date (September 1, 2001) specified in the standard has been superseded by the NHTSA Reauthorization Act of 1998. The Act ensures that the sled test option will remain in place at least until the vehicle manufacturers introduce advanced air bags. As discussed earlier in this notice, the Act provides that the unbelted sled test option ''shall remain in effect unless and until changed by [the final rule for advanced air bags].'' The Conference Report states that the current sled test certification option remains in effect ''unless and until phased out according to the schedule in the final rule.''

Since the Act overrides the provision in Standard No. 208 sunsetting the sled test alternative, the Act effectively moots the petitions for reconsideration concerning that provision. Accordingly, there is no need to set out the arguments made in those petitions. Further, those arguments and their underlying premises have themselves been superseded in some respects by the Act, having been submitted long before the air bag provisions of the Act were formulated and enacted. For example, many of those arguments were premised on the continued use of the current, single inflation level air bags, instead of the advanced air bags mandated by Congress in the Act.

Nevertheless, those arguments were generally considered by the agency before deciding to propose terminating the sled test alternative. The following discussion supplements the discussion in the preamble of the reasons for issuing that proposal.

*Adoption in 1997 of the Temporary Sled Test Option.* AAMA first petitioned the agency to provide a sled test alternative to the unbelted barrier test requirements in August 1996. By the time that organization submitted its petition, it had become clear that while the single inflation level air bag designs then being installed by the industry were highly effective in reducing teenager and adult fatalities from frontal crashes, they also sometimes caused fatalities to out-of-position occupants, especially children, in low speed crashes. NHTSA and the industry were then seeking solutions that could be implemented quickly to reduce the adverse effects of air bags, while also maintaining, to the extent possible, the benefits of air bags.

In analyzing AAMA's rulemaking petition, the agency recognized that there were downsides to the approach recommended by that organization. Unlike a full scale vehicle crash test, a sled test does not, and cannot, measure the actual protection that an occupant will receive in a crash. The test can measure limited performance attributes of the air bag, but not the performance provided by the full air bag system, much less the combination of the vehicle and its occupant crash protection system. It is that combination that determines the amount of protection actually received by occupants in a real world crash.

NHTSA was faced with a difficult decision in evaluating AAMA's rulemaking petition to permit use of the sled test. The agency wanted the industry to quickly mitigate the adverse effects of its then-current air bag designs, which the auto industry said it would do if the agency adopted the sled test, but the agency did not want to reduce the protection being ensured by Standard No. 208.

Faced with this dilemma, NHTSA carefully analyzed whether a reduction in stringency of the Standard was necessary in the short term to address adverse effects of air bags to out-of-position occupants. A review of the record showed that a wide range of technological solutions were, and had been, available to prevent adverse effects of air bags, and still enable vehicles to meet Standard No. 208's barrier crash test requirements.[24] However, these technologies generally could not be implemented as quickly as depowering.

In light of the rulemaking record before it, NHTSA decided to adopt the sled test alternative requested by the auto industry[25] and supported by others to be absolutely sure that, given the air bag designs then being used by the industry, the vehicle manufacturers had the necessary flexibility to address the problem of adverse effects of air bags in the shortest time possible. The agency recognized that there were longer term technological solutions that did not require a reduction in the safety protection afforded by Standard No. 208. It further recognized that many or most vehicles could have their air bags substantially depowered and still meet the standard's longstanding barrier test requirements. Nevertheless, NHTSA wanted to make sure that the standard did not prevent quick action by the manufacturers that would reduce air bag risks while still providing a measure of protection.

The agency took this action because the sled test offered advantages that, in the short

[24] In its 1984 decision, the Department had expressly recognized that the vehicle manufacturers had raised concerns about potential adverse effects of air bags to out-of-position occupants. In response to those concerns, the Department had identified a variety of available technological means for addressing those risks. The July 11, 1984 Final Regulatory Impact Analysis (FRIA) listed a variety of potential technological means for addressing the problem of injuries associated with air bag deployments (FRIA, pp. III–8 to 10) including dual level inflation systems and other technological measures such as bag shape and size, instrument panel contour, aspiration, and inflation technique. It also noted that a variety of different sensors could be used to trigger dual level inflation systems, e.g., a sensor that measures impact speed, a sensor that measures occupant size or weight and senses whether an occupant is out of position; and an electronic proximity sensor. However, the auto manufacturers generally did not adopt any of these technologies.

[25] The sled test alternative adopted by NHTSA, with a 125 msec pulse, had a more stringent pulse than the one first advocated by AAMA. That organization first recommended a 143 msec pulse. However, testing by NHTSA showed that a vehicle could pass Standard No. 208's requirements without an air bag with the 143 msec pulse. The more stringent pulse was recommended by AAMA in a later submission. Further testing by the agency showed that some vehicles could pass Standard No. 208's requirements without an air bag even with the 125 msec pulse. Given this testing, NHTSA added new neck injury criteria to the sled test alternative, to help ensure that the vehicle manufacturers did not depower their air bags to a point where they would provide little benefit.

run, outweighed the fundamental shortcomings of that test as a representation of potentially fatal real world crashes and thus as a reliable predictor of real world performance. Much of the sled test's short run value lay in the fact that it was simpler and less costly to conduct than a barrier crash test and that, by simplifying compliance testing through removal of some of the key elements related to real world performance, it made compliance much easier to achieve, and to demonstrate.

At the same time, the agency made it clear that it viewed the reduction in the standard's safety requirements as a short-term interim measure, while the vehicle manufacturers develop and implement better solutions. 62 FR 12968. The agency considered the sled test to be a short term means of ensuring that the vehicle manufacturers could quickly depower all of their air bags, but not an effective long-term means for measuring a vehicle's occupant protection.

*Proposal to Sunset the Sled Test Option.* NHTSA has proposed to sunset the unbelted sled test option in part because the agency believes that ensuring continued protection of unbelted occupants is vital to motor vehicle safety. About half of the occupants in potentially fatal crashes are still unbelted. Moreover, youth are overrepresented among unbelted victims in fatal crashes. Young people of both sexes, but particularly males, are disproportionately represented among the unbelted. It is well known that the young are more prone to risky behavior. As drivers grow older, they mature and adopt safer driving and riding habits.[26] By continuing to provide effective air bag protection for the unbelted, the agency and the vehicle manufacturers can help give young drivers and passengers a better chance of safely passing through their risk-prone years. Providing effective air bag protection for the unbelted will also help other disproportionately represented groups, such as rural residents and members of minorities.

The auto industry suggests that unbelted occupants would continue to be provided a level of protection even in the absence of an unbelted barrier test requirement. However, they have not provided any specific information concerning what level of protection would be provided. The agency tentatively concludes that such protection can best be measured, and ensured, in full scale vehicle crash tests.

In order to determine the amount of life-saving and injury-reducing protection that is provided by the combination of a vehicle and its air bags to unbelted occupants, it is necessary to test a vehicle in situations in which an unbelted occupant would, in the absence of an effective air bag, typically face a significant risk of serious injury or death. This need is met by the unbelted 48 km/h (30 mph) barrier test requirement, which is representative of a significant percentage of such real world crashes. A NHTSA paper titled ''Review of Potential Test Procedures for FMVSS No. 208,'' notes that data from the National Automotive Sampling System (NASS) indicate that the barrier crash pulse (full and oblique) represents about three-quarters of real world collisions. A copy of this paper is being placed in the public docket.

NHTSA believes that Standard No. 208 should continue to address the protection of the nearly 50 percent of all occupants in potentially fatal crashes who are still unbelted. Apart from the substantial numbers of lives at stake, the experience with current single inflation level air bags suggests that the agency should amend Standard No. 208 to ensure occupant protection in a wider variety of real world crash scenarios, rather than narrowing its scope.

Nevertheless, some petitioners have argued that NHTSA should drop the unbelted barrier requirement based on an expectation that seat belt use will substantially increase in the future. The agency recognizes that as seat belt use increases, the percentage of real world crashes that is directly represented by the unbelted barrier test decreases. However, there are several reasons why the agency tentatively concludes that dropping that test requirement would not be appropriate, particularly at this time.

First, future projections of increases in seat belt use are uncertain, and seat belt use in potentially fatal crashes is currently little over 50 percent. The agency tentatively concludes that it should not reduce safety performance requirements for nearly one-half the occupants involved in potentially fatal crashes, particularly on the basis of uncertain projections about future seat belt use.

Second, even as seat belt use increases, the persons not using seat belts will tend to be over-involved in potentially fatal crashes. Teenagers are among the persons least likely to use seat belts. They are also much more likely than other groups to be involved in potentially fatal crashes. Moreover, even in countries where seat belt use is 90 percent, unbelted occupants still represent about 33 percent of all fatalities.

The arguments made by the petitioners regarding the effect of the barrier test on air bag performance were typically premised on the continued use of the current, one-size-fits-all, air bag designs. They did not address the range of advanced air bag technologies that may be employed to meet the barrier test requirements. The issue about the compliance tests that should be used in the future should be determined in the context of the air bag technology to be used in the future, and not in the context of the older air bag designs currently in use. When the full range of advanced air bag technologies is considered, the agency believes that it is apparent that the vehicle manufacturers can address the adverse effects of air bags to out-of-position occupants, and provide excellent protection to both belted and unbelted occupants.

The agency believes the appropriate solution to the current air bag problems is to preserve and enhance the life-saving and injury-reducing benefits that air bags are providing to all occupants, belted and unbelted, while dramatically reducing or eliminating fatalities and serious injuries caused by air bags. In the longer run, the agency believes its plan to adopt requirements for advanced air bags and maintain an effective unbelted vehicle test requirement will achieve this goal.

The agency believes that justifying the elimination of the unbelted barrier test based on the shortcomings of current (or pre-depowered) air bag designs has parallels to the rationale for the agency's decision in the early 1980's to rescind the automatic restraint requirements. The agency rescinded those requirements for the stated reason that many vehicle manufacturers had initially chosen to comply with them by detachable automatic seat belts, instead of either nondetachable automatic seat belts or air bags, and that those detachable belts might not significantly improve vehicle safety. The U.S. Supreme Court unanimously concluded that the appropriate regulatory response to ineffective or undesirable design choices by the vehicle manufacturers regarding automatic restraints was not simply to rescind the requirements for those restraints, but first to consider the alternative of amending the requirements to ensure better technological choices in the future. *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 403 U.S. 29 (1983). The reasoning underlying that decision suggests that the fact that the air bag designs chosen to date do not meet all safety considerations is not a sufficient reason, by itself, to undercut or negate the broad, longstanding performance requirements for air bags, given that there are other, superior alternative designs from which to choose. Instead, the appropriate long-term solution is to amend the requirements to ensure that the manufacturers select and install better air bag designs in the future.

In arguing for permanent retention of the sled test, the petitioners made a number of arguments about the potential benefits of depowered air bags. However, NHTSA does not believe that it is necessary to retain the sled test to obtain the benefits of depowered air bags. Ultimately, the issue is not whether some vehicles with depowered, single inflation level air bags do not today meet the 48 km/h (30 mph) barrier test requirement. As noted above, the issue about future compliance tests should be determined in the context of future air bag technology, and not in the context of today's less sophisticated air bag designs. Various advanced air bag technologies can be used that will provide full protection in compliance with such substantial test crashes, while not injuring out-of-position occupants.

As discussed above, the primary reason NHTSA decided to adopt the temporary sled test alternative in its depowering rulemaking was because of its desire to ensure that the vehicle manufacturers could depower all of their single inflation level air bags quickly. The certification testing that vehicle manufacturers would have needed to conduct to ensure that their depowered air bags continued to meet the 48 km/h (30 mph) barrier test would have prevented the quick depowering of all air bags. However, the agency did not determine that multi-inflation

[26] The National Occupant Protection Use Survey (NOPUS) reported in August 1997 that young adults (16–24 years old) were observed with the lowest belt use rate (less than 50%) of any of the reported observed categories. The NOPUS data report findings of trained observers at controlled intersections. A copy of the NOPUS report is available at the NHTSA web site under the category ''Reports and Research Notes''.

level or even single inflation level depowered air bags could not, given sufficient time, be produced that would also meet the 48 km/h (30 mph) barrier test.[27]

In this connection, the agency notes that, based on very limited data, it appears that many, perhaps most, vehicles with depowered air bags continue to meet Standard No. 208's unbelted barrier test requirements by wide margins. NHTSA has tested five vehicles with depowered driver air bags in unbelted 48 km/h (30 mph) rigid barrier tests, and all passed Standard No. 208's injury criteria by significant margins.[28] The agency has tested six vehicles with depowered passenger air bags in unbelted 48 km/h (30 mph) rigid barrier tests, and all but one passed the standard's injury criteria performance limits by significant margins.[29]

NHTSA notes that the petitioners suggested that it should evaluate the real world safety impacts of depowering before deciding whether to restore the barrier test. This suggestion does not take into account the limitations of the sled test alternative for measuring the occupant protection provided in a potentially fatal crash, especially as compared to an actual crash test. Further, there is some question whether determining the level of protection provided by the current depowered air bags would enable the agency to assess the level of safety ensured by the sled test. The sled test gives vehicle manufacturers broad flexibility to design and install air bags that are significantly more depowered than the current depowered air bags. In comparing regulatory alternatives, the question for the agency to answer is the level of safety protection actually required by different alternatives instead of the safety protection that is currently provided, or may in the future be provided, voluntarily by the manufacturers.

These concerns are particularly relevant in considering any kind of permanent change to a safety standard. Since the agency analyzed the sled test amendment as a relatively short-term, interim means of ensuring that manufacturers could quickly depower their vehicles' existing air bags, it primarily analyzed the safety impacts of the changes the vehicle manufacturers said they would make. The agency did not analyze the safety implications of replacing the barrier test with a sled test on a long-term basis.

NHTSA does not know what kind of occupant protection the vehicle manufacturers would chose to provide if the sled test alternative were made permanent. As indicated above, based on very limited data, it appears that many vehicles with depowered air bags continue to meet Standard No. 208's unbelted barrier test requirements by wide margins. If the manufacturers continued to voluntarily meet the barrier test requirements for nearly all of their vehicles, the safety impacts of the sled test alternative would obviously be minimal.

However, the agency has no assurance that the vehicle manufacturers would continue to voluntarily meet the barrier test requirements if the sled test alternative were made permanent. The vehicles with depowered air bags being produced in model year 1998 were not primarily designed to meet the sled test. Instead, the vehicles were designed several years ago to meet the barrier test requirements but now have depowered air bags. There is no way of reliably predicting how the vehicle manufacturers would design their vehicles in the context of a permanent sled test alternative.

As to concerns about international harmonization, NHTSA supports international harmonization, when it is consistent with the adoption of best safety practices. For the reasons discussed above, the agency tentatively concludes that permanent retention of the sled test alternative would not be consistent with best safety practices.

*Questions for commenters concerning the proposed sunsetting.* While the information currently available to the agency on balance supports the proposal to sunset the sled test, the agency wishes to have as much information as possible to aid it in making a sound final decision regarding this proposal. To the end, the agency invites public comment on:

1. *Criteria for assessing tests.* What objective criteria should be used to evaluate and compare the available alternative types of compliance test procedures, e.g., the rigid barrier crash test and the sled test. Such criteria might include, but not be limited to:

A. Impact of a procedure on design flexibility;

B. Extent to which a procedure ensures that good real world performance is provided;

C. Extent to which a procedure creates the potential for degradation of real world performance;

D. Extent to which a procedure is representative of the varied real world crashes in which serious and fatal injuries occur; and

E. Administrative considerations, such as repeatability and costs of test conducted pursuant to a procedure.

2. *Comparison and ranking of tests.* How do the alternative test procedures rank when compared to each other based on the criteria listed above and any other appropriate objective criteria, *and* based on advanced air bag technology? The agency emphasizes that any comparisons submitted to the agency should be forward-looking ones in terms of technology. Some past comparisons of the barrier crash test and sled test have been of limited utility and relevance because they have been premised on the continued use of old air bag technology.

**D. Petition Objecting to NHTSA's Final Rule on Depowering**

Donald Friedman petitioned the agency to reconsider its decision to allow the sled test alternative even on a temporary basis. He argued that the problem of fatalities in low-speed air bag deployment crashes arose because some motor vehicle manufacturers failed to fully meet their legal responsibilities, that NHTSA responded belatedly and inappropriately with an amendment that will not prevent some of the low speed crash deployment fatalities, that the sled test amendment compromises the safety purpose of Standard No. 208 so that the standard no longer meets the need for motor vehicle safety, and that the agency had not formally considered all reasonable, available alternatives.

Mr. Friedman asked that the rulemaking be reopened with a broader spectrum of proposed options. He stated that NHTSA should not take at face value the industry's claim that the only way it can respond to the current situation is to depower air bags. The petitioner stated that, at a minimum, the options should include (1) making no change in the standard while encouraging manufacturers to raise the minimum crash speed at which air bags deploy, (2) recommending under any depowering option that manufacturers use more effective belt-use inducements in their new vehicles, and (3) recommending that manufacturers offer pedal extension attachments for short people who request them.

The petitioner also requested that the agency consider alternatives for the period after the next several years, including that NHTSA recommend that manufacturers use available voluntary consensus standards organizations or professional societies to draft recommended practices for air bag safety within the requirements of the original Standard No. 208. The petitioner stated that he opposes rulemaking to add major requirements to reduce the potential of harm from air bag deployment. Mr. Friedman stated that it took 20 years to get the automatic crash protection standard in place, and it is unlikely that the agency could make a major revision of this standard effective in less than a decade.

After carefully considering Mr. Friedman's petition, the agency has decided to deny it. NHTSA believes that it considered a reasonable range of interim approaches for addressing the problem of adverse effects from air bags, and that the temporary depowering amendment was a reasonable part of the interim approach selected by the agency.

The agency notes that it addressed a range of alternatives in both the NPRM and the final rule for depowering. Contrary to the allegation of the petitioner, NHTSA did not take at face value the industry's claim that the only way it can respond to the current situation is to depower air bags. In the final rule on depowering, NHTSA explained its position on this subject as follows:

NHTSA notes that, in its January 1997 proposal, it discussed a variety of alternative approaches for addressing the adverse effects of air bags, including higher deployment thresholds, dual level inflators, smart air

[27] Depowering has a very short leadtime because it can be accomplished simply by reducing the amount of propellant in existing air bag designs. If longer leadtime is assumed, however, manufacturers can make air bags less aggressive by means such as changing folding patterns and deployment paths, with a smaller chance of creating difficulties with respect to the barrier test requirements.

[28] These vehicles included the Taurus, Explorer, Neon, Camry and Accord.

[29] The vehicles which passed the standard's injury criteria by significant margins included the Taurus, Explorer, Caravan, Camry and Accord. The exception was the Neon.

bags, and various other changes to air bags. In issuing its proposal, the agency recognized that, for many vehicles, depowering has a shorter lead time than any of the other alternatives. The agency also explained that a change in Standard No. 208 is not needed to permit manufacturers to implement these other alternatives. The agency explained further:

The agency expects to ultimately require smart air bags through rulemaking. In the meantime, the agency is not endorsing depowering over other solutions. Instead, the agency is proposing a regulatory change to add depowering to the alternatives available to the vehicle manufacturers to address this problem on a short-term basis. To the extent that manufacturers can implement superior alternatives for some vehicles, the agency would encourage them to do so.

NHTSA shares the concern of the Parent's Coalition that depowering will not likely save all children and will likely result in trade-offs for adults. That is why the agency is limiting the duration of its depowering amendments and plans to conduct rulemaking to require smart air bags. In the meantime, however, NHTSA wants to be sure that the vehicle manufacturers have the necessary tools to address immediately the problem of adverse effects of air bags. Standard No. 208's existing performance requirements do restrict the use of depowering, since substantially depowering the air bags of many vehicles would make those vehicles incapable of complying with the standard's injury criteria in a 30 mph barrier crash test. Accordingly, to permit use of this alternative, it is necessary to amend Standard No. 208.

The issuance of any rule narrowing the discretion that vehicle manufacturers have had since the 1984 decision, whether by requiring depowering, higher thresholds, other changes to air bags, or smart air bags, would involve considerably more complex issues than a rulemaking simply adding greater flexibility. The agency would need to assess safety effects, practicability, and leadtime for the entire vehicle fleet. NHTSA will assess those types of issues in its rulemaking for smart air bags. The agency notes that there may not be any reason to have higher deployment thresholds with some types of smart air bags, since a low-power inflation may be automatically selected for low severity crashes.

Until the agency conducts its rulemaking regarding smart air bags, it believes it is best to focus on ensuring that manufacturers have appropriate flexibility to address the problem of adverse effects of air bags. This will enable the manufacturers to select the solutions which can be accomplished most quickly for their individual models. NHTSA encourages the vehicle manufacturers to use the best available alternative solutions that can be quickly implemented for their vehicles, whether depowering, higher thresholds, other changes to air bags, smart air bags, or a combination of the above. The agency notes again that the vehicle manufacturers need not wait for further rulemaking to begin installing smart air bags, and encourages them to move in that direction expeditiously.

NHTSA notes that Mr. Friedman did not address or challenge the specific rationales provided by the agency for the temporary depowering amendment. Moreover, he did not address the agency's overall comprehensive plan of rulemaking and other actions addressing the adverse effects of air bags, or explain why his various recommendations constitute a better approach. (This comprehensive plan was discussed in the depowering final rule at 62 FR 12961–62). Accordingly, the agency has concluded that the petitioner has not provided a basis for reopening the depowering rulemaking.

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Friday
September 18, 1998

# Part III

# Presidio Trust

**36 CFR Part 1001, et al.**

**Management of the Presidio; Proposed Rule**

**PRESIDIO TRUST**

**36 CFR Parts 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008 and 1009**

**RIN 3212–AA01**

## Management of the Presidio

**AGENCY:** The Presidio Trust.

**ACTION:** Proposed rule.

**SUMMARY:** The Presidio Trust (Trust) was created by Congress in 1996 to manage the former U.S. Army base known as the Presidio, in San Francisco, California. Pursuant to law, administrative jurisdiction of approximately 80 percent of this property was transferred from the National Park Service (NPS), Department of the Interior (DOI), to the Trust as of July 1, 1998. By publication in the **Federal Register** on June 30, 1998 (63 FR 35694), the Trust adopted a final interim rule for interim management of the area under its administrative jurisdiction. This rulemaking proposes to replace that final interim rule in its entirety with the requirements provided herein. Public comment is invited on this proposed rule and will be considered by the Trust in promulgating a final rule.

**DATES:** Comments on this rulemaking must be received by November 17, 1998.

**ADDRESSES:** Written comments on this proposed rule must be sent to Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

**SUPPLEMENTARY INFORMATION:**

## Background

### *I. Introduction*

The Presidio Trust is a wholly-owned government corporation created pursuant to Title I of the Omnibus Parks Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097 (the Trust Act). Pursuant to sec. 103(b) of the Trust Act, the Secretary of the Interior transferred administrative jurisdiction to the Trust of all of Area B of the former Presidio Army Base, as shown on the map referenced in the statute, on July 1, 1998. Notice of such transfer was published in the **Federal Register** on June 12, 1998 (63 FR 32246).

Section 104(j) of the Trust Act authorizes the Trust, ''in consultation with the Secretary [of the U.S. Department of the Interior], to adopt and to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities'' under the Trust Act. Consistent with that authority, and in order to provide for the interim management of the Presidio before more extensive regulations could be promulgated, the Trust promulgated a final interim rule on June 30, 1998 (63 FR 35694) concerning resource protection, public use, and recreation; vehicles and traffic safety; and commercial and private operations. These regulations, which are currently in effect, are contained in 36 CFR chapter X, parts 1001, 1002, 1004, and 1005.

The proposed regulations contained in this document expand upon and revise the final interim regulations. These proposed regulations cover such matters for the Presidio as resource protection, public use, and recreation; vehicles and traffic safety; commercial and private operations; rights-of-way; the need for permits to conduct certain activities; and procedures for implementing the Freedom of Information Act (FOIA), the Privacy Act, and the Federal Tort Claims Act.

Prior to proposing these regulations, the Trust consulted with the Secretary of the Interior, who serves on the Trust's Board of Directors pursuant to sec. 103(c)(1)(A) of the Trust Act, as well as with officials of the Department of the Interior, the National Park Service, and the U.S. Park Police designated by the Secretary of the Interior to facilitate such consultation. The Trust anticipates that such consultation will continue during the comment period on these final interim regulations.

The Trust is providing for a public comment period of 60 days on these regulations. All comments, including names and addresses, when provided, will be placed in the public record and made available for public inspection and copying. The Trust will consider each comment received within this period and then publish final regulations on these topics in the **Federal Register**. That promulgation will include a discussion of any comments received and any amendments made to these proposed regulations as a result of the comments.

### *II. General Principles of This Rulemaking*

The Trust applied three general principles in drafting these proposed regulations.

First, the regulations are designed to deviate as little as necessary from the regulations that applied to the Presidio during the approximately four-year period in which it was under the administrative jurisdiction of the National Park Service. The current regulations for the Presidio, which were adopted as a final interim rule, are almost identical in substance to those prior regulations.

Second, the regulations are designed to promote comity with the laws and regulations of neighboring jurisdictions. It takes but a matter of minutes by automobile, and only slightly longer by bicycle or on foot, to traverse the four separate jurisdictions of the Presidio Trust Area, the City and County of San Francisco, Marin County, and the Golden Gate National Recreation Area (GGNRA). It is therefore important for the sake of public notice and law enforcement that the Presidio's laws and regulations be consistent with those of its neighboring jurisdictions.

Third, the rules and regulations governing the Presidio Trust's internal operations and the conduct of individuals and businesses in the Presidio are designed to be as simple and clear as possible. Such simplicity and clarity will promote the Trust Act's goal of efficient management of the Presidio, while providing other public benefits.

Each of these principles and its practical application are discussed below.

#### A. Consistency With Existing Regulations

The primary regulations that governed conduct in the Presidio when it was under the administrative jurisdiction of the NPS are found at 36 CFR parts 1, 2, 4, and 5, and 36 CFR 7.97. These are NPS regulations applicable generally to units of the National Park system (36 CFR parts 1, 2, 4, and 5) and written specifically for the GGNRA (36 CFR 7.97). The Presidio is located within the boundaries of the GGNRA. Trust Act, sec. 103(b). Likewise, the primary regulations that governed administrative matters for the agency administering the Presidio prior to its transfer to the Trust are found at 36 CFR part 14 (NPS regulations concerning rights-of-way), 36 CFR part 11 (NPS regulations concerning use of NPS insignia), 43 CFR part 2 (DOI regulations concerning requests under the Freedom of Information Act and the Privacy Act), and 43 CFR part 22 (DOI regulations concerning claims under the Federal Tort Claims Act).

The Trust prepared the regulations in this document using these prior NPS and DOI regulations as a template. As these regulations were reviewed and modified, the Trust applied a principle

of deviating from these templates only so far as necessary to clarify issues, correct minor errors, and reflect the differences between the Trust's statute, organization, and mission, on the one hand, and those of the NPS and DOI, on the other.

The section-by-section analysis provided below explains in greater detail the changes that are proposed to these source regulations and the reasons for those changes. In general, the Trust is proposing not to adopt those regulations that are simply inapplicable to the Presidio (e.g., snowmobiling rules), those that are intended to promote the effective administration of the much larger NPS and DOI organizations, and those that reflect the different missions of the NPS and the Trust.

In a number of instances, material that is part of the current GGNRA Superintendent's Compendium has been incorporated into these proposed regulations in order to make them clearer and more complete. For example, boating on Lobos Creek and Mountain Lake, the only two bodies of surface water, is prohibited by the GGNRA Superintendent's Compendium. As a result, these proposed regulations simply prohibit boating in the Presidio. See § 1002.13. The current GGNRA Superintendent's Compendium is available for public inspection at the address identified above.

B. Comity With Laws in Neighboring Jurisdictions

The NPS regulations that governed conduct in the Presidio are to a great extent the same regulations that are applicable throughout the various units of the National Park system across the country. Because the parallel regulations of the Trust will apply primarily to conduct in just one locale, the Trust has attempted to tailor these regulations to match local standards and conditions.

Because the prior NPS regulations for the GGNRA address a number of forms of conduct that are also addressed by state law, the Trust in a number of areas faced a choice between adopting the rule from the NPS regulations or allowing the rule provided by California criminal law to be applied through the Assimilative Crimes Act (ACA), 18 U.S.C. 13. In each instance, the Trust analyzed the need for specifically prohibiting conduct in these regulations that is already prohibited under California law. In general, the Trust opted to allow California criminal law to be applied through the ACA to conduct in the Presidio that is not otherwise covered by the Trust's regulations or policies. The Trust believes that this approach promotes clarity for residents of and visitors to the San Francisco Bay Area, as well as comity with the neighboring jurisdictions of Marin County and the City and County of San Francisco.

It is helpful to understand the legal background for this proposal. As an example, under the NPS regulations at 36 CFR 2.14, littering is prohibited. Littering is also prohibited under California criminal law. Cal. Penal Code sec. 374.4. This criminal prohibition under California law may be applied to conduct occurring on federal lands such as the Presidio through the ACA, 18 U.S.C. 13, but only if such conduct is not already ''made punishable by any enactment of Congress * * *.'' Id.

Courts consider a duly authorized federal regulation an ''enactment of Congress'' for purposes of the ACA. See, e.g., *United States* v. *Hall*, 979 F.2d 320, 322 (3d Cir. 1992). If such conduct is already addressed by federal law, only federal law may be applied to the violator. See *Williams* v. *United States*, 327 U.S. 711, 724 (1946) (''If [the federal agency] had been satisfied to * * * apply local law to this and related offenses it would have been simple for it to have left the offense to the Assimilative Crimes Act.''); *United States* v. *Palmer*, 956 F.2d 189, 192 (9th Cir. 1992) (quoting *Williams* in holding that the NPS cannot enforce state law penalties against driving while intoxicated because there is already an NPS regulation addressing such conduct). As a result, if the Trust were to adopt the NPS regulation against littering, the Trust would not be able to enforce the California law against littering.

The Trust believes that confusion might result from adopting prohibitions on conduct that instead may be prohibited by application of California law through the ACA. There has been a significant number of legal disputes concerning which rule applies in such instances. The U.S. Supreme Court recently provided guidance for answering such questions in *Lewis* v. *United States*, _____ U.S. _____, 118 S. Ct. 1135 (1998). In this case, the Court articulated a two-part test for determining whether conduct on federal lands may be penalized under state law:

> [A] court must first ask the question that the ACA's language requires: Is the defendant's ''act or omission * * * made punishable by any enactment of Congress.'' * * * If the answer to this question is ''no,'' that will normally end the matter. The ACA presumably would assimilate the statute. If the answer to the question is ''yes,'' however, the court must ask the further question whether the federal statutes that apply to the ''act or omission'' preclude application of the state law in question, say because its application would interfere with the achievement of a federal policy * * *, because the state law would effectively rewrite an offense definition that Congress carefully considered * * *, or because federal statutes reveal an intent to occupy so much of a field as would exclude use of the particular state statute at issue * * *.

*Lewis*, 118 S. Ct. at 1141 (citations omitted). The Court went on to recognize that the complexity of state and federal criminal statutes makes it impossible ''for a touchstone to provide an automatic general answer to this second question.'' Id. at 1142.

Executive Order 12988 requires that regulations adopted by the Trust ''provide[] a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction * * *'' See Executive Order 12988, sec. 3(b)(2)(C). In order to avoid ambiguity, and to make clear to all persons who may enter, work or reside in the Presidio precisely which conduct is prohibited and in what manner violations will be penalized, the Trust has therefore drafted these proposed regulations to prohibit only such conduct as cannot be prohibited by application of state law (e.g., because state law does not proscribe such conduct).

The practical effect of this approach would be to reduce the enumeration of prohibited conduct in these regulations as compared to the NPS regulations. For example, although operating a motor vehicle under the influence of alcohol or drugs is prohibited by the NPS regulations at 36 CFR 4.23, no such prohibition appears in the Trust's regulations. Instead, persons who drive while under the influence of alcohol or drugs in the Presidio would be charged in federal court under the substantive provisions of California law, including its definition of the prohibited conduct and its penalties. They would be apprehended, investigated, and prosecuted, however, according to the procedures of federal law, including, for example, the testing procedures retained in § 1003.7 of these proposed regulations.

Under this approach, the Trust has not incorporated into these proposed regulations the following provisions of existing NPS regulations at 36 CFR:

2.4(f) Carrying firearms
2.14(a) Sanitation and refuse
2.30 Misappropriation of property and services
2.31 Trespassing, tampering and vandalism

2.34 Disorderly conduct
2.35 Alcoholic beverages and controlled substances
4.10(c)(3) Headlamps
4.12 Traffic control devices
4.13 Obstructing traffic
4.14 Open container of alcoholic beverage
4.20 Right-of-way 4.21(c) Speed limits
4.23 Operating under the influence of alcohol or drugs

The Trust's silence on the foregoing issues in these proposed regulations should not be interpreted as expressing any intent not to take such conduct seriously or to vary from its treatment or enforcement under prior law. Rather, by proposing not to incorporate these provisions from the NPS regulations, the Trust is merely looking to California law rather than NPS regulations to provide the applicable rule. The Trust does not anticipate that this will effect any practical change in enforcement or conduct in the Presidio, but instead will result in clearer and more concise regulations, greater notice to the public, and reduced opportunities for legal disputes.

California criminal statutes do not cover all possible forms of misconduct that would impede the efficient management of the Presidio. As a result, the Trust has maintained specific prohibitions in these proposed regulations where the conduct is not addressed by any such criminal statute. For example, it is not against California law to violate the provisions of a permit issued by the Presidio Trust. As a result, the Trust has maintained prohibitions of such conduct that are part of the NPS regulations. See § 1001.6(f).

The Trust's proposed use of the ACA to apply the substantive provisions of California law to criminal conduct in the Presidio in no way diminishes or limits the exclusivity of federal jurisdiction over the Presidio. Under these proposed regulations, State and local laws applicable to such issues as zoning, building permits, land use planning, rent control, property taxes, building codes, and the like will continue to have no applicability to activities of the Presidio Trust or others within the area administered by the Presidio Trust.

To summarize, prohibitions on conduct in the Presidio fall into two categories, and each category has a separate source of penalties for offending conduct in that category. First, conduct made criminal by California law (but not by federal law) would be prohibited in the Presidio by application of the ACA and would be punished according to the substantive California law. Second, conduct that is not prohibited by California law but that is prohibited directly by these regulations or other federal law would be punished according to applicable federal law. Violations in both categories would be enforced in federal court according to federal procedures.

The Trust believes that this interlocking structure will be clear in application. Residents of California and visitors in California generally expect California law to apply to their conduct throughout the State and are more likely to be aware of the rules that apply to their conduct under California law than under these specific regulations for the Presidio. By applying California law to conduct in the Presidio to the greatest extent possible (where there is no differing federal policy interest), and by avoiding promulgating regulations concerning conduct that is already addressed by California law, the Trust seeks to promote consistency with the laws of neighboring jurisdictions and thereby to reduce confusion on the part of residents of and visitors to the Presidio.

Under sec. 104(i) of the Trust Act, enforcement of these regulations, as well as applicable California law, will be the responsibility of the U.S. Park Police, the federal agency that provides professional law enforcement services for units of the National Park system. The Trust has been informed by the U.S. Park Police that its officers assigned to the GGNRA are familiar with and trained in the application of California state law in addition to the application of federal law and the existing NPS regulations, which these regulations parallel in many respects. As a result, the Trust anticipates no administrative difficulties with respect to the enforcement of these proposed regulations.

The Trust is particularly interested in public comment on this proposal, as it reflects a significant deviation from prior practice within the area now administered by the Presidio Trust. The Trust views the primary alternative to be to promulgate regulations that are much more similar to the prior NPS regulations and the current Trust regulations found at 36 CFR parts 1001, 1002, 1004, and 1005.

C. Simplicity

Although the Trust used the NPS and DOI regulations as templates for these proposed regulations, the Trust sought to simplify and shorten the source regulations to the greatest extent possible, consistent with Executive Orders 12861 and 12988. The Trust did this in four major ways:

First, these proposed regulations do not incorporate those provisions from the NPS and DOI regulations that are simply inapplicable to the Presidio, for example, regulations dealing with snowmobiling or winter activities. Where appropriate, the proposed regulations also reduce the level of detail provided concerning conduct that is unlikely to form a significant part of the user experience in the Presidio, such as hunting and trapping. Because there are no private inholdings within the Presidio, the Trust was also able to avoid incorporating provisions in the source regulations that address such situations.

Second, these proposed regulations consolidate, to the extent consistent with considerations of clarity, certain provisions of the NPS and DOI regulations that are repeated in various places throughout those regulations. For example, each section of the NPS regulations that authorizes the issuance of a permit for a certain activity also notes that violation of the terms and conditions of such a permit is prohibited. Rather than incorporate this phrase repeatedly, these proposed regulations state at the outset (in § 1001.6(f)) that violation of the terms and conditions of any permit issued under these regulations is prohibited.

Third, these proposed regulations reorganize certain of the provisions in the NPS and DOI regulations in order to place regulations on the same general topic near each other. For example, the proposed regulations place the provisions concerning commercial vehicles in the part concerning vehicles and traffic safety instead of in the part concerning commercial operations. They incorporate the specific provisions of 36 CFR 7.97 (regulations applicable only to the GGNRA) into the appropriate areas of the proposed regulations. And they incorporate certain DOI regulations governing commercial photography (43 CFR 5.1) into the portion of these proposed regulations concerning such issues (see § 1004.4).

Fourth, and most important, as part of its goal of simplifying the existing regulations, the Trust also sought with these proposed regulations to promote clarity concerning the internal division of duties and authority, particularly as between the Board of Directors, whose members are not full-time government employees, and the Executive Director and other employees of the Trust.

The primary source of this internal division is § 1001.8, in which the chain of authority is clarified and rules are laid out for appealing decisions to the Board of Directors, or a court of competent jurisdiction. Elsewhere in the

proposed regulations, though, care has been taken to identify the authorized entity for issuing permits or making given decisions, whether that be the Board (generally for issues of policy), the Executive Director (for most specific decisions), or the FOIA or Privacy Act Officers (for matters within their areas of delegated responsibility).

A number of NPS regulations contain the following language: ''The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.'' These include the following provisions:

- Wildlife protection (36 CFR 2.2(g))
- Fishing (36 CFR 2.3(g))
- Weapons, traps, and nets (36 CFR 2.4(g))
- Fires (36 CFR 2.13(d))
- Property (abandoned property) (portions of 36 CFR 2.22(d))
- Misappropriation of property and services (36 CFR 2.30(b))
- Trespassing, tampering, and vandalism (36 CFR 2.31(b))
- Interfering with agency functions (36 CFR 2.32(b))
- Disorderly conduct (36 CFR 2.34(b))
- Gambling (36 CFR 2.36(b))

These provisions were intended to allow the NPS ''to respond to complaints on the private property'' within park areas. 48 FR 30252, 30253 (June 30, 1983). Because the areas over which the Presidio Trust has administrative jurisdiction contain no private inholdings, and because these areas are subject to exclusive federal jurisdiction, these provisions are unnecessary and do not appear in these proposed regulations.

The Trust has also retained in these proposed regulations an efficient and effective administrative vehicle used by the NPS in managing its many diverse units. For most of these units, including the GGNRA, the NPS has developed a set of policies, procedures, closures, and designations; for the GGNRA, these are known as the GGNRA Superintendent's Compendium. The Trust has a similar Compendium (adopted on an interim basis) of detailed rules, including supporting determinations, in order to allow the Trust to manage flexibly the diverse demands on the Presidio while protecting its natural and cultural resources, fulfilling the purposes of the Trust Act, and responding to changing conditions. Section 1001.7 of these proposed regulations sets out the procedure for the Trust to follow in maintaining the Compendium and providing public notice of its contents.

**Section-by-Section Analysis**

The following analysis reviews only those sections of the proposed regulations that are not discussed elsewhere, in more general terms, in this preamble. Nevertheless, not every substantive change is discussed in this preamble. As discussed above, because these proposed regulations are modeled on existing regulations of the NPS and DOI, this analysis focuses on differences between these regulations and the existing regulations of these agencies.

Part 1001 General Provisions

*Section 1001.1 Purpose*

In modeling these proposed regulations on the existing regulations of the NPS and DOI, the Trust consistently changed a variety of terms used in the existing regulations as appropriate to the Trust and its separate mission, organization and statutory authority. This section reflects two of those general changes. First, references to the ''National Park Service'' or ''Department'' were changed to ''Presidio Trust.'' And second, references to ''the purposes for which a park unit is managed'' or similar language were changed to ''the purposes of the Presidio Trust Act.'' Elsewhere in these proposed regulations, references to the ''Superintendent'' or the ''Secretary'' were changed to the ''Executive Director'' or the ''Board'' as appropriate.

*Section 1001.2 Applicability and Scope*

This section had its origin in 36 CFR 1.2 and 4.1. As discussed above, § 1001.2(d) addresses the applicability of certain provisions of State and local law under the Assimilative Crimes Act, 18 U.S.C. 13. This section also includes a savings provision to eliminate any possibility of confusion about the Federal government's retention of exclusive federal jurisdiction, through the Trust, over the Presidio.

*Section 1001.3 Enforcement and Penalties*

This provision is discussed in greater detail above. As required by the Trust Act, at sec. 104(i), the Trust has entered into a memorandum of agreement for law enforcement in the areas under its administrative jurisdiction to be performed by the United States Park Police. Officers of the U.S. Park Police have the same authority within the Presidio as in the rest of the GGNRA.

*Section 1001.4 Definitions*

This section was substantially revised to incorporate definitions that are generally applicable to most of the regulations published today and to delete those definitions that were no longer needed as a result of other differences between the source regulations and these proposed regulations. They were also revised to reflect the applicability of these regulations solely to the Presidio, which is in California, and not to other park units, which are in other States as well.

The definition of ''authorized person'' was changed to ''authorized law enforcement officer,'' since the Trust anticipates that the individuals who will be authorized to perform the functions identified with this term in the regulations will generally be law enforcement officers (most likely members of the U.S. Park Police force or State or local law enforcement officials authorized by the Presidio Trust to perform duties in the Presidio under certain circumstances).

The terms ''Board,'' ''Executive Director'' and ''General Counsel'' were added, along with a provision including their designees in the definition. This is intended to provide senior officials of the Trust with the flexibility to delegate responsibilities and authority as appropriate to carry out the purposes of the Trust Act.

The terms ''commercial passenger vehicle'' and ''commercial vehicle'' were defined in this section based on definitions contained in 36 CFR 5.4 and 5.6, respectively. The regulations to which these definitions apply (§ § 1003.12 and 1003.13) are accordingly more concise and clear.

The distinction between ''developed areas'' and ''non-developed areas'' has been dropped from the definitions and from these proposed regulations because the Presidio is located in an urban area in which the activities allowed under the NPS regulations in ''non-developed areas'' are generally inappropriate.

The term ''Presidio Trust Area'' was defined as the real property over which the Presidio Trust has administrative jurisdiction. The term ''Presidio'' historically applies to property over which the U.S. Army once had administrative jurisdiction. Portions of this property will continue to be administered by the NPS as part of the GGNRA.

The term ''printed matter'' is defined in this section generally to exclude items of merchandise. This corresponds to the definition of the term used by the NPS in its Special Directive 95–11 interpreting its regulation at 36 CFR 2.52 concerning sale or distribution of printed matter. The Trust believes it is appropriate to incorporate this

definition directly into its regulations for the sake of clarity and public notice.

The term ''residential dwelling'' is defined because the Presidio currently houses and is expected to house numerous individuals and families. Although the precise extent of each private dwelling or leasehold will be established by the document granting occupancy, the Trust believes it is useful for law enforcement purposes to state a general definition of this term.

*Section 1001.5 Closures and Public Use Limits*

This section deviates only slightly from the NPS regulation at 36 CFR 1.5. The NPS regulation specifies a variety of criteria to be considered in reviewing the need for closures and public use limits. Because the Trust Act provides additional criteria, and because the Trust cannot foresee all possible circumstances necessitating closures or public use limits, these criteria have been made more general.

Section 1001.5(d) contains an added provision specifying the Trust's ability to charge fees for permits. The Trust Act, sec. 105(b), requires that the Trust become ''self-sufficient'' within 15 years, and these fees are a likely revenue source to offset the costs of administering the Presidio. References to fees for permits for filming and for serving alcohol have been deleted in the appropriate provisions because they are covered by this more general authority.

*Section 1001.6 Permits*

This section makes explicit the requirement that the Trust consider impacts on tenants and neighbors of the Presidio in making decisions on requests for permits. Unlike most national parks, the Presidio is located in a densely populated urban area, and numerous individuals live and work in the Presidio. These impacts are entitled to consideration by the Trust in its management of the Presidio.

*Section 1001.7 Public Notice and Comment*

The provisions added to this section make more explicit the duties of the Trust both to maintain a Compendium that provides notice to the affected public of the specific designations, closures, and permit requirements adopted by the Trust and to involve the Golden Gate National Recreation Area Advisory Commission (often referred to as the Citizens Advisory Commission or CAC) in policy, planning and design issues, in accordance with sec. 103(c)(6) of the Trust Act.

*Section 1001.8 Review and Final Agency Action*

This section establishes general procedures for review of delegated decisions. Decisions of the Executive Director or his or her designee may be appealed to the Board of Directors. In practice, where the Executive Director's delegation of authority so provides, there will likely be a preliminary step in which decisions of a designee of the Executive Director are reviewed by the Executive Director. The time periods that are set for these reviews are the shortest periods that the Trust believes are feasible in light of both the part-time nature of its Board members' service and the likely frequency of Board meetings.

This section also establishes a bright line rule for determining whether the Trust has taken final agency action. The Trust has established this rule in accordance with the President's call for the adoption of ''clear legal standard[s]'' and specification of what is required for a person aggrieved to exhaust their administrative remedies prior to seeking court review of the agency's action. See Executive Order 12988, sec. 3(b)(2).

Part 1002 Resource Protection, Public Use and Recreation

*Section 1002.2 Wildlife Protection*

Hunting and trapping are prohibited in the Presidio under current law. Fishing is also prohibited in the Presidio under the GGNRA Superintendent's Compendium. This section maintains these prohibitions. The GGNRA Superintendent's Compendium prohibits the viewing of wildlife with artificial light. These proposed regulations adopt this prohibition, but provide for the possibility that such viewing will be permitted (e.g., incidental to commercial filming) on terms and conditions established by the Board.

*Section 1002.5 Camping and Food Storage*

Because there are no bears in the Presidio, the requirement for suspension of food on bear poles has been deleted.

*Section 1002.9 Sanitation and Refuse*

As discussed above, the specific prohibition on littering in the NPS regulation has been removed in favor of reliance on state law. Similarly, the specific prohibitions on polluting have also been removed in favor of reliance on other federal law.

*Section 1002.10 Pets*

The exception in the NPS regulations for guide dogs accompanying persons with visual or hearing impairments has been expanded to include service dogs accompanying persons with disabilities, regardless of the disability requiring the use of a service dog.

*Section 1002.11 Horses and Pack Animals*

This regulation has been revised to state more concisely the general requirement that use of horses and pack animals in the Presidio be restricted to designated areas and trails, or under the terms and conditions of a permit (e.g., for a parade). It has also been revised to make clear that these requirements do not apply to law enforcement officers in the performance of their official duties.

*Section 1002.13 Swimming and Boating*

The GGNRA Superintendent's Compendium prohibits swimming, boating and the use of any water vessel on the bodies of water located within the Presidio. This regulation continues that prohibition.

*Section 1002.15 Smoking*

This regulation has been revised in accordance with the general approach of these proposed regulations to correspond, as nearly as possible, to conditions under State law.

*Section 1002.16 Property*

The Trust has reduced the general length of time that property may be left unattended without a permit or in designated areas from 24 hours to 12 hours. The purpose of this revision is to provide the Trust with greater ability to manage the area under its jurisdiction more closely.

*Section 1002.23 Special Events*

The requirement that applications for permits for special events be presented to the Trust at least 72 hours in advance has been extended to seven days in order to allow the time necessary for coordination of permit requests with the NPS in its management of the GGNRA. The Trust expects to continue to direct applicants for permits for activities in the Presidio to the Special Park Uses Office of the GGNRA, located at Building 201, Fort Mason, San Francisco 94123, telephone: (415) 561–4300, which is open between the hours of 9 a.m. and 5 p.m. on working days. This office will centralize the administrative process for permit applications for both the areas under the jurisdiction of the NPS and the Presidio Trust. Decisions concerning permit applications for activities on property administered by the Trust will be made by the Trust; those for activities on

properties administered by the NPS will be made by the NPS. The Trust anticipates that the NPS and the Trust will consult cooperatively concerning permit applications that will affect activities on the property administered by either or both agencies.

Part 1003 Vehicles and Traffic Safety

*Section 1003.3 Travel on Presidio Trust Area Roads and Designated Routes*

This regulation has been revised from the existing NPS regulation in accordance with the general principle discussed above concerning application of State law through the ACA. It also deletes the reference to Executive Order 11644 contained in the existing NPS regulation. This Executive Order, which concerns use of off-road vehicles on the public lands, does not apply to public lands administered by the Trust. Nevertheless, the Trust anticipates that it will address use of off-road vehicles in the Presidio in a manner consistent with Executive Order 11644, as amended by Executive Orders 11989 and 12608.

*Section 1003.10 Powerless Flight*

Under 36 CFR 7.97 and the GGNRA Superintendent's Compendium, powerless flight is prohibited in the Presidio. This section maintains that prohibition.

*Section 1003.11 Parking*

The existing NPS regulations do not cover parking explicitly. Although the Trust would have authority to manage motor vehicle parking under other portions of these regulations (e.g., § 1001.5), this section has been incorporated in order to provide clarity and better public notice concerning parking issues.

*Section 1003.12 Commercial Passenger Vehicles*

The provisions of this section, and those of the following section, condense the existing NPS regulations and prohibitions and conditions in the GGNRA Superintendent's Compendium concerning buses and trucks. The intention has been to maintain the status quo with respect to treatment of these vehicles in the Presidio until such time as the Trust may adopt different conditions or routes in its Compendium.

*Section 1003.13 Commercial Vehicles*

See discussion of § 1003.12, above.

*Section 1003.14 Safety Belts*

Although California has a law concerning safety belt and child restraint requirements, that law does not apply to all occupants of a motor vehicle. The federal government has a strong public policy of encouraging and in some cases requiring the use of safety belts and child restraints by all occupants of a motor vehicle. See Executive Order 13043 (April 16, 1997). As a result, the Trust has opted in these proposed regulations to adopt a rule on safety belt use that is consistent with the current rule of the NPS at 36 CFR 4.15.

Part 1004 Commercial and Private Operations

*Section 1004.1 Signs and Advertisements*

This section contains the same requirements as the existing NPS regulation concerning commercial notices, while also adding a specific provision on other signs. Although the Trust has authority to manage signage in the Presidio under other portions of these regulations (e.g., § 1001.6), this section has been incorporated in order to provide clarity and better public notice concerning signage issues.

*Section 1004.2 Alcoholic Beverages; Sale of Intoxicants*

This section deletes the provision in existing NPS regulations for appeals of decisions on permits to sell alcoholic beverages, since such appeals are now provided for under § 1001.8. It also deletes the provision allowing for fees for alcohol permits, since such fees are now provided for under § 1001.5(d).

*Section 1004.4 Commercial Photography*

This section is adapted from both 36 CFR 5.5 and 43 CFR 5.1, which have been consolidated and simplified to apply specifically to the operations of the Presidio Trust. The precise form of permit application has been deleted from the regulations and will be developed by the Trust, in consultation with the NPS, as the Trust acquires experience with permitting film projects. The Trust intends to charge fees for such permits, in accordance with its statutory mandate to become financially self-sufficient within 15 complete fiscal years. See § 1001.5(d).

*Section 1004.6 Discrimination in Employment Practices*

This section exempts governmental agencies or instrumentalities from the Trust's specific non-discrimination requirements because such entities are almost uniformly covered by similar requirements. This section adds the terms ''restaurant'' and ''recreational facility'' to the list of covered accommodations in order to clarify that such facilities are also covered. In order to be consistent with the principle of Executive Order 13087 (May 28, 1998), 63 FR 30097 (June 2, 1998), as well as to promote comity with laws and policies of neighboring jurisdictions, the Trust has added the category of ''sexual orientation'' to the list of prohibited bases for discrimination under this section.

*Section 1004.7 Discrimination in Furnishing Public Accommodations and Transportation Services*

See discussion of § 1004.6, above.

Part 1005 Rights-of-Way

This proposed part sets forth general terms and conditions, as well as the procedures that the Trust will follow, in issuing rights-of-way. This part has been simplified significantly from the NPS regulation at 36 CFR part 14. The Presidio Trust is not subject to the variety of statutes concerning rights-of-way over lands administered by the NPS. Furthermore, unlike many units of the National Park System, the Presidio does not have any private inholdings. As a result, the Trust intends to issue rights-of-way only to a limited number of entities, consistent with the purposes of the Presidio Trust Act, and only on written terms and conditions and for payment of monetary compensation.

*Section 1005.5 Terms and Conditions*

This section provides that the Trust, as a wholly-owned government corporation with ability to retain funds it collects, is the entity to be indemnified by the holders of rights-of-way over lands administered by the Trust. Section 1005.5(b) has been revised to be more general with respect to the obligations of the holder of a right-of-way, while continuing to cover the specific items covered by 36 CFR 14.9(b). Section 1005.5(g) has been expanded to include requirements for permission before trees may be cut and to require that any trees destroyed be replaced in kind. Additional categories on which discrimination is prohibited have been added to § 1005.5(k) in order to make it consistent with §§ 1004.6 and 1004.7 of this chapter.

*Section 1005.11 Disposal of Property on Termination of Right-of-way*

This section clarifies that the Trust will not be liable for any claim for damages on account of removal and restoration work required by termination of a right-of-way.

Part 1006 Presidio Trust Symbols

This part is adapted from NPS regulations at 36 CFR part 11. The Presidio is a unique location, and the

Trust intends to manage it in such a way as to increase the value of the property to the public, as well as the price that tenants are willing to pay for the benefits of being located in the Presidio. Consistent with this effort, this part is intended to protect the terms ''Presidio'' and ''Trust,'' as well as such symbols and insignia as the Trust may adopt for its own use, from commercial uses that are inconsistent with the purposes of the Presidio Trust Act. The Trust recognizes that certain entities may have already acquired rights in these terms under existing laws, and nothing in this regulation is intended to abrogate any such rights.

Part 1007 Requests Under the Freedom of Information Act

*Section 1007.4 Preliminary Processing of Requests*

In § 1007.4(b)(2), the reference to Executive Order 12356 from 43 CFR 2.15(c)(2) was removed because this order was revoked by Executive Order 12958. The basis for the reference to Executive Order 12356 in the DOI regulations appears to have been sec. 4.1(d) of that order, which states in pertinent part:

Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency.

Executive Order 12958 contains a similar provision at sec. 4.2(b), which states in pertinent part:

Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization.

The proposed regulation therefore retains the requirement that requests for classified information be forwarded for determination by the agency originating the classification.

*Section 1007.5 Action on Initial Requests*

The DOI regulations do not contain provisions concerning expedited processing. In order to conform to recent amendments to FOIA, the Trust is proposing special provisions concerning expedited processing in the circumstances enumerated by FOIA at 5 U.S.C. 552(a)(6)(E).

*Section 1007.8 Action on Appeals*

The Presidio Trust Act specifies at sec. 104(h) that ''[t]he District Court of the Northern District of California shall have exclusive jurisdiction over any suit filed against the Trust.'' As a result, this court is specified in the regulations as the court in which any appeal of the Trust's determination concerning a FOIA request must be filed.

*Section 1007.9 Fees*

The DOI regulations provide for set charges for FOIA requests that are published in an appendix to the regulations. In order to promote clarity and reduce administrative burdens on the Trust, the Office of the Federal Register, and requesters, the Trust has opted in § 1007.9(a)(1) to publish such charges in the Compendium required under § 1001.7. In accordance with FOIA and with sec. 7 of OMB's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (Mar. 27, 1987), which were promulgated under FOIA, 5 U.S.C. 552(a)(4)(A)(i), the Trust will set these charges only as high as necessary to ''recoup the full allowable direct costs'' incurred by the Trust in responding to FOIA requests.

The DOI regulations provide that fees will not be charged if they do not exceed $15.00. Under FOIA, 5 U.S.C. 552(a)(4)(A)(iv)(I), fees are not charged ''if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.'' Rather than set a precise amount in these regulations, which will need to be altered as these costs vary over time, the Trust has instead incorporated the statutory policy into these regulations at § 1007.9(a)(2), along with a requirement, for the sake of public notice, that the precise dollar figure be published in the Compendium called for under § 1001.7 of these regulations.

The OMB Guidelines suggest that agencies charge for the full costs of providing services that are not required under FOIA, such as certifying that records are true copies or sending records by express mail, should the Trust elect to provide such services. Although the Trust's willingness to provide such services will be contingent on its available resources, the Trust has incorporated this suggestion into these regulations at § 1007.9(a)(4) in order to clarify that such services will not be provided free of charge.

Sections 1007.9(b)(1) and (e)(1) require commercial use requesters and requesters that do not belong to other enumerated categories to pay for the Trust's costs in searching for documents covered by the FOIA request. The OMB Guidelines referred to above suggest (at sec. 9(b)) that agencies ''give notice in their regulations that they may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure.'' The Trust has done this by noting parenthetically in these sections that costs for ''search'' (as well as ''review'' for commercial requesters) are charged ''even if the search [''and review'' for commercial requesters] fails to locate records that are not exempt from disclosure.''

In § 1007.9(k), the reference to 4 CFR parts 101–105 in the existing DOI regulations has been removed from this provision because these regulations are coextensive with the entire body of ''[o]ther authorities of the Debt Collection Act of 1982'' under which the Trust may collect fees due and owing.

*Section 1007.10 Waiver of Fees*

The DOI regulations at 43 CFR 2.21(a)(2) contain a list of factors to be considered in determining whether a Freedom of Information Act request falls into the categories for partial or complete waiver of fees under 5 U.S.C. 552(a)(4)(A)(ii)(III). In light of the types of requests that the Trust is likely to receive, as well as the purposes of the Trust Act, the Trust does not consider it necessary to enumerate these factors in order to comply with FOIA.

The DOI regulations at 43 CFR 2.21(b) also contain a list of circumstances in which the agency will make copies available without charge. The OMB Guidelines promulgated under FOIA provide (at sec. 7) that ''[a]gencies should charge fees that recoup the full allowable direct costs they incur.'' The only exceptions to this requirement are for disclosures in the public interest under 5 U.S.C. 552(a)(4)(A)(iii) and for those fees which are lower than the costs of collecting them. The circumstances identified in sec. 2.21(b) of the DOI regulations are likely to be covered by one or both of these authorized exceptions, and as a result, these regulations do not enumerate the specific circumstances for discretionary fee waivers.

FOIA provides that, when fee waivers are granted, documents shall be furnished ''without any charge or at a charge reduced below the fees established'' by the agency. 5 U.S.C. 552(a)(4)(A)(iii). The Trust is proposing in these regulations to reduce otherwise applicable fees by 25% in most circumstances, while providing discretion for additional reductions, including complete waivers, in appropriate circumstances.

Part 1008 Requests Under the Privacy Act

*Section 1008.6 Assuring Integrity of Records*

The DOI regulations at 43 CFR 2.51(b) through (e) specify precise precautions to be taken to protect records covered by the Privacy Act. Rather than limit the discretion of the Trust official responsible for maintaining adequate precautions, these regulations state a general standard of security for all such records based on their relative sensitivity.

*Section 1008.12 Requests for Notification of Existence of Records: Action On*

In § 1008.12(b), the Trust has added a requirement for consultation with the General Counsel in order to ensure proper legal review at the earliest appropriate stage before action is taken on a request. For the same reason, this requirement has been added to § 1008.15(b) concerning requests for access to records and § 1008.20(b) concerning petitions for amendment. The requirement for consultation with the organization's top attorney regarding appeals of such decisions has also been retained.

*Section 1008.15 Requests for Access to Records: Initial Decision*

Under § 1008.15(d), the Trust anticipates charging fees for Privacy Act requests on the same schedule as for FOIA requests, which will be published in the Compendium provided for under § 1001.7.

Part 1009 Administrative Claims Under the Federal Tort Claims Act

This part sets forth the procedures that the Trust will follow in processing any claims presented to it under the Federal Tort Claims Act (FTCA), which applies to the Trust and its directors, officers, employees, and agents. Under Department of Justice regulations implementing the claims procedure for the FTCA, the Trust is authorized to establish procedures that are consistent with the Department of Justice procedures. See 28 CFR 14.11. DOI has promulgated regulations under this authority at 43 CFR part 22, and the Trust has looked to those regulations in drafting its own.

These regulations delete in their entirety the provisions of 43 CFR 22.2, which simply restate the statute. The regulations nevertheless incorporate the citation from 43 CFR 22.2(g) into § 1009.1 of these regulations in order to provide a useful reference to the Federal Tort Claims Act.

**Regulatory Impact**

This proposed rulemaking will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, 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 or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of this proposed rule. Because this proposed rule is not ''economically significant,'' it is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this proposed rule is not a ''major rule'' under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.* The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this proposed rule will not have a significant economic effect on a substantial number of small entities.

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

**Environmental Impact**

The Presidio Trust has prepared an Environmental Assessment (EA) in connection with this proposed rule. The EA determined that this proposed rule will not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Presidio in any significant manner.

As a result, the Trust has issued a Finding of No Significant Impact (FONSI) concerning these final interim regulations and has therefore not prepared an Environmental Impact Statement concerning this proposed action. The EA and the FONSI were prepared in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), and regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA, 40 CFR parts 1500–1508.

Both the EA and the FONSI are available for public inspection at the offices of the Presidio Trust, 34 Graham Street, The Presidio, San Francisco, CA 94129, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**Paperwork Reduction Act**

The information collection requirements of this proposed rule are no more extensive than those of the existing NPS regulations, which have previously been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. These information collection requirements are contained in 36 CFR 1001.5, 1001.6, 1002.4, 1002.7, 1002.12, 1002.19, 1002.22, 1002.23, 1002.24, 1002.25, 1002.27, 1002.28, 1003.2, 1003.4, 1003.12, 1004.1, 1004.2, 1004.3, 1004.4, 1004.5, and 1004.8. This information is being collected to provide the Executive Director with data necessary to issue permits for special uses of the Presidio Trust Area and to obtain notification of accidents that occur within the Presidio Trust Area. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In 36 CFR 1002.19 and 1003.2, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

**Other Applicable Authorities**

The Presidio Trust has drafted and reviewed these proposed regulations in light of Executive Order 12988 and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that order.

**List of Subjects**

*36 CFR Part 1001*

Administrative practice and procedure, National parks, Penalties, Public lands, Recreation and recreation areas.

*36 CFR Part 1002*

National parks, Public lands, Recreation and recreation areas, Signs and symbols.

*36 CFR Part 1003*

Bicycles, National parks, Public lands, Recreation and recreation areas, Traffic regulations.

*36 CFR Part 1004*

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Pets, Public lands, Recreation and recreation areas, Transportation.

*36 CFR Part 1005*

National parks, Public lands, Public lands-rights-of-way, Recreation and recreation areas, Rights-of-way.

*36 CFR Part 1006*

National parks, Public lands, Recreation and recreation areas, Seals and insignia, Signs and symbols.

*36 CFR Part 1007*

Administrative practice and procedure, Freedom of information, Records.

*36 CFR Part 1008*

Administrative practice and procedure, Privacy, Records.

*36 CFR Part 1009*

Administrative practice and procedure, Tort claims.

Dated: September 9, 1998.

**James E. Meadows,**

*Executive Director.*

Accordingly, the Presidio Trust proposes to revise 36 CFR Parts 1001, 1002, 1004, and 1005, and to add 36 CFR Parts 1003, 1006, 1007, 1008, and 1009, as set forth below:

## CHAPTER X—PRESIDIO TRUST

*Part*

1001 General provisions
1002 Resource protection, public use and recreation
1003 Vehicles and traffic safety
1004 Commercial and private operations
1005 Rights-of-way
1006 Presidio Trust symbols
1007 Requests under the Freedom of Information Act
1008 Requests under the Privacy Act
1009 Administrative claims under the Federal Tort Claims Act

## PART 1001—GENERAL PROVISIONS

Sec.

1001.1 Purpose.
1001.2 Applicability and scope.
1001.3 Enforcement and penalties.
1001.4 Definitions.
1001.5 Closures and public use limits.
1001.6 Permits.
1001.7 Public notice and comment.
1001.8 Review and final agency action.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1001.1 Purpose.

(a) The regulations in this chapter provide for the proper use, management, government, and protection of persons, property, and natural and cultural resources within the Presidio Trust Area.

(b) The regulations in this chapter will be utilized to fulfill the purposes of the Presidio Trust Act.

### § 1001.2 Applicability and scope.

(a) Except as otherwise specified herein, the regulations in this chapter apply to all persons entering, using, visiting, or otherwise within the boundaries of the Presidio Trust Area.

(b) The regulations in this chapter apply, regardless of land ownership or possession, on all lands and waters within the Presidio Trust Area.

(c) The regulations in parts 1002, 1003 and 1004 of this chapter shall not be construed to prohibit activities conducted by the Presidio Trust or its agents in accordance with the Presidio Trust Act and approved policies of the Presidio Trust or in emergency operations involving threats to life, property, or resources of the Presidio Trust Area.

(d) Unless specifically addressed by regulations in this chapter or authorized, permitted, prohibited or undertaken by or at the direction of the Trust, conduct within the Presidio Trust Area is governed by the provisions of State law that are now or may later be in effect, to the extent that such may be applied pursuant to the Assimilative Crimes Act, 18 U.S.C. 13.

(e) Nothing in this chapter shall be construed as providing jurisdiction over the Presidio Trust Area in any way to any entity other than the Presidio Trust.

### § 1001.3 Enforcement and penalties.

Violation of any regulation contained in this chapter, violation of the terms and conditions of any permit issued in accordance with this chapter, and/or failure to abide by area designations and conditions established in accordance with this chapter is prohibited, may result in the suspension or revocation of the permit and the denial of future permits by the same applicant, and may subject the violator to a fine or imprisonment as provided by law, as well as such other penalties as are provided by law, in addition to costs of the proceedings and compensation for damages to property.

### § 1001.4 Definitions.

The following definitions shall apply to this chapter, unless modified by the definitions for a specific part or regulation:

*Administrative activities* means those activities conducted under the authority of the Presidio Trust for the purpose of safeguarding persons or property, implementing management plans and policies, repairing or maintaining government facilities, or otherwise promoting the purposes of the Presidio Trust Act.

*Aircraft* means a device that is used or intended to be used for human flight in the air, including powerless flight.

*Archeological resource* means material remains of past human life or activities that are of archeological interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

*Authorized emergency vehicle* means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by California law.

*Authorized law enforcement officer* means a law enforcement officer duly authorized by the Presidio Trust or other competent governmental authority to enforce applicable law in the Presidio Trust Area.

*Bicycle* means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

*Board* means the Board of Directors of the Presidio Trust or its designee.

*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

*Carry* means to wear, bear, or have on or about the person.

*Chair* means the Chair of the Board of Directors of the Presidio Trust or, if there is no Chair, then the Acting Chair of the Board of Directors of the Presidio Trust.

*Commercial passenger vehicle* means a bus, motor coach, van or other vehicle capable of seating seven or more passengers, when used in transporting passengers for a fee or profit (other than bona fide sharing of actual expenses), either as a direct charge to another person, or otherwise, or used in connection with any business, but excepting pleasure type vehicles rented without a driver for general use at a charge based on time or mileage or both.

*Commercial vehicle* means a truck, station wagon, pickup, passenger car or other vehicle when used in transporting movable property for a fee or profit, either as a direct charge to another person, or otherwise, or used as an incident to providing services to another person, or used in connection with any business.

*Cultural resource* means material remains of past human life or activities that are of significant cultural interest and are less than 50 years of age. This

term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

*Downed aircraft* means an aircraft that cannot become airborne as a result of mechanical failure, fire, or accident.

*Executive Director* means the Executive Director of the Presidio Trust or his or her designee.

*Firearm* means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

*Fish* means any member of the subclasses Agnatha, Chondrichthyes, or Osteichthyes, or any mollusk or crustacean found in salt water.

*Fishing* means taking or attempting to take fish.

*FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

*FOIA Officer* means the employee designated by the Executive Director to process FOIA requests and otherwise supervise the Presidio Trust's compliance with FOIA, or the alternate employee so designated to perform these duties in the absence of the FOIA Officer.

*General Counsel* means the General Counsel of the Presidio Trust or his or her designee.

*Hunting* means taking or attempting to take wildlife, except trapping.

*Manual wheelchair* means a device that is propelled by human power, designed for and used by a mobility-impaired person.

*Motor vehicle* means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a motorized wheelchair.

*Motorized wheelchair* means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

*Net* means a seine, weir, net wire, fish trap, or other implement designed to entrap fish, except a hand-held landing net used to retrieve fish taken by hook and line.

*Operator* means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

*Pack animal* means a horse, burro, mule or other hoofed mammal.

*Pedestrian* means a person walking or a mobility-impaired person using a manual or motorized wheelchair.

*Permit* means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

*Person* means an individual, firm, corporation, society, association, partnership, or private or public body.

*Pet* means a dog, cat or any animal that has been domesticated.

*Possession* means exercising direct physical control or dominion, with or without ownership, over property, or archeological, cultural or natural resources.

*Presidio Trust* and *Trust* mean the wholly-owned federal government corporation created by the Presidio Trust Act.

*Presidio Trust Act* or *Trust Act* means Title I of Public Law 104–333, 110 Stat. 4097, as the same may be amended.

*Presidio Trust Area* means all property, lands and waters under the administrative jurisdiction of the Presidio Trust.

*Presidio Trust Area road* means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the Presidio Trust.

*Printed matter* means message-bearing textual printed material such as books, pamphlets, magazines, and leaflets, and does not include other forms of merchandise, such as posters, coffee mugs, audio or videotapes, T-shirts, hats, shorts, sunglasses, ties, and other clothing articles.

*Public use limit* means the number of persons; number and type of animals; amount, size and type of equipment, vessels, mechanical modes of conveyance, or food/beverage containers allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

*Refuse* means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid waste, feces, or other discarded materials.

*Residential dwelling* means a fixed housing structure and such land appurtenant thereto which is either the principal residence of its occupants, or is occupied on a regular and recurring basis by its occupants as an alternate residence or vacation home, and which is under the possession of a private individual pursuant to a lease.

*Services* means, but is not limited to, meals and lodging, labor, professional services, transportation, admission to exhibits, use of telephone or other utilities, or any act for which payment is customarily received.

*Smoking* means the carrying of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

*State* means a State, territory, or possession of the United States.

*State law* means the laws, statutes, regulations, and codes of the State of California that are applicable to conduct within the State of California and that do not conflict with Federal laws and regulations, including the Presidio Trust Act and the regulations in this chapter.

*Take* or *taking* means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

*Traffic* means pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for purpose of travel.

*Traffic control device* means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Executive Director for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

*Trap* means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

*Trapping* means taking or attempting to take wildlife with a trap.

*Unloaded*, as applied to weapons and firearms, means that:

(1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm;

(2) A muzzle-loading weapon does not contain gun powder in the pan, or the percussion cap is not in place; and

(3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

*Vehicle* means every device in, upon, or by which a person or property is or may be transported or drawn on land, except devices moved by human power or used exclusively upon stationary rails or track.

*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes a weapon the possession of which is prohibited under State law.

*Wildlife* means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

*Working day* means a regular Federal workday and does not include Saturdays, Sundays or Federal holidays.

**§ 1001.5 Closures and public use limits.**

(a) Consistent with the purposes of the Presidio Trust Act, public health and safety, resource protection, sound land use management, and approved Presidio Trust policies, and based upon a determination that such action is necessary and appropriate, the Board may:

(1) Establish, for all or a portion of the Presidio Trust Area, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of the Presidio Trust Area to all public use or to a specific use or activity.

(2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.

(3) Terminate a restriction, limit, closure, designation, condition, or visiting hour restriction imposed under paragraph (a)(1) or (2) of this section.

(b) At the discretion of the Board, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the Presidio Trust Area, adversely affect the Presidio Trust Area's resources, require a long-term or significant modification in the management of the Presidio Trust Area, or is of a highly controversial nature, may be published as a rulemaking in the **Federal Register**.

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit, or closure, the Board shall approve a written determination justifying the action. That determination shall set forth the reason(s) for the restriction, condition, public use limit or closure authorized by paragraph (a) of this section that has been established, and an explanation of why less restrictive measures will not suffice, or in the case of a termination of a restriction, condition, public use limit or closure previously established under paragraph (a), a determination as to why the restriction is no longer necessary and a finding that the termination will not adversely impact the resources of the Presidio Trust Area.

(d) To implement a public use limit, the Board may establish a permit, registration, or reservation system. The Board may charge fees for the processing of requests for, and the issuance of, permits, registrations, or reservations. Permits, registrations, and reservations shall be issued in accordance with the criteria and procedures of this chapter.

**§ 1001.6 Permits.**

(a) When authorized by regulations set forth in this chapter, the Executive Director may issue a permit to authorize an otherwise prohibited or restricted activity or impose a public use limit. The activity authorized by a permit shall be consistent with applicable law and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor, tenant and neighbor use activities and services will not be unduly adversely impacted.

(b) Except as otherwise provided, application for a permit shall be submitted to the Executive Director during normal business hours.

(c) The public will be informed of the existence of a permit requirement in accordance with § 1001.7 of this chapter.

(d) Unless otherwise provided for by the regulations in this chapter, the Executive Director shall deny a permit that has been properly applied for only upon a determination that the designated capacity for an area or facility would be exceeded; or that one or more of the factors set forth in paragraph (a) of this section would be unduly adversely impacted. The basis for denial shall be provided to the applicant upon request.

(e) The Executive Director shall include in a permit the terms and conditions that the Executive Director deems necessary to protect the resources of the Presidio Trust Area or public safety and may also include terms or conditions established pursuant to the authority of any other section of this chapter or other applicable law.

(f) The following are prohibited:

(1) Engaging in an activity subject to a permit requirement imposed pursuant to any provision of this chapter without obtaining a permit; or

(2) Violating a term or condition of a permit issued pursuant to this chapter.

**§ 1001.7 Public notice and comment.**

(a) Whenever the authority of § 1001.5 is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of the Presidio Trust Area as open or closed, or to require a permit to implement a public use limit, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the affected locale.

(2) Maps available in the office of the Presidio Trust and other places convenient to the public.

(3) Publication in a newspaper of general circulation in the San Francisco Bay Area.

(4) Other appropriate methods, such as the removal of closure signs, use of electronic media, brochures, maps and handouts.

(b) To the extent practicable, the Presidio Trust will post signs providing general information and regulatory guidance in the Presidio Trust Area that are consistent with signs used by the National Park Service under 36 CFR 1.10 in administering the Golden Gate National Recreation Area. The use of other types of signs by the Presidio Trust is not precluded.

(c) The Executive Director shall:

(1) Maintain and make available to the public upon request a current map showing the boundaries of the Presidio Trust Area.

(2) Publish in the **Federal Register**, within 30 days of any change in the boundaries of the Presidio Trust Area, a notice of such change and the availability of a revised map showing the boundaries of the Presidio Trust Area.

(3) Maintain and make available to the public upon request a compendium consisting of

(i) current map(s) showing the boundaries of those areas that have been designated to allow or prohibit certain uses or activities;

(ii) permit, registration, and reservation system requirements (including any applicable fees) and other conditions and restrictions imposed under the regulations in this chapter;

(iii) the written determinations required under § 1001.5(c); and

(iv) such other information or guidance as the Executive Director shall deem appropriate.

(d) At the discretion of the Board and in such manner as the Board deems appropriate, actions taken or proposed to be taken under §§ 1001.5, 1001.6, or any other provision of this chapter may be presented for comment to the Golden Gate National Recreation Area Advisory Commission and other interested entities, organizations, or individuals.

**§ 1001.8 Review and final agency action.**

(a) Decisions or actions to be made or taken by the Executive Director under

the regulations in this chapter (other than the regulations in parts 1007 and 1008 of this chapter) may also be made, altered, or reversed in whole or in part by the Board, as provided in this section. This authority of the Board may not be delegated.

(b) Any person aggrieved by a decision or action of the Executive Director may request that such be reviewed by the Board. Such a request must be received in writing at the office of the Presidio Trust within 20 days after receipt by the person aggrieved of notice of the action for which review is sought. If no decision or action is taken on such request within 60 days of its having been received, the decision or action to be reviewed shall be considered to have been approved by the Board.

(c) Decisions or actions of the Board shall be considered final agency action upon the earlier of:

(1) The passing of 60 days from the receipt of a request under paragraph (b) of this section, or

(2) The issuance of a final decision or action by the Board stated in writing to be final agency action.

## PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Sec.

1002.1 Preservation of natural, cultural and archeological resources.
1002.2 Wildlife protection.
1002.3 Weapons, traps and nets.
1002.4 Research specimens.
1002.5 Camping and food storage.
1002.6 Picnicking.
1002.7 Audio disturbances.
1002.8 Fires.
1002.9 Sanitation and refuse.
1002.10 Pets.
1002.11 Horses and pack animals.
1002.12 Aircraft and air delivery.
1002.13 Swimming and boating.
1002.14 Skating, skateboards, and similar devices.
1002.15 Smoking.
1002.16 Property.
1002.17 Recreation fees.
1002.18 Interfering with agency functions.
1002.19 Report of injury or damage.
1002.20 Gambling.
1002.21 Noncommercial soliciting.
1002.22 Explosives.
1002.23 Special events.
1002.24 Public assemblies, meetings.
1002.25 Sale or distribution of printed matter.
1002.26 Livestock use and agriculture.
1002.27 Residing on Federal lands.
1002.28 Memorialization.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1002.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following are prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into the Presidio Trust Area.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the Presidio Trust Area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the Board.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler. This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in the Presidio Trust Area.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The Board may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1001.5 and 1001.6. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The Board may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect wildlife, the reproductive potential of a plant species, or otherwise adversely affect the Presidio Trust Area's resources.

(2) The Board may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the Presidio Trust Area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the Board.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 1002.2 of this chapter.

### § 1002.2 Wildlife protection.

(a) The following are prohibited:

(1) The taking of wildlife.

(2) The feeding, touching, teasing, or frightening of wildlife.

(3) The intentional disturbing of wildlife nesting, breeding or other activities.

(4) Possessing unlawfully taken wildlife or portions thereof.

(5) Hunting, trapping, and fishing.

(b) The following are prohibited, except under such terms and conditions as may be established by the Board:

(1) The use of an artificial light for purposes of viewing wildlife.

(2) The transporting of lawfully taken wildlife through the Presidio Trust Area.

### § 1002.3 Weapons, traps and nets.

(a)(1) Except as otherwise provided in this section, it is prohibited to possess, carry or use a weapon, trap or net.

(2) Weapons, traps or nets may be carried, possessed or used:

(i) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated as such by the Board.

(ii) Within a residential dwelling.

(3) Traps, nets and unloaded weapons may be possessed within a temporary

lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.

(b) Carrying or possessing a loaded weapon in a motor vehicle, vessel or other mode of transportation is prohibited.

(c) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(d) Authorized law enforcement officers may carry weapons in the performance of their official duties.

**§ 1002.4 Research specimens.**

(a) It is prohibited to take plants, fish, wildlife, rocks or minerals except in accordance with other regulations of this chapter or pursuant to the terms and conditions of a specimen collection permit.

(b) A specimen collection permit may be issued only to an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the Executive Director determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies. A permit shall not be issued if removal of the specimen would result in damage to other natural or cultural resources, adversely affect environmental or scenic values, or if the specimen is readily available outside of the Presidio Trust Area.

(c) A permit to take an endangered or threatened species listed pursuant to the Endangered Species Act, or similarly identified by the State of California, shall not be issued unless the species cannot be obtained outside of the Presidio Trust Area and the primary purpose of the collection is to enhance the protection or management of the species.

(d) The Executive Director may issue a permit which authorizes the killing of plants, fish or wildlife after approving a written research proposal and determining that the collection will benefit science or has the potential for improving the management and protection of the resources of the Presidio Trust Area.

(e) Specimen collection permits shall require that specimens and data derived from consumed specimens will be made available to the public and reports and publications resulting from a research specimen collection permit shall be filed with the Executive Director.

**§ 1002.5 Camping and food storage.**

(a) The following are prohibited:

(1) Camping anywhere in the Presidio Trust Area, except in designated areas and under conditions that may be established by the Board.

(2) Digging or leveling the ground at a campsite.

(3) Leaving camping equipment, site alterations, or refuse after departing from the campsite.

(4) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.

(5) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(6) The installation of permanent camping facilities.

(7) Displaying wildlife carcasses or other remains or parts thereof.

(8) Connecting to a utility system, except as designated.

(b) Food, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

**§ 1002.6 Picnicking.**

Picnicking is allowed, except in designated areas closed in accordance with § 1001.5. In areas where picnicking is allowed, persons may engage in picnicking only in accordance with such conditions as the Board may establish.

**§ 1002.7 Audio disturbances.**

(a) The following are prohibited:

(1) Operating motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or an audio device, such as a radio, television set, tape deck or musical instrument, in a manner:

(i) That exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet; or

(ii) If below that level, that nevertheless makes noise which is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, purpose for which the area was established, impact on Presidio Trust Area visitors and tenants, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(2) Operating any type of power saw, portable motor or engine, or device powered by a portable motor or engine, except pursuant to the terms and conditions of a permit issued by the Executive Director.

(3) Operating a public address system, except in connection with a public gathering or special event for which a permit has been issued pursuant to § 1002.23 or § 1002.24.

**§ 1002.8 Fires.**

(a) The following are prohibited:

(1) Lighting or maintaining a fire, including a fire inside an appliance such as a barbecue grill, except in designated areas or receptacles and under conditions that may be established by the Board.

(2) Using stoves or lanterns in violation of established restrictions.

(3) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to, or results in the burning of property, real property or resources of the Presidio Trust Area, or creates a public safety hazard.

(4) Leaving a fire unattended.

(5) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or resources of the Presidio Trust Area, or creates a public safety hazard.

(b) Fires shall be completely extinguished upon termination of use.

(c) During periods of high fire danger, the Board may close all or a portion of the Presidio Trust Area to the lighting or maintaining of a fire.

**§ 1002.9 Sanitation and refuse.**

The following are prohibited:

(a) Using government refuse receptacles or other refuse facilities for dumping household, commercial, or industrial refuse, brought as such from private or municipal property, except in accordance with conditions established by the Board.

(b) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(c) Draining refuse from a trailer or other vehicle, except in facilities provided for such purpose.

(d) Bathing, or washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those designated for such purpose.

(e) Disposing of human body waste, except at designated locations or in fixtures provided for that purpose.

**§ 1002.10 Pets.**

(a) The following are prohibited:

(1) Possession of a pet in a public building, public transportation vehicle, or any structure or area that may be closed to the possession of pets by the Board. This subparagraph shall not apply to guide dogs necessary to accompany persons with impaired hearing, vision, or mobility.

(2) Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times, except in designated areas and under conditions which may be established by the Board.

(3) Leaving a pet unattended and tied to an object, except in designated areas and under conditions which may be established by the Board.

(4) Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on Presidio Trust Area visitors and tenants, and other relevant factors, or that disturbs wildlife by barking, howling, or making other noise.

(5) Failing to comply with pet excrement disposal conditions which may be established by the Board.

(b) Pets or feral animals that are running at-large and/or observed by an employee or agent of the Presidio Trust in the act of killing, injuring or molesting humans, pets, or wildlife may be destroyed if necessary for public safety or protection of humans, pets, wildlife, or resources of the Presidio Trust Area.

(c) Pets that are running at-large and/or observed by an employee or agent of the Presidio Trust in the act of killing, injuring or molesting humans, pets, or wildlife may be impounded by the Presidio Trust and/or remanded to the custody of other governmental authorities, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(d) Pets may be kept by residents of the Presidio Trust Area consistent with the provisions of this section and in accordance with terms of the owner's lease and conditions which may be established by the Board. Violation of these conditions is prohibited.

(e) This section does not apply to dogs or other animals used by authorized law enforcement officers in the performance of their official duties.

**§ 1002.11 Horses and pack animals.**

(a) The use of horses and pack animals is prohibited except in designated areas or pursuant to the terms and conditions of a permit issued by the Executive Director.

(b) It is prohibited:

(1) To allow horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(2) To obstruct a trail, or make an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(c) This section does not apply to authorized law enforcement officers in the performance of their official duties.

**§ 1002.12 Aircraft and air delivery.**

(a) Except as may be permitted by the Board, and except as the official business of the Federal government may be involved, the following are prohibited:

(1) Operating or using aircraft within the Presidio Trust Area.

(2) Delivering or retrieving a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss.

(b) The owners of a downed aircraft shall remove the aircraft and all component parts thereof as directed by the Executive Director.

(c) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration.

**§ 1002.13 Swimming and boating.**

Swimming, boating, and the use of any type or description of craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, including a buoyant device permitting or capable of free flotation, are prohibited in the Presidio Trust Area.

**§ 1002.14 Skating, skateboards, and similar devices.**

Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices is prohibited in the Presidio Trust Area, except in such areas as may be designated for such use by the Board.

**§ 1002.15 Smoking.**

(a) Smoking in the Presidio Trust Area is allowed or prohibited in the same manner as it would be allowed or prohibited under State law.

(b) Notwithstanding paragraph (a) of this section, the Board may designate a portion of the Presidio Trust Area, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect resources of the Presidio Trust Area, reduce the risk of fire, or prevent conflicts among visitor or tenant use activities.

**§ 1002.16 Property.**

(a) *Prohibitions.* The following are prohibited:

(1) Leaving property in the Presidio Trust area with no intent to retain possession.

(2) Leaving property unattended for longer than 12 hours, except in locations where longer time periods have been designated or in accordance with conditions established by the Board or a permit issued by the Executive Director.

(3) Failing to turn in found property to the Executive Director as soon as practicable.

(b) *Impoundment of property.* (1) Property determined to be left unattended in excess of an allowed period of time may be impounded by the Executive Director.

(2) Unattended property that interferes with visitor or tenant safety, orderly management of the Presidio Trust Area, or presents a threat to resources of the Presidio Trust Area may be impounded by the Executive Director at any time.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard personal property.

(4) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section; or the Executive Director may assess the owner reasonable fees for the impoundment and storage of property impounded pursuant to this section.

(c) *Disposition of property.* (1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60-day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the Executive Director's custody, if the owner cannot be identified.

(2) Unclaimed, found property shall be stored for a minimum period of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the Presidio Trust. Found property not claimed by the owner or an authorized

representative of the finder shall be deemed abandoned.

(3) Abandoned property shall be sold, donated, or disposed of at the discretion of the Executive Director.

(4) Property owned by a deceased person shall be disposed of in accordance with State law.

**§ 1002.17 Recreation fees.**

It is prohibited to enter designated entrance fee areas or use specialized sites, facilities, equipment or services, or to participate in group activities, recreation events, or other specialized recreation uses for which recreation fees have been established by the Presidio Trust, without paying the required fees and possessing the applicable permits.

**§ 1002.18 Interfering with agency functions.**

The following are prohibited:

(a) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(b) *Lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals that pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or resources of the Presidio Trust Area, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

(c) *False information.* Knowingly giving a false or fictitious report or other false information: (i) To an authorized law enforcement officer investigating an accident or violation of law or regulation; or (ii) on an application for a permit.

(d) *False Report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

**§ 1002.19 Report of injury or damage.**

A person involved in an incident resulting in personal injury or property damage exceeding $500, other than an accident reportable under § 1003.2 of this chapter, shall report the incident to the Executive Director as soon as possible. This notification does not satisfy any other reporting requirements that may be imposed by federal or State law.

**§ 1002.20 Gambling.**

Gambling in any form, or the operation of gambling devices, is prohibited.

**§ 1002.21 Noncommercial soliciting.**

Soliciting or demanding gifts, money, goods or services is prohibited, except pursuant to the terms and conditions of a lease or other written agreement with the Presidio Trust or of a permit that has been issued under §§ 1002.23, 1002.24 or 1002.25.

**§ 1002.22 Explosives.**

(a) Using, firing, discharging, possessing, storing or transporting explosives, blasting agents, explosive materials, fireworks, or firecrackers are prohibited, except pursuant to the terms and conditions of a permit issued by the Executive Director.

(b) When permitted, the use, possession, storage and transportation of such materials shall be in accordance with applicable Federal and State laws and under such conditions as the Executive Director may establish.

**§ 1002.23 Special events.**

(a) Sports events, pageants, public spectator attractions, entertainments, ceremonies, and similar events are allowed when a permit therefore has been issued by the Executive Director. A permit shall be denied if such activities would:

(1) Cause injury or damage to resources of the Presidio Trust Area; or

(2) Be inconsistent with the purposes of the Presidio Trust Act or otherwise unreasonably impair the atmosphere of peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with the authorized activities of Presidio Trust Area visitors, tenants, or neighbors, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust Area tenants; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses; or

(7) Constitute a violation of an applicable law or regulation.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the Executive Director. The application shall be submitted so as to reach the Executive Director at least seven days in advance of the proposed event.

(c) As a condition of permit issuance, the Executive Director may require:

(1) The filing of a bond payable to the Presidio Trust, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash with the Presidio Trust equal to the amount of the required bond. Such deposits shall not earn interest.

(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the Presidio Trust is named as co-insured in an amount sufficient to protect the Presidio Trust.

(d) The permit may contain such conditions as are reasonably consistent with protection and use of the Presidio Trust Area in accordance with the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

**§ 1002.24 Public assemblies, meetings.**

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within the Presidio Trust Area, provided a permit therefore has been issued by the Executive Director.

(b) An application for such a permit shall set forth the name of the applicant; the date, time, duration, nature and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used, and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to resources or facilities of the Presidio Trust Area, inconsistency with the purposes of the Presidio Trust Act, interference with authorized activities of Presidio Trust Area visitors, tenants, or neighbors, impairment of public use facilities or services of Presidio Trust

Area tenants, or conflict with other existing uses; or

(4) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate areas of the Presidio Trust Area that are not available for public assemblies only if such activities would:

(1) Cause injury or damage to resources of the Presidio Trust Area; or

(2) Be inconsistent with the purposes of the Presidio Trust Act or otherwise unreasonably impair the atmosphere of peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with the authorized activities of Presidio Trust Area visitors, tenants, or neighbors, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust Area tenants or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Constitute a violation of an applicable law or regulation.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the Presidio Trust Area in accordance with the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of seven days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in activities covered under this section to obstruct or impede pedestrians or vehicles, or harass Presidio Trust Area visitors or tenants with physical contact.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made to be followed by written confirmation within 72 hours.

**§ 1002.25 Sale or distribution of printed matter.**

(a) The sale or distribution of printed matter is allowed within the Presidio Trust Area, provided that a permit to do so has been issued by the Executive Director, and provided further that the printed matter is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed sale or distribution, the number of participants, and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to resources of the Presidio Trust Area or facilities, inconsistency with the purposes of the Presidio Trust Act, interference with authorized activities of Presidio Trust Area visitors and tenants, impairment of public use facilities or services of Presidio Trust Area tenants, interference with the administrative activities of the Presidio Trust or the National Park Service, or conflict with other existing uses; or

(4) The sale or distribution would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate areas of the Presidio Trust Area that are not available for the sale or distribution of printed matter only if such activities would:

(1) Cause injury or damage to resources of the Presidio Trust Area; or

(2) Be inconsistent with the purposes of the Presidio Trust Act or otherwise unreasonably impair the atmosphere of peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with the authorized activities of Presidio Trust Area visitors, tenants, or neighbors, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust Area tenants or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Constitute a violation of an applicable law or regulation.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the Presidio Trust Area in accordance with the purposes of the Presidio Trust Act.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in the sale or distribution of printed matter under this section to obstruct or impede pedestrians or vehicles, harass Presidio Trust Area visitors or tenants with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

**§ 1002.26 Livestock use and agriculture.**

The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind in the Presidio Trust Area or the use of the Presidio Trust Area for agricultural purposes is prohibited except as may be allowed for residential purposes in accordance with the terms and conditions of a valid permit, lease or contract.

**§ 1002.27 Residing on Federal lands.**

It is prohibited to reside in the Presidio Trust Area, except pursuant to the terms and conditions of a valid permit, lease or contract.

**§ 1002.28 Memorialization.**

(a) The installation of a monument, memorial, tablet, structure, or other commemorative installation in the

Presidio Trust Area without a permit issued by the Board is prohibited.

(b) The scattering of human ashes from cremation is prohibited, except pursuant to the terms and conditions of a permit, or in designated areas and according to conditions which may be established by the Board.

## PART 1003—VEHICLES AND TRAFFIC SAFETY

Sec.

1003.1 Authorized emergency vehicles.
1003.2 Report of motor vehicle accident.
1003.3 Travel on Presidio Trust Area roads and designated routes.
1003.4 Load, weight and size limits.
1003.5 Speed limits.
1003.6 Unsafe operation.
1003.7 Operating under the influence of alcohol or drugs.
1003.8 Bicycles.
1003.9 Hitchhiking.
1003.10 Powerless flight.
1003.11 Parking.
1003.12 Commercial passenger vehicles.
1003.13 Commercial vehicles.
1003.14 Safety belts.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1003.1 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

(1) Disregard traffic control devices;

(2) Exceed the speed limit; and

(3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

### § 1003.2 Report of motor vehicle accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the Executive Director as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the Executive Director.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the Executive Director unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the Presidio Trust Area.

(c) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

### § 1003.3 Travel on Presidio Trust Area roads and designated routes.

The following are prohibited:

(a) Operating a motor vehicle anywhere other than on Presidio Trust Area roads, in parking areas, and on routes and areas designated for such use or in accordance with the terms of a permit.

(b) Operating a motor vehicle not equipped with pneumatic tires.

(c) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a road or route.

### § 1003.4 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a Presidio Trust Area road. The Board may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The Executive Director may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the Board.

(2) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

### § 1003.5 Speed limits.

(a) The Board shall establish speed limits in the Presidio Trust Area and post such limits by using standard traffic control devices.

(b) Unless otherwise posted, the speed limit in the Presidio Trust Area is 25 miles per hour.

(c) An authorized law enforcement officer may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a Presidio Trust Area road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

(d) The offense of exceeding a speed limit is defined by State law and violations are prosecuted pursuant to the provision of § 1001.2(d) of this chapter.

### § 1003.6 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of § 1001.2(d) of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle except as may be allowed under State law.

### § 1003.7 Operating under the influence of alcohol or drugs.

(a) At the request or direction of an authorized law enforcement officer who has probable cause to believe that an operator of a motor vehicle within the Presidio Trust Area is under the influence of alcohol, or a drug, or drugs, or any combination thereof, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(b) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(c) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized law enforcement officer.

(d) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(e) The offense of operating a motor vehicle while under the influence of alcohol or drugs is defined by State law and violations are prosecuted pursuant to the provision of § 1001.2(d) of this chapter.

### § 1003.8 Bicycles.

(a) The use of a bicycle is prohibited except on Presidio Trust Area roads, in parking areas and on routes designated for bicycle use by the Board after considering possible injury or damage to resources of the Presidio Trust Area, the purposes of the Presidio Trust Act, possible impairment of the operation of public use facilities or services of Presidio Trust Area tenants, public health and safety, and potential for

interference with the authorized activities of Presidio Trust Area visitors and tenants, or with the administrative activities of the Presidio Trust.

(b) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 1003.3 and 1003.4.

(c) Bicycle speed limits are as follows:

(1) On Presidio Trust Area roads: the same as motor vehicle speed limits.

(2) On other designated routes in the Presidio Trust Area: 15 miles per hour.

(3) On blind curves and when passing other trail users: 5 miles per hour.

(d) The following are prohibited:

(1) Operating a bicycle during periods of low visibility, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(2) Operating a bicycle abreast of another bicycle except where authorized by the Board.

(3) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

(4) The possession of a bicycle on routes not designated as open to bicycle use.

### § 1003.9 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the Board.

### § 1003.10 Powerless flight.

The use of devices designed to transport persons through the air in powerless flight is prohibited.

### § 1003.11 Parking.

The Board shall designate areas and establish conditions for parking of motor vehicles, including time limits and fees. Motor vehicles parked in violation of these conditions may be ticketed and/or towed at the owner's expense.

### § 1003.12 Commercial passenger vehicles.

(a) The use of Presidio Trust Area roads by commercial passenger vehicles is prohibited, except pursuant to the terms and conditions of a permit issued by the Executive Director, and only in such areas as may be designated by the Board, with the following exceptions:

(1) Operation of a commercial passenger vehicle by a government agency or instrumentality for the purpose of providing public transit.

(2) Operation of a commercial passenger vehicle as part of a trip or tour initiated, organized, and directed by an established bona fide school or college, institution, society or other organization, as a nonprofit activity of such organization, and if all passengers are students, faculty, members, or employees of such organization, or otherwise connected therewith, provided that, upon request by an authorized law enforcement officer, credentials are presented by the head of such institution or organization indicating the trip is in accordance with these provisions. Clubs or associations having as a principal purpose the arranging of tours, trips, or transportation for their members will not qualify for admission into the Presidio Trust Area under the provision of this paragraph.

(3) Operation of a commercial passenger vehicle as a result of an emergency involving public safety or risk of serious property loss.

(b) The idling of commercial passenger vehicle engines while loading, unloading, or waiting for passengers to board is prohibited.

### § 1003.13 Commercial vehicles.

The use of Presidio Trust Area roads by commercial vehicles when such use is not connected with the administrative activities of the Presidio Trust or authorized services provided by or to Presidio Trust Area visitors or tenants, is prohibited, except that in emergencies the Executive Director may grant permission to use Presidio Trust Area roads.

### § 1003.14 Safety belts.

(a) Each operator and passenger occupying any seating position of a motor vehicle in the Presidio Trust Area will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

## PART 1004—COMMERCIAL AND PRIVATE OPERATIONS

Sec.

1004.1 Signs and advertisements.
1004.2 Alcoholic beverages; sale of intoxicants.
1004.3 Business operations.
1004.4 Commercial photography.
1004.5 Construction of buildings or other facilities.
1004.6 Discrimination in employment practices.
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1004.8 Eating, drinking, or lodging establishments.
1004.9 Nuisances.
1004.10 Prospecting, mining, and mineral leasing.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1004.1 Signs and advertisements.

(a) No sign, poster, placard, flier, or other printed notice may be posted anywhere in the Presidio Trust Area except in accordance with such conditions as to reasonable time, place, and manner that may be established by the Board.

(b) Commercial notices or advertisements shall not be displayed, posted, or distributed within the Presidio Trust Area without a permit issued therefor.

### § 1004.2 Alcoholic beverages; sale of intoxicants.

(a) The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than one percent of alcohol by weight, shall conform with all applicable Federal and State laws and regulations.

(b) No such liquor shall be sold within the Presidio Trust Area, unless a permit for the sale thereof has first been secured from the Executive Director.

(1) In granting or refusing applications for permits as herein provided, the Executive Director shall take into consideration the character of the neighborhood, the availability of other liquor-dispensing facilities, State law governing the sale of liquor, and any other local factors which have a relationship to the privilege requested.

(2) The permit for sale of intoxicating liquors shall contain such general and special conditions as the Executive Director may deem reasonably necessary to insure safe and orderly management of the Presidio Trust Area.

(3) The permittee shall comply with State law, other than fee and license requirements, as such would be applicable to the premises and to the sale and dispensing of intoxicating beverages.

### § 1004.3 Business operations.

Engaging in or soliciting any business in the Presidio Trust Area, except in accordance with the provisions of a permit, contract, or other written agreement with the Presidio Trust, is prohibited.

**§ 1004.4 Commercial photography.**

(a) *Permit requirement.* Before any still or motion picture may be taken or filmed or any video or television production or sound track may be made, which involves the use of professional casts, models, settings, or crews, by any person other than bona fide newsreel or news television personnel, a written permit must first be obtained from the Executive Director.

(b) *Bond.* A bond shall be furnished, or deposit made in cash or by certified check, in an amount to be set by the Executive Director to insure full compliance with all of the conditions prescribed in paragraph (c)(5) of this section.

(c) *Form of application.* The person or organization seeking a permit must state in writing:

(1) The type of activity sought to be performed;

(2) The area of the Presidio Trust Area in which the activity is sought to be performed;

(3) The scope of the filming (or production or recording) and the manner and extent thereof;

(4) The approximate dates of the activity;

(5) That the applicant will comply with the following conditions:

(i) Utmost care will be exercised to see that no natural features or public or private property are injured, and after completion of the work the area will, as required by the official in charge, either be cleaned up and restored to its prior condition or left, after clean-up, in a condition satisfactory to the official of the Presidio Trust in charge.

(ii) Credit will be given to the Presidio Trust through the use of an appropriate title or announcement, unless there is issued by the Executive Director a written statement that no such courtesy credit is desired.

(iii) Pictures will be taken of wildlife only when such wildlife will be shown in its natural state or under approved management conditions if such wildlife is confined.

(iv) Any special instructions received from the official in charge of the area will be complied with.

(v) Any additional information relating to the privilege applied for will be furnished upon request of the official in charge.

**§ 1004.5 Construction of buildings or other facilities.**

Constructing or attempting to construct a building, or other structure, road, trail, path, or other way, telephone line, telegraph line, power line, or any other private or public utility, upon, across, over, through, or under any portion of the Presidio Trust Area, except in accordance with the provisions of a valid permit, contract, or other written agreement with the United States, is prohibited.

**§ 1004.6 Discrimination in employment practices.**

(a) With the exception of governmental agencies or instrumentalities covered by other non-discrimination requirements, the proprietor, owner, or operator of any hotel, inn, lodge, restaurant, recreational facility, or other facility or accommodation offered to or enjoyed by the general public within the Presidio Trust Area, is prohibited from discriminating against any employee or maintaining any employment practice which discriminates because of race, creed, color, ancestry, sex, age, disabling condition, national origin or sexual orientation in connection with any activity provided for or permitted by contract with or permit from the Presidio Trust or by derivative subcontract or sublease. As used in this section, the term ''employment'' includes, but is not limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Each such proprietor, owner or operator shall post the following notice at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking employment:

*Notice*

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination in employment practices on the basis of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation is permitted in this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints or violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

**§ 1004.7 Discrimination in furnishing public accommodations and transportation services.**

(a) With the exception of governmental agencies or instrumentalities covered by other non-discrimination requirements, the proprietor, owner or operator and the employees of any hotel, inn, lodge, restaurant, recreational facility, or other facility or accommodation offered to or enjoyed by the general public within the Presidio Trust Area and, while using any portion of the Presidio, any commercial passenger-carrying motor vehicle service and its employees, are prohibited from:

(1) Publicizing the facilities, accommodations or any activity conducted therein in any manner that would directly or inferentially reflect upon or question the acceptability of any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation; or

(2) Discriminating by segregation or otherwise against any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation in furnishing or refusing to furnish such person or persons any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

(b) Each such proprietor, owner, or operator shall post the following notice at such locations as will insure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges:

*Notice*

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints or violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

**§ 1004.8 Eating, drinking, or lodging establishments.**

(a) No establishment offering food, drink, or lodging for sale within the Presidio Trust Area may be operated without a permit obtained from the Executive Director. Such permit may include terms and conditions deemed necessary by the Executive Director to the health, safety and welfare of the public and it may be revoked upon failure to comply with the requirements of paragraphs (b) and (c) of this section or the conditions set forth in the permit.

(b) Such establishment shall be maintained and operated in accordance with the rules and regulations recommended by the U.S. Public Health Service for such establishments, and State law. In the event of conflict or inconsistency between such U.S. Public Health Service recommendations and the requirements of State law, the former shall prevail.

(c) The Executive Director shall have the right to inspect such establishments

at reasonable times to determine whether the establishment is being operated in accordance with the applicable rules and regulations and in accordance with the provisions of the permit.

### § 1004.9 Nuisances.

The creation or maintenance of a nuisance within the Presidio Trust Area is prohibited.

### § 1004.10 Prospecting, mining, and mineral leasing.

Prospecting, mining, and the location of mining claims under the general mining laws and leasing under the mineral leasing laws are prohibited in the Presidio Trust Area except as authorized by law.

## PART 1005-RIGHTS-OF-WAY

Sec.
1005.1 Definitions.
1005.2 Issuance of rights-of-way.
1005.3 Nature of interest granted.
1005.4 Unauthorized occupancy.
1005.5 Terms and conditions.
1005.6 Nonconstruction, abandonment or nonuse.
1005.7 Deviation from approved right-of-way.
1005.8 Order of cancellation.
1005.9 Change in jurisdiction over lands.
1005.10 Transfer of right-of-way.
1005.11 Disposal of property on termination of right-of-way.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1005.1 Definitions.

The following terms have the following meanings as used in this part:

*Construction work* means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

*Project* means the physical structures in connection with which the right-of-way is approved.

*Right-of-way* includes license, permit, or easement, as the case may be.

### § 1005.2 Issuance of rights-of-way.

Rights-of-way over or through the Presidio Trust Area will be issued by the Board under the regulations of this part on such terms and conditions (including monetary charges) as the Board finds to be in the public interest, in accordance with applicable law, and consistent with the purposes of the Presidio Trust Act.

### § 1005.3 Nature of interest granted.

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the Board unless an applicable statute provides otherwise. Except as otherwise provided by law, no interest granted shall give the grantee any right whatsoever to take from the Presidio Trust Area any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

### § 1005.4 Unauthorized occupancy.

Any occupancy or use of the lands of the Presidio Trust Area without authority will subject the person occupying or using the land to prosecution and liability for trespass.

### § 1005.5 Terms and conditions.

By accepting a right-of-way, the holder thereof agrees and consents to comply with and be bound by the following terms and conditions, except to the extent that the instrument granting the right-of-way expressly provides otherwise:

(a) To comply with Federal and State laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To prevent or minimize damage to the Presidio Trust Area's resources related to the holder's use of or activities related to the right-of-way, including but not limited to restoration, landscaping, and disposal of brush and other refuse, as determined by and at the direction of the Executive Director.

(c) To take such soil and resource conservation and protection measures including weed control, on the land covered by the right-of-way as determined by and at the direction of the Executive Director.

(d) To do everything reasonably within the holder's power, both independently and on request of any duly authorized representative of the Presidio Trust or the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way, subject to the approval of the Executive Director.

(f) To pay the Presidio Trust the full value for all damages to lands in the Presidio Trust Area or other property of or administered by the Presidio Trust caused by the holder or by the holder's employees, contractors, or employees of the contractors, and to indemnify the Presidio Trust against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way; except that where a right-of-way is granted hereunder to a State or other governmental agency whose power to assume liability by agreement is limited by law, such agency shall indemnify the Presidio Trust as provided above to the extent that it may legally do so.

(g) To refrain from cutting or destroying any timber without first obtaining permission from the Executive Director; to replace in kind any trees removed or reimburse the Trust for its costs in replacing in kind any trees removed; and to notify promptly the Executive Director of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the Presidio Trust in advance of construction such sum of money as the Executive Director may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the Board to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Executive Director, the holder shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the Executive Director.

(j) That the holder shall at all times keep the Executive Director informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation and shall require an

identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management and administration by the Presidio Trust or the United States of the lands affected thereby, and that the holder agrees and consents to the occupancy and use by the Presidio Trust and the United States, and their grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Board to be necessary, without liability or expense to the Presidio Trust or the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the Presidio Trust or the United States.

### § 1005.6 Nonconstruction, abandonment or nonuse.

Unless otherwise provided by law, rights-of-way are subject to cancellation by the Board for failure to construct within the period allowed under the terms of the issuance of the right-of-way and for abandonment or nonuse.

### § 1005.7 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the Executive Director. The Executive Director may require that the Board approve the deviation where in the Executive Director's judgment the deviation is substantial.

### § 1005.8 Order of cancellation.

All rights-of-way issued pursuant to this part shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto, or for the violation of the terms or conditions of the right-of-way, at the discretion of the Board. No right-of-way shall be deemed to be cancelled except on the issuance of a specific order of cancellation, which order shall be published in the **Federal Register**.

### § 1005.9 Change in jurisdiction over lands.

A change in jurisdiction over the lands in the Presidio from one Federal agency to another will not cancel a right-of-way involving such lands. It will however, change the administrative jurisdiction over the right-of-way or part thereof affected by the change in jurisdiction.

### § 1005.10 Transfer of right-of-way.

No transfer of any right-of-way will be recognized unless and until it is first approved in writing by the Board.

### § 1005.11 Disposal of property on termination of right-of-way.

Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all monies due the Presidio Trust thereunder have been paid, the holder of the right-of-way will be allowed 60 days or such additional time as may be granted by the Executive Director in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the Presidio Trust, without any compensation owed therefore. No claim for damages against the Presidio Trust or its employees, directors, officers, or agents shall arise or be made on account of such removal and restoration work.

## PART 1006—PRESIDIO TRUST SYMBOLS

Sec.
1006.1 Definitions.
1006.2 Applicability.
1006.3 Uses.
1006.4 Power to revoke.
1006.5 Penalties.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

### § 1006.1 Definitions.

The term *Presidio Trust symbol*, as used in this part, refers to:

(a) any official symbol, insignia, trademark or service mark of the Presidio Trust designated as such by action of the Board, with notice published in the **Federal Register**; and

(b) the words ''Presidio'' and ''Trust'' when used together and/or in conjunction with other words.

### § 1006.2 Applicability.

The regulations contained in this part shall apply to the fullest extent of the jurisdiction of the United States.

### § 1006.3 Uses.

(a) All reproduction and use of Presidio Trust symbols by any entity other than the Presidio Trust are prohibited, except as provided in these regulations.

(b) The Board may license or otherwise permit the reproduction and use of one or more Presidio Trust symbols, with or without charge, for uses that are consistent with the purposes of the Presidio Trust Act.

### § 1006.4 Power to revoke.

Permission granted under this part by the Board may be rescinded by the Board at any time upon a finding that the use of the Presidio Trust symbol or symbols involved is inconsistent with the purposes of the Presidio Trust Act, or for disregard of any limitations or terms contained in the applicable licenses or permits.

### § 1006.5 Penalties.

Whoever reproduces or uses any Presidio Trust symbol in violation of the regulations of this part shall be subject to the penalties prescribed in 18 U.S.C. 701.

## PART 1007—REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

Sec.
1007.1 Purpose and scope.
1007.2 Records available.
1007.3 Requests for records.
1007.4 Preliminary processing of requests.
1007.5 Action on initial requests.
1007.6 Time limits for processing initial requests.
1007.7 Appeals.
1007.8 Action on appeals.
1007.9 Fees.
1007.10 Waiver of fees.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552.

### § 1007.1 Purpose and scope.

(a) This part contains the procedures for submission to and consideration by the Presidio Trust of requests for records under the Freedom of Information Act, 5 U.S.C. 552.

(b) Before invoking the formal procedures set out below, persons seeking records from the Presidio Trust may find it useful to consult with the Presidio Trust's FOIA Officer, who can be reached at Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: (415) 561–5300.

(c) The procedures in this part do not apply to:

(1) Records published in the **Federal Register**, the Bylaws of the Presidio Trust, statements of policy and interpretations, and other materials that have been published by the Presidio Trust on its internet website (http://www.presidiotrust.gov) or are routinely made available for inspection and copying.

(2) Records or information compiled for law enforcement purposes and

covered by the disclosure exemption described in § 1007.2(c)(7) if:

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that:

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by the United States Park Police under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

**§ 1007.2 Records available.**

(a) *Policy.* It is the policy of the Presidio Trust to make its records available to the public to the greatest extent possible consistent with the purposes of the Presidio Trust Act and the Freedom of Information Act.

(b) *Statutory disclosure requirement.* FOIA requires that the Presidio Trust, on a request from a member of the public submitted in accordance with the procedures in this part, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from FOIA's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Presidio Trust to withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this part to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released. In such circumstances, the records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

**§ 1007.3 Requests for records.**

(a) *Submission of requests.* A request to inspect or copy records shall be submitted to the Presidio Trust's FOIA Officer at P.O. Box 29052, San Francisco, CA 94129–0052.

(b) *Form of requests.* (1) Requests under this part shall be in writing and must specifically invoke FOIA.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Presidio Trust familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall:

(A) Specify the fee category (commercial use, educational institution, noncommercial scientific institution, news media, or other, as defined in § 1007.9 of this chapter) in which the requester claims the request to fall and the basis of this claim and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 1007.9 (f), (g) and (h), the time for responding to requests may be delayed:

(A) If a requester has not sufficiently identified the fee category applicable to the request,

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Presidio Trust or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Presidio Trust.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 1007.10 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend ''FREEDOM OF INFORMATION REQUEST.''

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from

manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Presidio Trust determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Presidio Trust may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

**§ 1007.4 Preliminary processing of requests.**

(a) *Scope of requests.* Unless a request clearly specifies otherwise, requests to the Presidio Trust may be presumed to seek only records of the Presidio Trust.

(b) *Records of other departments and agencies.* (1) If a requested record in the possession of the Presidio Trust originated with another Federal department or agency, the request shall be referred to that agency unless:

(i) The record is of primary interest to the Presidio Trust, for example, because it was developed or prepared pursuant to Presidio Trust regulations or request,

(ii) The Presidio Trust is in a better position than the originating agency to assess whether the record is exempt from disclosure, or

(iii) The originating agency is not subject to FOIA.

(2) A request for documents that were classified by another agency shall be referred to that agency.

(c) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the Presidio Trust shall provide the submitter with notice of the request whenever:

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(4) If a submitter's statement cannot be obtained within the time limit for processing the request under § 1007.6, the requester shall be notified of the delay as provided in § 1007.6(f).

(5) Notification to a submitter is not required if:

(i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than FOIA) or regulation (other than this part);

(iv) Disclosure is clearly prohibited by a statute, as described in § 1007.2(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Presidio Trust more than 10 years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.

(6) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

**§ 1007.5 Action on initial requests.**

(a) *Authority.* (1) Requests shall be decided by the FOIA Officer.

(2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in § 1007.9.

(2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (e.g., paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

(3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(4) If a claim of confidentiality has been found frivolous in accordance with § 1007.4(c)(5)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A listing of the names and titles or positions of each person responsible for the denial;

(ii) A reference to the specific exemption or exemptions authorizing the withholding;

(iii) If neither a statute nor an Executive order requires withholding, the sound ground for withholding;

(iv) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(v) A statement that the denial may be appealed and a reference to the procedures in § 1007.7 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records

cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed and a reference to the procedures in § 1007.7 for appeal.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:

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

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited processing is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

**§ 1007.6 Time limits for processing initial requests.**

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 20 working day time limit begins to run when a request meeting the requirements of § 1007.3(b) is received at the Presidio Trust.

(2) The running of the basic time limit may be delayed or tolled as explained in § 1007.9 (f), (g) and (h) if a requester:

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver, or

(ii) Has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended by more than 20 working days:

(1) The need to search for and collect the requested records from facilities or other establishments that are separate from the main office of the Presidio Trust;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 20 working day period for deciding an initial request, or an extension thereof under § 1007.6(c), the requester may deem the request denied and may exercise a right of appeal in accordance with § 1007.7.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal, including a reference to the procedures for filing an appeal in § 1007.7.

**§ 1007.7 Appeals.**

(a) *Right of appeal.* A requester may appeal to the Executive Director when:

(1) Records have been withheld,

(2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located,

(3) A fee waiver has been denied,

(4) A request has not been decided within the time limits provided in § 1007.6; or

(5) A request for expedited processing under § 1007.5(d) has been denied.

(b) *Time for appeal.* An appeal must be received at the office of the Presidio Trust no later than 20 working days after the date of the initial denial, in the case of a denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend ''FREEDOM OF INFORMATION APPEAL.''

**§ 1007.8 Action on appeals.**

(a) *Authority.* Appeals shall be decided by the Executive Director after consultation with the FOIA Officer and the General Counsel.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 1007.7(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 1007.6(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 1007.6(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in the United States District Court for the Northern District of California, as specified in 5 U.S.C. 552(a)(4).

(4) When no determination can be reached within the applicable time

limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched and of the right to seek judicial review.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the FOIA Officer shall immediately make the records available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the Northern District of California and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), the submitter shall be provided notice as described in § 1007.5(b)(3).

**§ 1007.9 Fees.**

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 1007.10, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Board and published in the compendium provided under § 1001.7 of this chapter.

(2) Fees shall not be charged if the total amount chargeable does not exceed the costs of collecting the fee. The Trust shall periodically determine the cost of collecting a fee and publish such amount in the compendium provided under § 1001.7 of this chapter.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(4) Fees shall be charged to recover the full costs of providing such services as certifying that records are true copies or sending records by a method other than regular mail, when the Trust elects to provide such services.

(5) The following definitions shall apply to this part:

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents or databases. Searches shall be undertaken in the most efficient and least expensive manner possible, consistent with the Presidio Trust's obligations under FOIA and other applicable laws.

(ii) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(iii) A *commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that further the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(iv) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(v) A *noncommercial scientific institution* is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(vi) A *representative of the news media* is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. Free-lance journalists may be considered representatives of the news media if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search and review (even if the search and review fails to locate records that are not exempt from disclosure) and duplication.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in:

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in:

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c), or (d) of this section shall be charged fees for document search (even if the search fails to locate records that are not exempt from disclosure) and

duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in:

(i) Examining requested records to determine whether they are exempt from disclosure,

(ii) Deleting reasonably segregable exempt matter,

(iii) Monitoring the requester's inspection of agency records, or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d), or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Presidio Trust, and the requester has not sought and been granted a full waiver of fees under § 1007.10, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed $250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h)(1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 1007.6 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Presidio Trust. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection shall be prepared for each request that requires collection of fees.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees.

### § 1007.10 Waiver of fees.

(a) *Statutory fee waiver.* Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 1007.9 if disclosure of the information is in the public interest because it:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the government and

(2) Is not primarily in the commercial interest of the requester.

(b) *Elimination or reduction of fees.* Ordinarily, in the circumstances where the criteria of subsection (a) are met, fees will be reduced by twenty-five percent from the fees otherwise chargeable to the requester. In exceptional circumstances, and with the approval of the Executive Director, fees may be reduced below this level or waived entirely.

(c) *Notice of denial.* If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(1) A statement of the basis on which the waiver or reduction has been denied.

(2) A listing of the names and titles or positions of each person responsible for the denial.

(3) A statement that the denial may be appealed to the Executive Director and a description of the procedures in § 1007.7 for appeal.

## PART 1008—REQUESTS UNDER THE PRIVACY ACT

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**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552a.

### § 1008.1 Purpose and scope.

This part contains the regulations of the Presidio Trust implementing section 3 of the Privacy Act. Sections 1008.3 through 1008.10 describe the procedures and policies of the Presidio Trust concerning maintenance of records which are subject to the Privacy Act. Sections 1008.11 through 1008.17 describe the procedure under which individuals may determine whether systems of records subject to the Privacy Act contain records relating to them and the procedure under which they may seek access to existing records. Sections 1008.18 through 1008.24 describe the procedure under which individuals may petition for amendment of records subject to the Privacy Act relating to them.

### § 1008.2 Definitions.

The following terms have the following meanings as used in this part:

*Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

*Maintain* means maintain, collect, use or disseminate.

*Privacy Act* means section 3 of the Privacy Act, 5 U.S.C. 552a.

*Record* means any item, collection, or grouping of information about an individual that is maintained by the Presidio Trust, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph. *Record* includes:

(1) *System of records* means a group of any records under the control of the Presidio Trust from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(2) *Medical records* means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(3) Personnel records means records used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(4) *Statistical records* means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

*Routine use* means a use of a record for a purpose which is compatible with the purpose for which it was collected.

*System notice* means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published in the **Federal Register** upon establishment or revision of the system of records.

*System manager* means the official designated in a system notice as having administrative responsibility for a system of records.

*Privacy Act Officer* means the Presidio Trust official charged with responsibility for carrying out the functions assigned in this part.

### § 1008.3 Records subject to the Privacy Act.

The Privacy Act applies to all records which the Presidio Trust maintains in a system of records.

### § 1008.4 Standards for maintenance of records subject to the Privacy Act.

(a) *Content of records.* Records subject to the Privacy Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the Presidio Trust required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Privacy Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determinations about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others, may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) Advice to individuals concerning uses of information. (1) Each individual who is asked to supply information about him or herself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on the individual, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be provided on the form, on a tear-off sheet attached to the form, or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests a copy.

(iii) An individual may be asked to acknowledge, in writing, that the notice required by this section has been provided.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless the maintenance of the record is:

(1) Expressly authorized by statute or by the individual about whom the record is maintained or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

### § 1008.5 Federal Register notices describing systems of records.

The Privacy Act requires publication of a notice in the **Federal Register** describing each system of records subject to the Privacy Act. Such notice will be published prior to the establishment or a revision of the system of records. 5 U.S.C. 552a(e)(4).

### § 1008.6 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Privacy Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 552a(e)(10).

(b) *Records security.* Whether maintained in physical or electronic form, records subject to the Privacy Act shall be maintained in a secure manner commensurate with the sensitivity of the information contained in the system of records. The Privacy Act Officer will periodically review these security measures to ensure their adequacy.

### § 1008.7 Conduct of employees.

(a) *Handling of records subject to the Privacy Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Presidio Trust may disclose records subject to the Privacy Act unless disclosure is permitted under § 1008.9 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Presidio Trust may alter or destroy a record subject to the Privacy Act unless:

(1) Such alteration or destruction is properly undertaken in the course of the employee's regular duties or

(2) Such alteration or destruction is required by a decision under §§ 1008.18 through 1008.23 or the decision of a court of competent jurisdiction.

**§ 1008.8 Government contracts.**

(a) *Required contract provisions.* When a contract provides for the operation by or on behalf of the Presidio Trust of a system of records to accomplish a Presidio Trust function, the contract shall, consistent with the Presidio Trust's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this part to be applied to such system.

(b) *System manager.* A regular employee of the Presidio Trust will be the manager for a system of records operated by a contractor.

**§ 1008.9 Disclosure of records.**

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) To those officers or employees of the Presidio Trust who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use which has been described in a system notice published in the **Federal Register**;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code.

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Presidio Trust specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(9) Pursuant to the order of a court of competent jurisdiction; or

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information Act request made under this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Presidio Trust indicating that the record may not be fully accurate, complete, or timely.

**§ 1008.10 Accounting for disclosures.**

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 1008.9(c), an accounting shall be made.

(2) The accounting shall record:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency and

(ii) The name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 1008.9(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of § 1008.13.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 1008.9(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

**§ 1008.11 Request for notification of existence of records: Submission.**

(a) *Submission of requests.* (1) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the Privacy Act Officer, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend ''PRIVACY ACT INQUIRY.''

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (e.g., maiden name), shall include such information in the request.

**§ 1008.12 Requests for notification of existence of records: Action on.**

(a) *Decisions on request.* (1) Individuals inquiring to determine whether a system of records contains records pertaining to them shall be promptly advised whether the system contains records pertaining to them unless:

(i) The records were compiled in reasonable anticipation of a civil action or proceeding or

(ii) The system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individuals will be promptly notified that they are not entitled to notification of whether the system contains records pertaining to them.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the Privacy Act officer in consultation with the General Counsel.

(c) *Form of decision.* (1) No particular form is required for a decision informing individuals whether a system of records contains records pertaining to them.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him or her shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Advise the individual that an appeal of the declination may be made to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision declining a request for notification of the existence of records involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the declination may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions declining a request for notification of the existence of records made pursuant to paragraphs (c)(2) and (c)(3) of this section shall be provided to the Privacy Act Officer.

**§ 1008.13 Requests for access to records.**

The Privacy Act permits individuals, upon request, to gain access to their records or to any information pertaining to them which is contained in a system and to review the records and have a copy made of all or any portion thereof in a form comprehensive to them. 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this part.

**§ 1008.14 Requests for access to records: Submission.**

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing and addressed to Privacy Act Officer, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend ''PRIVACY ACT REQUEST FOR ACCESS.''

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 1008.15(d) the failure to state willingness to pay fees as high as are anticipated by the Presidio Trust will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

**§ 1008.15 Requests for access to records: Initial decision.**

(a) *Decisions on requests.* A request made under this part for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or

(2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this part shall be made by the Privacy Act Officer in consultation with the General Counsel.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 1008.15(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Contain a statement that the denial may be appealed to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision denying a request for access involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the declination may be made

only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (c)(2) and (c)(3) of this section will be provided to the Privacy Act Officer.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 1008.14.

(2) Unless the Privacy Act Officer determines that reduction or waiver of fees is appropriate, fees for copying a record in response to a request made under § 1008.14 shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Board and published in the compendium provided under § 1001.8 of this chapter.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the Privacy Act Officer shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

**§ 1008.16 Requests for notification of existence of records and for access to records: Appeals.**

(a) *Right of appeal.* Except for appeals pertaining to records under the jurisdiction of another agency, individuals who have been notified that they are not entitled to notification of whether a system of records contains records pertaining to them or have been denied access, in whole or part, to a requested record may appeal to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received by the Executive Director no later than 20 working days after the date of the initial decision on a request.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within 20 working days of the date of the initial decision on the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to § § 1008.12 and 1008.14 shall be decided for the Presidio Trust by the Executive Director after consultation with the General Counsel.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

**§ 1008.17 Requests for access to records: Special situations.**

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) Individuals wishing to inspect records pertaining to them which have been opened for their inspection may, during the inspection, be accompanied by a person of their own choosing.

(2) When such a procedure is deemed appropriate, individuals to whom the records pertain may be required to furnish a written statement authorizing discussion of their records in the accompanying person's presence.

**§ 1008.18 Amendment of records.**

The Privacy Act permits individuals to request amendment of records pertaining to them if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this part.

**§ 1008.19 Petitions for amendment: Submission and form.**

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted with respect to each system.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record for which amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

**§ 1008.20 Petitions for amendment: Processing and initial decision.**

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 1008.4.

(b) *Authority to decide.* A decision on a petition for amendment shall be made by the Privacy Act Officer in consultation with the General Counsel.

(c) *Acknowledgment of receipt.* Unless processing of a petition is completed within ten working days, the receipt of the petition for amendment shall be acknowledged in writing by the Privacy Act Officer.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 1008.19, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 1008.19.

(2) If the petitioner fails to submit the additional information within a reasonable time, the petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petition for amendment is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Advise the petitioner that the rejection may be appealed to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(iii) State that the appeal must be received by the foregoing official within 20 working days of the decision.

(3) If the petition for amendment involves records which fall under the jurisdiction of another agency and is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the rejection may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of rejections of petitions for amendment made pursuant to paragraphs (e)(2) and (e)(3) of this section will be provided to the Privacy Act Officer.

(f) *Implementation of initial decision.* If a petition for amendment is accepted, in whole or part, the system manager maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 1008.10, advise all previous recipients of the record that the correction was made and the substance of the correction.

**§ 1008.21 Petitions for amendment: Time limits for processing.**

(a) *Acknowledgment of receipt.* The acknowledgment of receipt of a petition required by § 1008.20(c) shall be dispatched not later than ten working days after receipt of the petition by the Privacy Act Officer, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petition for amendment shall be made within 30 working days after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The 30 working day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 1008.20(d), that additional information in support of the petition is required. Running of the 30 working day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The 30 working day time limit for a decision on a petition may be extended if the Privacy Act Officer determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the Privacy Act Officer is located.

(iii) Some or all of the challenged records are of concern to another agency of the Federal Government whose assistance and views are being sought in processing the request.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, the official shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

**§ 1008.22 Petitions for amendment: Appeals.**

(a) *Right of appeal.* Except for appeals pertaining to records under the jurisdiction of another agency, where a petition for amendment has been rejected in whole or in part, the individual submitting the petition may appeal the denial to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received no later than 20 working days after the date of the decision on a petition.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within 20 working days of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

**§ 1008.23 Petitions for amendment: Action on appeals.**

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided by the Executive Director, in consultation with the General Counsel.

(b) *Time limit.* (1) A final determination on any appeal shall be made within 30 working days after receipt of the appeal.

(2) The 30 working day period for decision on an appeal may be extended, for good cause shown, by the Executive Director. If the 30 working day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petition for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the Presidio Trust;

(ii) Of the procedure established by § 1008.24 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Presidio Trust, a brief statement by the Presidio Trust summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Presidio Trust's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petition for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosures has been made, advise all previous recipients of the record of the amendment and its substance.

**§ 1008.24 Statements of disagreement.**

(a) *Filing of statement.* If the determination of the Executive Director under § 1008.23 rejects in whole or part, a petition for amendment, the individual submitting the petition may file with the Privacy Act Officer a concise written statement setting forth the reasons for disagreement with the determination of the Presidio Trust.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section which occurs after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be

provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Presidio Trust for not making the requested amendments may also be provided to the recipient.

(c) *Maintenance of statements.* System managers shall develop procedures to assure that statements of disagreement filed with them shall be maintained in such a way as to assure dissemination of the statements to recipients of the records to which the statements pertain.

## PART 1009—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

1009.1 Purpose.
1009.2 Procedure for filing claims.
1009.3 Denial of claims.
1009.4 Payment of claims.
1009.5 Indemnification of Presidio Trust directors and employees.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 28 U.S.C. 2672.

### § 1009.1 Purpose.

The purpose of this part is to establish procedures for the filing and settlement of claims under the Federal Tort Claims Act (in part, 28 U.S.C. secs. 2401(b), 2671–2680, as amended by Pub. L. 89–506, 80 Stat. 306). The officers to whom authority is delegated to settle tort claims shall follow and be guided by the regulations issued by the Attorney General prescribing standards and procedures for settlement of tort claims (28 CFR part 14).

### § 1009.2 Procedure for filing claims.

(a) The procedure for filing and the contents of claims shall be pursuant to 28 CFR 14.2, 14.3 and 14.4.

(b) Claims shall be filed directly with the Presidio Trust.

(c) Upon receipt of a claim, the time and date of receipt shall be recorded. The claim shall be forwarded with the investigative file immediately to the General Counsel for determination.

### § 1009.3 Denial of claims.

Denial of a claim shall be communicated as provided by 28 CFR 14.9.

### § 1009.4 Payment of claims.

(a) When an award of $2,500 or less is made, the voucher signed by the claimant shall be transmitted for payment to the Presidio Trust. When an award over $2,500 is made, transmittal for payment will be made as prescribed by 28 CFR 14.10.

(b) Prior to payment, appropriate releases shall be obtained as provided in 28 CFR 14.10.

### § 1009.5 Indemnification of Presidio Trust directors and employees.

(a) The Presidio Trust may indemnify a Presidio Trust director or employee who is personally named as a defendant in any civil suit in state or federal court or an arbitration proceeding or other proceeding seeking damages against a Presidio Trust director or employee personally, for any verdict, judgment, or other monetary award which is rendered against such director or employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her duties or employment and that such indemnification is in the interest of the Presidio Trust as determined by

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(b) The Presidio Trust may settle or compromise a personal damage claim against a Presidio Trust director or employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of the duties or employment of the director or employee and that such settlement or compromise is in the interest of the Presidio Trust as determined by:

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(c) The Presidio Trust will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award, unless exceptional circumstances exist as determined by:

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(d) A Presidio Trust director or employee may request indemnification to satisfy a verdict, judgment, or award entered against the director or employee. The director or employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the Presidio Trust shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Board for decision. In the event that a claim is made against the General Counsel, the Chair shall designate a director or employee of the Trust to fulfill the duties otherwise assigned to the General Counsel under this section.

(e) Any payment under this section either to indemnify a Presidio Trust director or employee or to settle a personal damage claim shall be contingent upon the availability of funds.

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# Part IV

# Department of Health and Human Services

## Administration for Children and Families

**45 CFR Parts 1355 and 1356**

**Title IV–E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Parts 1355 and 1356**

**RIN 0970–AA97**

## Title IV–E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Administration for Children and Families is proposing to amend the current regulations for Child and Family Services by adding new requirements governing the review of a State's conformity with its State plan under titles IV–B and IV–E of the Social Security Act (the Act). This Notice of Proposed Rulemaking (NPRM) implements the provisions of the Social Security Act Amendments of 1994 (Pub. L. 103–432), the Multiethnic Placement Act (MEPA) as amended by Pub. L. 104–188, and certain provisions of the Adoption and Safe Families Act (ASFA) of 1997 (Pub. L. 105–89).

In addition, this NPRM proposes to set forth regulations that clarify certain eligibility criteria that govern the title IV–E foster care eligibility reviews which the Administration on Children, Youth and Families conducts to ensure a State agency's compliance with statutory requirements under the Act.

The publication of a Notice of Proposed Rulemaking often engenders confusion in the field regarding its applicability to existing policy. The existing regulations and policy remain in full force and effect. Regulations published in the final rule will be effective prospectively from the date of publication and have no bearing on the application of policy that was in effect prior to the publication of the final rule.

**DATES:** In order to be considered, written comments on this proposed rule must be received on or before December 17, 1998.

**ADDRESSES:** Please address comments to Carol W. Williams, Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Washington, DC 20447. Comments will be accepted electronically at http://www.acf.dhhs.gov/hypernews. Comments will not be accepted by telephone or fax.

Beginning 14 days after the close of the comment period, comments will be available for public inspection in Room 2068, 330 C Street, SW, Washington, DC, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

In order to ensure that public comments have maximum effect in developing the final rule, please cite the section and paragraph number of the proposed regulation that relates to each comment. Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of these comments also may be sent to the Department representative cited above.

**FOR FURTHER INFORMATION CONTACT:** Kathleen McHugh, Director of Policy, Children's Bureau, Administration on Children, Youth and Families, (202) 401–5789.

**SUPPLEMENTARY INFORMATION:** The preamble to this Notice of Proposed Rulemaking (NPRM) is organized as follows:

I. Summary of Proposed Review Processes
II. Introduction to the title IV–E eligibility and child and family service reviews
  A. Key features of the new reviews
  B. Consultation with the field and pilot reviews
  C. Reinventing the review process
III. Background
  A. Legislative history
  B. Interrelationship of titles IV–B and IV–E
IV. Overview of title IV–E eligibility reviews
  A. Development of the reviews
  B. Summary of the title IV–E eligibility review process
V. Overview of child and family service reviews
  A. Development of the reviews
  B. Summary of the child and family service reviews
VI. Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 and the Multiethnic Placement Act of 1994
VII. Welfare reform legislation and title IV–E eligibility
VIII. The Adoption and Safe Families Act of 1997
IX. Strategy for Regulating the Adoption and Safe Families Act of 1997
X. Section-by-section discussion of the NPRM
XI. Impact analysis

### I. Summary of Proposed Review Processes

This Notice of Proposed Rulemaking (NPRM) presents a revised framework for reviews of Federally-assisted child and family services and for reviews of related eligibility determinations for Federally-assisted foster care programs. The revised review procedures for these programs were developed in response to concerns expressed by the Congress and the States regarding the effectiveness of the current review procedures and the benefits to the States relative to the efforts required of them. ACF had begun revising the review procedures when Congress, through the Social Security Amendments of 1994 (Pub. L. 103–432), mandated changes in the Federal monitoring of State child and family service programs funded under titles IV–B and IV–E. This legislation directed the Department of Health and Human Services, in consultation with State agencies, to promulgate regulations for child and family service programs which will:

- Determine whether these programs are in substantial conformity with applicable State plan requirements and Federal regulations;
- Develop a timetable for conformity reviews; and
- Specify the State plan requirements subject to review, and the criteria to be used in determining a State's substantial conformity with these requirements.

Since ACF was already revising its approach to monitoring eligibility requirements for title IV–E foster care maintenance payments at the time the legislation was enacted, we have also included the proposed title IV–E eligibility review process in this NPRM. While Pub. L. 103–432 also permits a program improvement process for compliance issues associated with the Adoption and Foster Care Analysis and Reporting System (AFCARS), we intend to propose an AFCARS program improvement protocol in a separate NPRM.

The revised review processes, including the instruments used in the reviews, grew out of extensive consultation with interested groups, individuals and experts in the field of child welfare and related areas. A series of focus groups related to the child and family service reviews was conducted with representatives of State programs and national organizations, as well as with family and child advocates. Review teams consisting primarily of Federal and State agency staff have conducted 20 pilot reviews of child and family services and foster care programs using the proposed processes. We have taken seriously the comments and suggestions received during the consultations, focus groups and pilot reviews and have incorporated them in the development and refining of the new monitoring approaches that are proposed in this NPRM.

The revised review framework reflects the basic purposes of publicly-supported child and family services: to

assure safety for all children; to assure permanent, nurturing homes for these children; and to enhance the well-being of children and their families. In support of these goals, this proposal is designed to achieve the following objectives:

- Reviews of child and family services programs will focus on the results these programs achieve. In the past, review procedures have focused almost entirely on review of the accuracy and completeness of case files and other records to determine that required legal processes and protections were being carried out. This proposal provides for reviews that determine that child welfare practices, procedures and requirements are achieving desired outcomes for children and families. Reviews to assure eligibility for Federally-assisted foster care will not only address conformity with key requirements, but will assist States in improving their systems, thereby enhancing their capacity to serve children needing foster care placements.
- The revised framework for conducting reviews of both child and family services and eligibility for Federal foster care payments will promote partnerships between States and the Federal government. It will strengthen Federal-State collaboration in achieving improvements in child welfare systems. Joint reviews, with peer involvement, will identify strengths and weaknesses, define corrective actions, and make it possible to craft specific technical assistance plans that support program improvements.
- This proposed revision will promote greater public support and collaboration for child and family services within each State. The proposal for participation of interested and committed individuals and organizations in the State self-assessment process, in the conduct of on-site reviews, and in the development and evaluation of program improvement plans will accommodate broader perspectives on the degree to which the desired results are being achieved and encourage greater commitment within the State to address areas where improvements are needed.
- The revised approach will shift the focus of reviews to program improvement and away from financial penalties imposed on those States that do not ''pass'' their reviews. States that do not achieve expected results in areas related to child safety, permanency and well-being may have a portion of their Federal funds withheld, but only if the State's program improvement plan does not effectively correct the identified problem(s).
- The proposed new framework for reviews will be comprehensive. It will address not only foster care and adoption but the full range of child and family services, including family preservation and support services, child protective services, and independent living services.
- The revised review procedures will generate a significant amount of useful information on the State's child welfare system, enabling policy makers, program managers, Federal program officials, and concerned citizens to understand better the full range of issues related to the State's child and family services. The dynamic process—involving interviews with children, parents, judges, social workers, foster parents, and other major service providers—will yield findings of higher quality which will lead to improved outcomes in a way that the previous reviews of case files could not.

## II. Introduction to the Title IV–E Eligibility and Child and Family Service Reviews

### *A. Key Features of the New Reviews*

Both of the proposed review processes reflect significant departures from the existing reviews. We have intentionally proposed measures that will reduce the burden on States while balancing the need to review for protections that are critical to the safety and well-being of a vulnerable population of children and families. Wherever the statute has permitted flexibility, we have attempted to reduce our reliance on the paperwork and documentation requirements that characterized prior reviews in favor of a more comprehensive examination of the results of a State's efforts to alleviate the problems of families and children. While the two procedures have unique features and concerns, some key features are common to both:

- The procedures have moved from a focus on total compliance with statutory requirements to a determination of ''substantial conformity'' or ''substantial compliance'' in an effort to avoid penalizing States whose systems are generally performing well;
- Both proposed processes now include a stage where program improvement measures will be undertaken to correct areas of nonconformity and noncompliance and strengthen State programs;
- Both reviews provide opportunities for States to receive technical assistance from the Federal government in implementing program improvement plans;
- The reviews operationalize partnership concepts through joint Federal/State participation in the on-site reviews and in developing and evaluating program improvement plans;
- The reviews rely on existing sources of data, such as the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS), for information needed in the reviews, rather than requiring States to duplicate efforts in data collection and submissions;
- Both reviews propose to focus attention on recent practices in an effort to evaluate fairly the current status of child and family services in the States;
- The proposed regulations include various provisions for flexibility and individualizing the reviews to States.

### *B. Consultation With the Field and Pilot Reviews*

ACF has sought extensive consultation from the child welfare field in a variety of ways. Experts in the field and representatives of legal, advocacy, educational and research institutions provided information to the teams on issues related to both reviews. A series of focus groups related to the child and family service reviews was conducted with representatives of State programs, national organizations, family and child advocates, National Resource Centers, child welfare experts and others. Drafts of instruments and procedures were reviewed by similar individuals and organizations throughout the developmental process. On-site review teams, composed primarily of Federal and State agency staff, conducted 10 full child and family service pilot reviews and two partial pilots in fiscal years 1995 through 1997 using the proposed process. Pilots of the title IV–E eligibility reviews were conducted in 12 States during fiscal years 1995 through 1998.

### *C. Reinventing the Review Process*

In 1994, the Administration for Children and Families commissioned a team to develop recommendations for reinventing the review process across the range of child and family services programs. Later, two separate teams were established in the Administration on Children, Youth and Families' Children's Bureau to identify ways that the Federal process of reviewing State programs could be redesigned or restructured.

In commissioning two teams to reinvent the review process, the ACF leadership recognized that both the section 427 reviews and the title IV–E eligibility reviews had led to a number

of improvements in child and family services, including written case plans as a routine component of child welfare casework, periodic judicial and administrative reviews of children in foster care, increased capacity among States to identify and track children in foster care, and an increased focus on permanency planning for children in foster care. Other contributions included the establishment of procedural protections for vulnerable children against remaining in unsafe homes or in non-permanent placements, increased involvement of the courts in making judicial determinations about removals of children from their homes and the need to continue foster care placements, and enhanced stewardship by ensuring that Federal funds were expended in accordance with statutory requirements.

Along with these accomplishments, the ACF also recognized the validity of a number of criticisms about the reviews. Because the reviews relied heavily on case documentation and process, States that provided and documented all the required protections were able to pass compliance reviews without necessarily having practices and procedures in place culminating in satisfactory outcomes for the children and families served by the State. On the other hand, States that might be achieving desirable outcomes, but whose case record documentation did not reflect all of the required protections, were penalized through the loss of incentive funds.

Additionally, the reviews focused only on foster care services and adoption assistance rather than on the full range of child and family services; therefore, they did not promote the development and integration of a continuum of services needed by many of the families and children served by State agencies. The absence of regulations governing both review processes also complicated the goal of consistent application of policies and review procedures across the States.

In June 1994, the Office of Inspector General, Department of Health and Human Services, reported the findings of a study of oversight of State child welfare programs that confirmed our concerns. The report was based on information obtained from interviews with State child welfare officials in 13 States, and other sources. It addressed a number of issues about previous section 427 and title IV–E eligibility reviews, including the following: review reports had not been issued in a timely fashion; ACF had not provided sufficient technical assistance to States; severe problems that were identified in successful lawsuits against States had not surfaced during a review, and reviews focused more on case record content than how well children were served. The report delivered a clear message from State officials that the existing review processes were not adequately meeting their needs and should be revised substantially.

At the same time that ACF was taking steps to reinvent its review processes, Pub. L. 103–432, the Social Security Act Amendments of 1994, was signed by the President on October 31, 1994. The Conference Committee report for the Social Security Act Amendments of 1994 outlined Congressional concerns with ACF review practices. It pointed out that the review process did little to address quality of care for children; that compliance criteria needed to be written clearly and uniformly; and that review standards needed to be developed in a more open setting which encouraged discussion and participation among affected parties. The concerns of State officials, ACF and Congress presented a clear case for reinventing the review process and form the basis for the strategies proposed in this NPRM.

## III. Background

### *A. Legislative History*

The review structures for section 427 and title IV–E have been in place since the early 1980s. They were authorized by the Adoption Assistance and Child Welfare Act (Pub. L. 96–272), passed by Congress in 1980, which amended sections of title IV–B and provided for mandatory Federal reviews of State foster care services under section 427 of the Act. The statute also established Part E of title IV of the Social Security Act, ''Federal Payments for Foster Care and Adoption Assistance.'' The foster care component of the Aid to Families with Dependent Children (AFDC) program, which had been an integral part of the AFDC program under title IV–A of the Act, was transferred to the new title IV–E, effective October 1, 1982.

The creation of title IV–E and amendments to title IV–B reflected the perception of Congress and most State child welfare administrators that the public child welfare agencies responsible for dependent and neglected children had become holding systems for children living away from their parents. Congress intended that Pub. L. 96–272 would mitigate the need for the placement of children into foster care and encourage greater efforts by State agencies to find permanent homes for children—either by making it possible for them to return to their own families or by placing them in adoptive homes. The goals of Pub. L. 96–272 have not yet been fully realized, however, as evidenced by continued increases in the numbers of children entering foster care, increasing lengths of stay in care, and growing concerns about the safety, permanency and well-being of children served by public agencies.

In August 1993, under the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), Congress again amended title IV–B, creating two subparts and extending the range of child and family services funded under title IV–B to include specific family preservation and family support services designed to strengthen and support families and children in their own homes, as well as children in out-of-home care. Later, through the Social Security Amendments of 1994, Congress repealed section 427 of the Act and amended section 422 of the Act to include, as State plan assurances, the protections formerly required in section 427. As a result, ACF is no longer conducting ''427'' reviews to confirm whether (or not) a State is eligible to receive additional title IV–B, subpart 1 funds. In addition to mandating the Secretary, DHHS, to promulgate regulations for reviews of State child and family service programs, the amendments to the Act also required the Department to make technical assistance available to the States, and afforded States the opportunity to develop and implement corrective action plans designed to ameliorate areas of nonconformity before Federal funds are withheld due to the nonconformity.

In 1994, Congress passed the Multiethnic Placement Act, Pub. L. 103–382, (MEPA) to address excessive lengths of stay in foster care experienced by children of minority heritage. One factor contributing to these excessive lengths of stay in foster care was State agencies' attempts to place children of minority heritage in foster and adoptive homes of similar racial or ethnic background. The MEPA forbids the delay or denial of a foster or adoptive placement solely on the basis of the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. At the same time, Congress added a title IV–B State plan requirement, section 422(b)(9), which compels States to make diligent efforts to recruit and retain prospective foster and adoptive parents who reflect the racial and ethnic diversity of the children in the State for whom foster and adoptive homes are needed. The MEPA, in section 553, permitted States to consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or

adoptive parent to meet the needs of a child of such background as one of a number of factors in making foster and adoptive placements. In 1996, through section 1808, ''Removal of Barriers to Interethnic Adoptions'' (Section 1808), of the Small Business Job Protection Act (Pub. L. 104–188), Congress repealed section 553 of MEPA, believing that the ''permissible consideration'' language therein was being used to obfuscate the intent of MEPA. Section 1808 amended title IV–E by adding a State plan requirement, section 471(a)(18), which prohibits the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. Section 1808 also dictates a penalty structure and corrective action planning for any State that violates section 471(a)(18) of the Act.

On November 19,1997, President Clinton signed the first child welfare reform legislation since Pub. L. 96–272 in 1980. The Adoption and Safe Families Act (ASFA) seeks to provide States the necessary tools and incentives to achieve the original goals of Pub. L. 96–272: safety; permanency; and child and family well-being. The impetus for the ASFA was a general dissatisfaction with the performance of the child welfare system in achieving these goals for children and families. This dissatisfaction came as a result of:

(1) A number of high profile child deaths across the country, the occurrence of which was often attributable to confusion and misinterpretation over the reasonable efforts provision. This confusion stems from the notion that there is a lack of clarity about the relationship between reasonable efforts and child safety;

(2) growth in the foster care caseload. We are now slightly in excess of a half-million children in foster care on any one day. This number has almost doubled since the mid-eighties. More children are coming into foster care each year than are exiting;

(3) increased costs of foster care; and,

(4) a need for greater emphasis on individual responsibility by parents and accountability by States for moving children to permanency in a timely manner.

The ASFA seeks to strengthen the child welfare system's response to children's need for safety and permanency at every point along its continuum of care. In this NPRM, we propose regulations for those provisions in the ASFA which strengthen the child welfare system's response to safety and certain provisions which address permanency.

*B. Interrelationship of Titles IV–B and IV–E*

Titles IV–B and IV–E are closely related parts of the Act. Each title provides funds to States to serve large numbers of children and families who are among the most vulnerable to harm and separation in our society. The two programs help finance services to the almost 3,000,000 children who are reported annually as alleged victims of maltreatment (data from 1994 NCANDS), and the approximately 469,000 children who are in foster care placements on a given day (estimates from 1994 Voluntary Cooperative Information System (VCIS)/AFCARS).

Title IV–B, subpart 1 makes funds available to States for services directed toward protecting children, strengthening families, preventing unnecessary separation of parents and children, providing care and services to children and families when separation occurs, and working with parents and children to reunify families or achieve an alternate permanent plan for the child. Subpart 2 initially provided funding for family preservation and family support services. Under the ASFA, subpart 2 funds must now also be used to provide time-limited reunification services and services to promote and support adoption.

Title IV–E foster care funds enable States to provide foster care for children who were or would have been eligible for assistance (Aid to Families With Dependent Children) under a State's approved title IV–A plan (as in effect on July 16, 1996) but for their removal from home. The Act includes requirements which define the circumstances under which a State shall make foster care maintenance payments (section 472(a)), and mandates a child's placement in an approved or licensed facility (section 472(b)). The eligibility review is focused on these requirements, so that ACF can verify that children in foster care for whom Federal financial participation is being claimed (or can be claimed) are eligible and are being placed with eligible foster care providers.

Titles IV–E and IV–B are linked not only by common goals but by numerous cross-references to detailed protections or safeguards for children in foster care, e.g., a case review system which includes periodic case reviews and permanency hearings. Further, while title IV–E requires that reasonable efforts be made to prevent removal of children from their homes when it is safe to do so, to safely reunify children in foster care with their families, and to make and finalize permanent placements for children who cannot return home, the services needed to provide reasonable efforts are not funded by title IV–E, but are made available in many circumstances through title IV–B and other sources of State and Federal funds. While title IV–B requires States to deliver child welfare services in order to be eligible for Federal funds, title IV–E tests both the eligibility of each child on whose behalf a payment is made and the eligibility of the foster home or child-care institution in which the child is placed.

## IV. Overview of Title IV–E Eligibility Reviews

*A. Development of the Reviews*

The title IV–E eligibility review process proposed in this NPRM reflects a number of important lessons learned in the pilot reviews, including the following:

- Pilot reviews conducted jointly by a team of Federal and State staff fostered working partnerships and assisted the States in identifying strategies for corrective action where indicated in the reviews and increased the knowledge of State staff on eligibility requirements for title IV–E foster care maintenance payments.
- Examining a sub-sample of non-IV–E cases during the reviews, along with the IV–E cases, increased the potential for States to receive Federal funding to which they are entitled by statute and demonstrated the fairness of the reviews to States.
- The emphasis on program improvement planning in the reviews led to specific recommendations for improving title IV–E error rates and the quality of services to children in such critical areas as foster home licensing and services to prevent removal of children from their families and reunify children in foster care with their families.
- Examination of cases involving more recent foster care entries linked the reviews and potential disallowances to current practices and policies that impact both eligibility for services and the quality of services provided, rather than focusing on older practices inherent to the previous reviews.

The revised title IV–E review strategy incorporates these important lessons learned from the pilots, while ensuring compliance with key requirements of the statute regarding eligibility for funds. The requirements are designed to enhance child safety, permanency and well-being, and they provide a specific framework for reviewing State compliance through the title IV–E eligibility reviews.

We believe that the proposed changes to the review process will produce results which are more meaningful and helpful to States which undergo a title IV–E eligibility review with the intention of improving their State systems. Additional changes in the title IV–E eligibility review process are included in the section-by-section discussion of the NPRM.

*B. Summary of the Title IV–E Eligibility Review Process*

We are proposing to conduct title IV–E eligibility reviews in States at three-year intervals. The review process includes an initial review of foster care cases for the title IV–E eligibility requirements defined in the statute. States determined to be in substantial compliance based on the review will not be subject to another review for three years. States that are determined not to be in compliance will develop and implement a program improvement plan designed to correct the areas of non-compliance, and a follow-up review will be conducted after completion of the program improvement plan.

The reviews will be conducted by a joint team of Federal and State staff in order to promote working partnerships through the review process. In contrast to prior reviews, the sample for the reviews will be drawn from the AFCARS data base, reducing the burden on the State to select the sample.

The threshold error rate for a determination of non-compliance is proposed at 15 percent in the first round of reviews following publication of the final rule, and 10 percent for subsequent years. States with error rates within the threshold will receive disallowances only on the ineligible cases. Further, if the number of ineligible cases in the review that follows the program improvement plan is within the threshold, disallowances will be assessed only on those cases. If the number exceeds the threshold in the review following the program improvement plan, disallowances will be extrapolated to the universe.

## V. Overview of Child and Family Service Reviews

*A. Development of the Reviews*

The child and family service reviews proposed in this NPRM are the result of extensive piloting and consultation. Among the chief lessons learned from the developmental process are the following:

- Reviewing for outcomes, as opposed to procedural indicators alone, is more likely to lead to improvements in State programs;
- Three outcome areas of safety, permanency, and child and family well-being were identified and agreed upon as the areas in which almost all outcomes associated with Federally-funded child and family services fit;
- Reviewing for documentation alone in case records is insufficient for evaluating outcomes and the quality of services;
- The pilots indicated that a smaller sample of cases reviewed more intensely yielded more information about outcomes than larger samples that involved only case record reviews;
- The pilots indicated that State self-assessment is a viable approach for identifying programmatic strengths and needs, for building on the community planning process begun through implementation of the Child and Family Services Plan (CFSP) planning requirements, and for enhancing Federal/State partnerships (The final rule on Foster Care Maintenance Payments, Adoption Assistance, and Child and Family Services published November 18, 1996, contains the requirements governing the CFSP (61 FR 58632).);
- The review process is an effective means of assisting States in examining the effects of practice innovations and technical assistance and refining the indicators used to measure progress over time; and,
- A review team that includes State representatives from outside the State agency helps broaden the perspective of the review, supports locally-based partnerships between the State agency and the communities it serves, increases the likelihood that the review will be relevant to all populations served by the agency, and helps identify training needs in the State.

With these lessons in mind, our primary goal in revising the reviews for child and family services is to assist States in improving outcomes for children and families by identifying the strengths and needs within State programs and those areas where technical assistance can lead to program improvements. Supporting goals include: (1) reviewing for the actual outcomes of services as well as the procedures that support desirable outcomes; and (2) using the reviews to promote the integration of the range of Federally-funded child and family services programs.

In developing the NPRM, we have followed the statutory requirements closely when the statute has provided specific parameters for the reviews. Where we were required to make decisions about issues, such as the State plan requirements subject to review and the criteria for determining substantial conformity, we have focused on the emphasis the statute places on program improvements. We have integrated the proposed review requirements with other requirements related to data collection and the CFSPs in order to reduce the burdens on States whenever possible. Finally, in emphasizing the importance of outcomes over procedure, we are proposing a review process that States can adapt to their ongoing self-evaluation and integrate into their own quality assurance efforts, apart from periodic Federal reviews.

We chose not to emphasize the penalty structure associated with the child and family services reviews. Rather, we have designed a review process that will lead to meaningful improvements in the outcomes of services delivered to children and families and will strengthen State and Federal collaboration. We have purposefully crafted the regulation to encourage States to make the necessary program improvements.

*B. Summary of the Child and Family Service Reviews*

We are proposing to review State programs in two areas: (1) outcomes for children and families in the areas of safety, permanency, and child and family well-being; and (2) systemic factors that directly impact the State's capacity to deliver services leading to improved outcomes.

The process we are proposing includes two stages: a State self-assessment and an on-site review. The State self-assessment will be completed by the State members of the review team, including staff of the State agency and community representatives, in collaboration with ACF Regional Offices. In the second phase, a representative team of Federal, State and community reviewers will review a small ''discovery sample'' of cases selected randomly and stratified by type of cases, based on the findings of the self-assessment. The reviews will examine cases which reflect a wide range of services provided by the State, e.g., child protective services, out-of-home and in-home services, but more emphasis will be placed on those cases reflecting State-specific issues identified in the self-assessment. Information on each case will be gathered from the case records as well as interviews with the children, parents, social worker, foster parent and service providers in the case. Systemic issues will be reviewed on-site, primarily through interviews with State and community stakeholders from within and outside the State agency.

As explained in the section-by-section discussion of the preamble, we are proposing to make ''substantial conformity'' determinations for each outcome and systemic factor reviewed, rather than an overall determination of conformity for the State's entire title IV–B and IV–E program. To be determined to be in ''substantial conformity,'' each outcome reviewed on-site must be rated ''substantially achieved'' in at least 90% of the cases examined in the first review, and 95% in the subsequent reviews. To be determined to be in ''substantial conformity'' for the systemic factors reviewed, each factor must be operating in accordance with applicable statutory requirements. Federal funds may be withheld from States that are determined to be in nonconformity. However, States first will be required to implement program improvement plans to correct areas of nonconformity and, if the plans are implemented successfully, funds will not be withheld.

We propose that States determined to be operating in substantial conformity be reviewed at five-year intervals and States not in substantial conformity be reviewed at three-year intervals.

## VI. Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 and the Multiethnic Placement Act of 1994

On August 20, 1996, President Clinton signed the Small Business Job Protection Act of 1996. Section 1808 of this Act (section 1808), ''Removal of Barriers to Interethnic Adoption,'' repeals and replaces the nondiscrimination provision of the Multiethnic Placement Act of 1994 (MEPA). Section 1808 prohibits denial of or delay in the placement of a child for adoption or foster care on the basis of race, color, or national origin of the adoptive parent, foster parent, or child involved. It also prohibits denying to any person the opportunity to become an adoptive or foster parent, on the basis of the race, color, or national origin of the person or child involved. This provision became a new title IV–E State plan requirement, section 471(a)(18) of the Act, effective January 1, 1997. Noncompliance with section 471(a)(18) constitutes a violation of title IV–E as well as a violation of title VI of the Civil Rights Act of 1964.

The diligent recruitment requirement at section 422(b)(9) of the Act in no way mitigates the prohibition on denial or delay of placement based on race, color or national origin. However, the statute is clear that the section 1808 prohibitions against delaying or denying placement based on race, color, or national origin have no effect on the application of the Indian Child Welfare Act of 1978.

In implementing the provisions of section 1808, we will identify potential violations during the conduct of child and family services reviews. We will refer cases so identified, as well as cases brought to our attention by any other means, to the Department's Office for Civil Rights (OCR) for investigation. Based on the OCR investigation in any such case, we will determine whether a violation of section 471(a)(18) has occurred. Under section 474(d) of the Act, States and other entities receiving title IV–E funding are subject to financial penalties and corrective action for such violations.

## VII. Welfare Reform Legislation and Title IV–E Eligibility

On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was signed into law (Pub. L. 104–193). This law repealed the Aid to Families with Dependent Children (AFDC) program and replaced it with the Temporary Assistance for Needy Families (TANF) block grant. This change has implications for the title IV–E foster care program since title IV–E eligibility is predicated, in part, on the child's eligibility for AFDC. The PRWORA, as amended by the Balanced Budget Act of 1997 (Pub. L. 105–33), requires States to apply the AFDC eligibility requirements that were in effect in the State on July 16, 1996, when determining whether children are financially eligible for Federal foster care. Consistent with this approach, we continue to use references which predate the passage of TANF, but are to be applied as they were in effect on July 16, 1996.

## VIII. The Adoption and Safe Families Act of 1997

On November 19, 1997, the President signed into law the Adoption and Safe Families Act (ASFA) of 1997, Pub. L. 105–89. This legislation, passed by the Congress with overwhelming bipartisan support, represents an important landmark in Federal child welfare law. Its passage affords us an unprecedented opportunity to build on the reforms of the child welfare system that have begun in recent years in order to make the system more responsive to the multiple, and often complex, needs of children and families. The Adoption and Safe Families Act embodies a number of key principles that must be considered in order to implement the law:

- The safety of children is the paramount concern that must guide all child welfare services. The new law requires that child safety be the paramount concern when making service provision, placement and permanency planning decisions. The law reaffirms the importance of making reasonable efforts to preserve and reunify families, but also now clarifies instances in which States are *not* required to make efforts to keep children with their parents, when doing so places children's safety in jeopardy.
- Foster care is a temporary setting and not a place for children to grow up. To ensure that the system respects a child's developmental needs and sense of time, the law includes provisions that shorten the time frame for making permanency planning decisions, and that establish a time frame for initiating proceedings to terminate parental rights. The law also strongly promotes the timely adoption of children who cannot return safely to their own homes.
- Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families. The enactment of a legal framework requiring permanency decisions to be made more promptly heightens the importance of providing quality services as quickly as possible to enable families in crisis to address problems. It is only when timely and intensive services are provided to families that agencies and courts can make informed decisions about parents' ability to protect and care for their children.
- The child welfare system must focus on results and accountability. The law is clear that it is no longer enough to ensure that procedural safeguards are met. It is critical that child welfare services lead to positive results. The law contains a number of tools for focusing attention on results, including an annual report on State performance; the creation of an adoption incentive payment for States, designed to support the President's goal of doubling the annual number of children who are adopted or permanently placed by the year 2002; and a requirement to study and make recommendations regarding additional performance-based financial incentives in child welfare.

We are proposing regulations in this NPRM for the following provisions in the ASFA:

- Section 471(a)(15) of the Act regarding reasonable efforts;
- Section 471(a)(20) of the Act regarding criminal records checks;
- Section 475(1)(E) of the Act regarding documentation of the State's

efforts to make and finalize a child's placement when the permanency goal is adoption, guardianship, or some other permanent arrangement;

- Section 475(5)(C) of the Act regarding permanency hearings;
- Section 475(5)(E) of the Act regarding requirements to file or join a petition to terminate parental rights.
- Section 475(5)(F) of the Act regarding the date a child has entered foster care; and,
- Section 475(5)(G) of the Act regarding notice of reviews and hearings and an opportunity to be heard for foster parents, relative caregivers, and preadoptive parents.

The proposed title IV–E review only monitors eligibility for foster care maintenance payments. Therefore, those provisions in the ASFA which amend title IV–B, subpart 2, and the Adoption Assistance program will be regulated in a subsequent NPRM. We will propose regulations for the following ASFA provisions in the next NPRM:

- Title IV–B, subpart 2 of the Act regarding the Promoting Safe and Stable Families program;
- Section 471(a)(21) of the Act regarding health insurance coverage for children with special needs for whom an adoption assistance agreement is in effect; and,
- Section 473(a)(2)(C) of the Act regarding a child's continued title IV–E eligibility for adoption assistance in cases where an adoption disrupts or the adoptive parent(s) die.

ACF does not intend to issue regulations to implement the adoption incentive bonuses at section 473A of the Act because of the time-limited nature of the provision. Rather, we have provided guidance through policy issuance.

## IX. Strategy for Regulating the Adoption and Safe Families Act of 1997

We have decided to regulate the provisions of ASFA and other recent statutory amendments through two NPRMs. This, the first NPRM, transmits ACF's proposed review systems for child and family services and title IV–E eligibility, proposes an enforcement strategy for the statutory prohibitions regarding race preference in foster and adoptive placements, and addresses those provisions in the ASFA related to the foster care maintenance program. The second NPRM will propose codification of the remaining ASFA amendments to the Social Security Act. Clarification and interpretation required by the field to implement the time sensitive provisions in the ASFA will be addressed by policy issuances prior to codification in a final rule.

We considered issuing a single comprehensive NPRM which would encompass technical and programmatic changes to titles IV–B and IV–E and the review processes, but rejected that approach in favor of the alternative strategy for the following reasons:

(1) ACF is required by statute to promulgate regulations to implement State plan compliance reviews. After extensive consultation with the field to develop these proposed review procedures and several years of pilot testing, it is critical that the field receive guidance on the proposed review processes without further delay;

(2) The proposed review processes can easily accommodate revisions to program operation and policy; and,

(3) ACF has a statutory obligation to enforce the provisions of section 471(a)(18) of the Act.

Soon after the enactment of the ASFA, we held focus groups in Washington, DC and in each of the 10 Federal regions to obtain input from the field on the implementation of the new law. We learned a great deal about the provisions in the law that require clarification and guidance. The section-by-section discussion in the preamble offers guidance on the intent of the ASFA and its implementation.

We want to be very clear about the effective dates in the ASFA. The provisions in the ASFA were effective on the date of enactment, November 19, 1997, except for those provisions which require action on the part of the State legislature. The ASFA establishes a delayed effective date (the first day of the calendar quarter following the first legislative session which follows the enactment of the ASFA) for States that must pass legislation to implement certain provisions. States may not wait until final regulations are promulgated to come into compliance with the ASFA provisions. States must adhere to the effective dates in the statute.

## X. Section-by-Section Discussion of the NPRM

### *A. Child and Family Service Reviews*

### Part 1355—General

*Section 1355.20 Definitions*

We have amended 45 CFR 1355.20 to include definitions of new terms relevant to monitoring, including *full review, partial review, and State self-assessment.* We have added a definition of the *National Child Abuse and Neglect Data System,* since the term is not defined in other regulations (See Part X.B. for other definitional revisions in § 1355.20.)

*Section 1355.31 Elements of the Review System*

Section 1355.31 is added to specify the scope of the reviews covered in the NPRM.

*Section 1355.32 Timetable for the Reviews*

This section specifies the review timetable for the initial and subsequent reviews as required by Section 1123A of the Social Security Act.

In paragraph (a), we are proposing a six-month period following publication of the final rule and prior to the commencement of Child and Family Service reviews so that States can become knowledgeable about the review process before the initial reviews begin in each State. The extended time period proposed for completing the initial reviews takes into account that: (1) States will need time to become familiar with and prepare for these new reviews; and (2) the ACF Regional Offices must schedule these reviews in all of the States within each region, in conjunction with separate scheduling for the newly revised title IV–E eligibility reviews. We learned from our pilot reviews that approximately six months is required to prepare for and conduct a review that examines the quality of services and outcomes.

In paragraph (b), we describe the timetable for reviews following the initial review, in accord with the statutory requirement for less frequent reviews of States that are determined to be in substantial conformity. We propose that full reviews be conducted at five-year intervals in States found to be in substantial conformity. We also propose that the State self-assessment portion of the review be completed three years after a review in which a State is found to be in substantial conformity.

In addition, we propose that reviews for States determined not to be in substantial conformity occur at three-year intervals. This proposal is based on the recognition that many States have technical assistance needs that will extend beyond a year or two in order for them to implement program improvement plans designed to correct the areas of nonconformity in their child and family services program.

In paragraph (c), we implement the provision at section 1123A(b)(1)(C) of the Act regarding the reinstatement of more frequent reviews of States and also provide examples of information that might indicate that the State is not operating in substantial conformity. We propose that when information is received suggesting the possibility of

nonconformity, ACF will conduct detailed inquiries prior to initiating an unscheduled review. We do not wish to pursue more frequent reviews than are necessary and will conduct detailed inquiries prior to initiating an unscheduled review. If the State, however, does not provide the additional information requested, we will proceed with a review. When a full review is not deemed necessary or appropriate, we propose that a targeted partial review be conducted of the areas indicated to be in nonconformity.

*Section 1355.33 Procedures for the Review.*

In paragraph (a), we propose a two-phase review process and suggest that the joint State-Federal review team have multiple representation, including individuals and organizations outside the State agency with whom the State was required to consult in developing its State plan (external members). Federal review team members will consist primarily of staff from ACF, but may also include staff from other agencies within HHS, including the Office for Civil Rights (OCR).

We received positive feedback from participants in the pilot reviews that this approach encourages Federal-State collaboration during the review, as well as during the development and implementation of program improvement plans. We found that a team with a more diverse composition:

- Had a broader perspective of the extent to which outcomes were being achieved, and was more comprehensive in its identification of areas needing improvement within a State;
- Would be better able to integrate the proposed review process with the CFSP planning process by including the external representatives in both processes and building on the existing consultation requirements in place;
- Satisfied a repeatedly expressed need on the part of the focus group participants for a broad base of community involvement in the new review process, including representatives other than staff of the State agency; and
- May lead to increased opportunities for technical assistance from those involved in identifying the State's strengths and needs.

In paragraph (b), we describe the proposed State self-assessment process which is based on data, provided by ACF to the States in report format, from their own most recent submissions to the AFCARS and NCANDS systems. State review team members will review and analyze the data to evaluate the strengths and needs of the child and family services systems in the State. ACF will conduct an independent analysis of the AFCARS and NCANDS data and provide consultation to the State during the development of the self-assessment to ensure that it is complete and accurate. In promoting the principles of State flexibility and program improvement through the reviews, the analysis of the self-assessment will provide the focus for the on-site review by identifying particular aspects of State programs that need further review. This approach is proposed as an alternative to conducting standard reviews on similar populations in every State, absent any recognition of individual State needs. State self-assessments were used successfully to structure the on-site reviews around specific outcome areas, service areas, and systemic issues. We think this approach will promote a more efficient use of State and Federal resources.

In paragraph (c), we describe the proposed on-site review process. The proposal that the on-site review be focused in specified geographic locations in the State, including the State's largest city, reflects an approach used in all of the pilots. It provided members of the review team opportunities to speak to local stakeholders and conduct face-to-face interviews with children and families, service providers, foster families and staff from various localities. Because the nation's large metropolitan areas are often characterized by complex social and organizational issues that affect large numbers of children and families, we propose that each State's largest metropolitan area be one of the locations selected for an on-site review.

In paragraph (c)(3), we propose that ACF has final approval if consensus cannot be reached regarding the selection of programmatic areas of emphasis for the on-site reviews and the geographic locations in which the on-site review will occur. However, our experience from the pilot reviews suggests that, in most cases, the State and ACF will reach consensus.

The proposed approach of using various sources of information to determine substantial conformity with the outcomes and systemic factors is also based on the pilot reviews. The comparative experiences in the pilots revealed that the reviews yield findings of greater quality and higher accuracy when they include case reviews and interviews rather than rely solely on the case records.

The on-site review, by design, is qualitatively focused, reflecting our belief that a small sample that examines outcomes thoroughly will best promote the State/Federal partnerships and collaboration necessary to achieve program improvements through the reviews. We propose that the sample of cases be randomly selected and that the sampling plan be approved by the ACF designated official in order to achieve an objectively selected sample. We have not prescribed a specific number of cases to be included in the sample, since the number will vary by State, depending upon the size of the State and the areas under review. However, we propose to select a relatively small sample, that is, 30–50 cases, and conduct an intense review, including interviews with the relevant parties in each case.

In some pilot States, we used both the old review method of merely reading case records and the proposed method of reading case records and conducting interviews with families and other relevant parties. In those pilot States where both the old and the proposed review methods were deployed simultaneously, the review teams reported that the proposed method provided a more accurate measure of the status of outcomes in the States. Conducting interviews with families and other relevant parties resulted in a more balanced approach by the review team when considering the State's success in achieving outcomes for families.

In paragraph (d), we propose that partial reviews be jointly planned and conducted by the State and ACF. Partial reviews will be targeted to the nature of the concern.

We believe the stated emphasis on program improvement will best be served through timely feedback to the States on the review findings. Therefore, in paragraph (e), we propose a time frame of 30 calendar days in which to notify the State of ACF's determination as to whether the State is operating in substantial conformity. However, the letter of notification will not include a detailed report of the review. Rather, it will summarize and confirm the findings of the review, many of which will have been assembled and reported to the State at the conclusion of the on-site review. We propose that the substance of findings related to a determination of nonconformity be expounded upon and developed in the context of the program improvement plan, which will then serve as a guide to the State in achieving substantial conformity (see section 1355.35).

*Section 1355.34 Criteria for Determining Substantial Conformity*

This section describes the criteria which will be used to determine a

State's degree of conformity with specified State plan requirements for each outcome and systemic factor of the State's service delivery system that undergoes review.

We propose to base conformity on the specific outcomes and systemic factors reviewed, rather than on the State program as a whole. Accordingly, we have limited the State plan requirements subject to review to those requirements related specifically to outcomes and the delivery of improved services. We are, in effect, proposing that conformity with these requirements constitutes ''substantial conformity,'' rather than reviewing for and requiring some percentage of compliance with all of the title IV-B and IV-E State plan requirements. Also, making determinations of substantial conformity based on specific outcomes and systemic factors will permit States to take advantage of technical assistance opportunities to focus on those aspects of their programs needing improvement.

In paragraphs (a)(1) and (2), we propose to determine the State's substantial conformity with applicable CFSP requirements based on: (1) the achievement of the seven outcomes specified in paragraph (b); and (2) the functioning of seven core systemic factors directly related to the State's capacity to deliver services leading to improved outcomes, as specified in paragraph (c). In paragraph (a)(3), we propose that a review and analysis of the aggregate data in the State self-assessment should be consistent with, and support, the findings of the on-site review. Significant discrepancies between the aggregate data and the on-site review findings may be a contributing factor in determining that a State is not in substantial conformity.

In paragraph (b)(1), we link substantial conformity to the outcomes for children and families, and list the seven outcomes that are subject to review. These outcomes were derived from discussions with numerous focus groups, consultation with experts in the field, and from an extensive review of the literature on the outcomes for children and families served by the programs under review. The pilot reviews have demonstrated them to be appropriate outcomes to measure.

In paragraph (b)(2), we propose that a State's level of achievement (i.e., ''substantially achieved,'' ''partially achieved,'' or ''not achieved'') with regard to each outcome, as determined by the review team, reflect the extent to which a State has implemented the CFSP requirements and assurances subject to review. We have specified those CFSP requirements that are directly related to the outcomes that will undergo review, including the new title IV-B State plan requirement to make effective use of cross-jurisdictional resources to place children in adoptive homes.

While the requirement at section 471(a)(18) of the Act has a direct impact on permanency for the children affected, we have proposed only to use the child and family services review as a mechanism for identifying potential section 471(a)(18) compliance issues rather than as a mechanism to determine compliance with this provision, hence its exclusion from this paragraph. The statutory requirements for enforcing section 471(a)(18) necessitate a different approach from that taken in the child and family services review. However, the self-assessment and the instruments for the on-site portion of the review will include questions designed to probe for potential section 471(a)(18) compliance issues. Once identified through a child and family services review, or otherwise, potential noncompliance with section 471(a)(18) will be addressed through the process proposed at section 1355.38.

In paragraph (b)(2)(vii), the proposed review of the title IV–E requirement regarding reasonable efforts is not a duplication of the review of reasonable efforts determinations performed in the title IV–E foster care eligibility reviews. We are not proposing to review for reasonable efforts determinations in court orders or other court documentation, but for the actual services provided to prevent removals, facilitate reunification, or, in conformance with the ASFA, to make and finalize alternate permanent placements. This State plan requirement clearly supports two of the outcomes proposed for review: (1) *children are, first and foremost, protected from abuse and neglect, and are safely maintained in their homes whenever possible;* and (2) *children have permanency and stability in their living situations.*

In paragraph (b)(3), we propose that in order for a State to be determined to be in substantial conformity, each outcome to be examined must be rated as ''substantially achieved'' in at least 90 percent of the cases reviewed on-site in the initial review and 95 percent in subsequent reviews. For example, if 40 cases are reviewed as part of an initial on-site review, each outcome must have been ''substantially achieved'' for at least 36 (90%) of these cases as determined by the review team. The rationale for the phased-in standard of outcome achievement is that States will need time to focus their resources on program improvements and the new approach to the reviews and may not be able to conform to a 95 percent standard initially. However, given the goal of the proposed review process to support practice improvements over time, we believe a 95 percent standard better reflects the ongoing quality of outcomes we are promoting.

The on-site review instruments are designed to guide reviewers in determining the degree of outcome achievement. Specific items in the on-site review instruments are indexed to each outcome. These items will be examined collectively from a case-specific qualitative level in determining if each outcome has been or is being achieved at a satisfactory level, that is, ''substantially achieved.'' We have published the items indexed to the outcomes at Attachment A, at the end of this preamble, in order to give States a more specific idea of what is reviewed during the on-site process. We do intend to publish the self-assessment and on-site review instruments in meeting Paperwork Reduction Act requirements. These documents provide detail regarding the information to be collected and reviewed. We want to be clear, however, that the items will not be published as part of the final rule because they are subject to change as we learn more about how particular issues affect outcomes for children and families.

In the pilot reviews, we invested considerable effort in preparing reviewers to collect and consider the information needed to make decisions about outcome achievement. In addition, we assembled a cross-section of representatives from within and outside the State agency and made numerous revisions to the instrument to increase the likelihood of objective conclusions. We propose to require that conclusions about outcomes be made on the basis of several perspectives, including those of the children, parents, social worker and service providers involved in the cases reviewed, in order to provide us with more comprehensive information about each case undergoing review.

We believe that the proposed review of outcomes is necessary to achieve the goal of improved services. In each of the pilots, reviewers were able to apply the criteria to the outcomes in a manner that led to decisions considered by the review team to be valid. Further, the compilation of findings around outcomes by the review team was generally consistent with the State agency's perception of the strengths and needs of its programs which, we think,

adds further validity to the approach we are proposing.

In paragraph (c), we propose also to link substantial conformity to a State's implementation of those CFSP requirements clearly related to delivering child welfare services which lead to improved outcomes, in addition to the review of the actual outcomes. We have identified the seven core systemic factors that we propose to examine, along with the specific criteria that will be reviewed to determine if each systemic factor is operating in substantial conformity. The factors we have chosen to examine emerged from a much longer list that was refined over the course of the pilot reviews. The systemic factors to be reviewed are those that seemed to most critically influence agency capacity at both the State and local levels.

The nature of the systemic factors and criteria for determining substantial conformity does not accommodate measurement at an interval level, e.g., percentage of achievement. We are, therefore, proposing that the review team apply specific criteria associated with each factor and determine whether the State is operating in substantial conformity with the CFSP requirements related to each factor. In paragraphs (c)(1) through (7), we have identified the components of each systemic factor that will be examined. The factors include: (1) The Statewide information system; (2) the case review system (which incorporates the new requirements in the ASFA for permanency hearings, termination of parental rights, and notice of hearings for foster and preadoptive parents); (3) the quality assurance system (which includes the new State plan requirement to establish and maintain quality standards for children in foster care); (4) training; (5) service array (including the new services that must be provided under title IV–B subpart 2, i.e., time limited reunification services and post-legal adoption services); (6) agency responsiveness to the community; and (7) foster/adoptive parent licensing, recruitment, and retention (which includes the new State plan requirements for criminal record checks and plans for effective use of cross-jurisdictional resources for making adoptive placements).

Since these factors relate to systemic issues within State agencies, the degree to which they are operating in substantial conformity with CFSP requirements is a decision made with input from the entire review team. The decision will be based on information contained in the State self-assessment, as well as interviews with a broad cross-section of internal and external stakeholders at the State and local levels. In proposing the criteria to evaluate each systemic factor, we have worked to stay within the limits of the statutory and regulatory language related to the factors.

With regard to the case review system required in section 422 and defined in section 475 of the Act, we will not base substantial conformity on the documentation of these requirements for individual children as was the practice in previous section 427 reviews. Rather, the extent to which the State has in place a case review system that effectively promotes desirable safety, permanency, and well-being outcomes for the children and families served by the State will determine the degree of conformity.

We propose in paragraph (d) that the review instruments be provided to all States when the final rule becomes effective. This will ensure that States are aware of the methodology that will be used to make determinations related to outcome achievement and the functionality of systemic factors. We are particularly interested in comments regarding the most effective method for keeping States informed of the content of the review instruments.

*Section 1355.35 Program Improvement Plans*

This section describes the requirements for developing, implementing and reviewing State program improvement plans and for providing technical assistance to States in implementing the program improvement plans. It implements the requirement in section 1123A(b)(4) of the Act that States found not to be in substantial conformity be afforded the opportunity to develop and implement a corrective action plan. We are proposing the term ''program improvement plan'' as an alternative to corrective action plan, believing that it better reflects the principles of program improvement and State/Federal partnerships that we are attempting to cultivate through the reviews.

In paragraph (a)(1) we propose to require that the program improvement plan be developed jointly between the State and HHS, consistent with other regulatory requirements that the State plan be developed jointly, and in keeping with the desire to promote State and Federal partnerships through the reviews.

In paragraphs (a) (2) through (5), we describe the required content of the program improvement plans, specifically that the plans address the areas of nonconformity and identify the activities, time frames, technical assistance and evaluations needed to achieve substantial conformity.

In paragraph (b), we propose the option of a voluntary program improvement plan for States that meet the criteria for substantial conformity but yet have areas where program improvements are needed, and we describe the requirements for such voluntary plans.

In paragraph (c)(1), we propose that a State's program improvement plan be approved in accordance with section 1123A(b)(4)(A) of the Act. In addition, we propose that a State submit its plan for approval within 60 days following receipt of the written notice of nonconformity so that a State found to be in nonconformity may receive prompt assistance in achieving program improvements.

In paragraph (c)(2), ACF will approve the plan if it meets the requirements for program improvement plans described in this section. If the plan does not meet the requirements and is not approved, we propose in paragraph (c)(3) that the State be given 30 additional days to revise and re-submit the plan for approval. If the State does not re-submit the plan, or if the re-submitted plan continues to fail to meet the requirements and cannot be approved, we propose in paragraph (c)(4) to initiate withholding of funds in accordance with the provisions of § 1355.36 of this part. We believe that reasonable time frames must govern the submission of approvable program improvement plans, and would appreciate comments as to whether the time frame for the joint development of the program improvement plan is adequate as proposed.

In paragraph (d), we are proposing that program improvement plans be approved for time periods of up to two years, depending upon the level of nonconformity. We do not expect all program improvements to take two years to implement and expect States to address areas of nonconformity expeditiously. States will be required to prioritize areas needing improvement that pose risks to child safety and complete the appropriate action steps within a time frame to be determined in consideration with the level of risk. We do recognize, however, that, in some circumstances, it will be impossible for the State to address the areas needing improvement within the two year time frame, even with technical assistance. In such situations we are, thus, proposing a three-year period of time as the maximum implementation period for the plans, consistent with the time frame for the ongoing full reviews.

In paragraph (e), we propose procedures for evaluating the implementation of program improvement plans. We propose that the State members of the review team and the ACF Regional Office determine the appropriate intervals for evaluating the plans, since the content of each plan and the needs of individual States will vary significantly. Our proposal that the evaluations occur no less frequently than annually is an effort to: (1) assure that delays in evaluation do not prevent the State from correcting the areas of nonconformity in a timely manner; (2) integrate the implementation of the plans with the joint planning process between the State and ACF; and (3) reduce the burden on States by using the existing annual CFSP progress review and update as the vehicle for evaluating the plans, rather than create an additional process.

In paragraph (e)(3), we address evaluation of individual components of the program improvement plans. We are proposing that the areas of nonconformity be addressed individually when evaluating the plans, so that once they are determined to be complete they will not require further evaluation.

In paragraph (e)(4), we propose the option for the State and ACF to renegotiate the terms of the program improvement plans, as needed. This is based on the fact that changes in approach may be needed during the implementation of a plan, and we want to provide that flexibility for the States.

In paragraph (f), we elaborate on the proposal that States integrate their program improvement plans with CFSP planning and implementation.

To the extent that ACF has the resources and funds available, it shall make technical assistance available to improve the outcomes or other factors that are outlined in a State's program improvement plan.

Our goals in this section and in the withholding section (45 CFR 1355.36) include: providing timely feedback on the findings of the review to the State, based on joint planning, collaboration and agreement on the strengths and needs of the program; avoiding the ''review and penalize'' approach used in prior reviews; and focusing the period following the review on program improvement. In the pilot reviews, we found that the final reports of the reviews, prepared by ACF in collaboration with the State and the review team, required (at a minimum) several months to complete and delayed the development of program improvement plans well beyond the completion of the actual review. We, therefore, have proposed that ACF develop a concise, focused report of findings within 30 days of the review. This method allows us to expeditiously engage the State in developing a program improvement plan that addresses the mutually agreed upon areas of nonconformity. We have proposed that program improvement plans be developed within 60 days of ACF issuing a written confirmation to the State of the findings of the review.

*Section 1355.36 Withholding Federal Funds Due to Failure To Conform Following the Completion of a State's Program Improvement Plan*

This section describes the process for withholding funds due to the failure of the State to meet the criteria for substantial conformity. We have addressed statutory requirements by specifying the methods used to determine the amount of Federal funds to be withheld due to a State's failure to comply substantially, and the conditions under which the funds will be withheld. In reviewing this section, the reader should note that the withholding of funds is suspended during the implementation period of a program improvement plan. Following the completion of the program improvement plan, the amount of funds which will be withheld and collected in arrears is the amount identified in conjunction with those areas of nonconformity that remain uncorrected.

In paragraphs (a)(1) and (2), we define the pool of funds to which any penalties should apply. Inasmuch as section 1123A(a) of the Act requires that the Secretary review a State's conformity with State plan requirements of both titles IV–B and IV–E, we have deemed it appropriate and consistent to propose that funds under each of these titles be subject to withholding. This approach is further supported by the close linkages we see between both titles, for example, in the areas of protections for children, the recruitment of foster and adoptive families, and the development of training strategies. While greater emphasis is placed on title IV–B State plan requirements in the reviews of State child and family services programs, the requirements within the two titles are sufficiently intertwined so as to justify a pool of both title IV–B and title IV–E funds. However, in recognition of this greater emphasis, we believe that it is appropriate that the pool of funds subject to withholding be comprised of a State's total title IV–B allocation. Since a smaller number of title IV–E State plan requirements have been included as part of these reviews, we are proposing that the pool of title IV–E funds subject to withholding be limited to a State's claims for title IV–E foster care administrative costs, and not include foster care maintenance payments.

In paragraph (b)(1), we propose that withholding funds based on a determination that a State is not operating in substantial conformity be delayed until the State has the opportunity to develop and implement a program improvement plan.

In paragraph (b)(2), we propose that funds not be withheld from a State if the determination of nonconformity is caused by the State's correct use of formal statements of Federal law or policy provided by DHHS.

In (b)(3), we are proposing that withholding apply to the year under review and each succeeding year until the failure to conform ends through the successful completion of the program improvement plan, or until a subsequent review determines that the State is operating in substantial conformity. The amount of funds subject to withholding that we are proposing is relatively modest for a single year. We therefore believe that for potential withholding to serve as an incentive for program improvements, it must be applied over the entire period of nonconformity.

In (b)(4) we address the statutory requirement that the amount of funds withheld must be proportionate to the extent of nonconformity. In paragraph (b)(4)(i), we define the pool of funds from which any funds shall be withheld due to nonconformity. The pool includes the State's entire title IV–B allocation, subparts 1 and 2, for the years to which the withholding applies, plus an amount equivalent to 10 percent of the State's Federal claims for title IV–E foster care administrative costs (exclusive of training costs matched at 75 percent) for the years to which the withholding applies. Only 10 percent of the title IV–E foster care administrative claims is proposed since a smaller number of the State plan requirements subject to review are specifically title IV–E related.

In paragraphs (b)(4)(ii) and (iii), we are proposing that equal weight be given to each of the seven core outcomes, described in § 1355.34(b)(2) of this part, and the seven core systemic factors, described in § 1355.34(c)(2) of this part, in determining substantial conformity. We propose that the amount of funds subject to withholding for each outcome and systemic factor be one percent of the pool of the State title IV–B allocation and title IV–E foster care administrative costs. We propose that funds be withheld only for those

particular outcomes and systemic factors that are determined not to be in substantial conformity, whether as a result of a full or partial review. Therefore, States determined not to be operating in substantial conformity based on only one outcome would be subject to a one percent withholding, and States with greater degrees of nonconformity would be subject to proportionately higher withholding.

We think that our proposal for withholding provides a sufficient penalty to serve as an incentive for program improvements as needed, but does not withhold so much as to prohibit States from making improvements or delivering services. Our definition of the pools of funds to which penalties will apply is consistent with the extent to which we will be reviewing State plan requirements for programs administered under both funding sources. We anticipate that the maximum penalty proposed for States determined not to be in substantial conformity on all of the outcomes and systemic factors reviewed will be less than penalties imposed under the section 427 reviews, on a year-by-year basis. This is primarily due to our expectation that the development and implementation of a program improvement plan, along with the provision of technical assistance, will result in significant progress by the State in achieving substantial conformity. This proposal is consistent with our intent to de-emphasize penalties in favor of efforts to improve services. We particularly invite comments on this issue.

In paragraph (b)(5), we propose the maximum amount of funds to be withheld if the State cannot achieve substantial conformity through the implementation of a program improvement plan.

In paragraph (c), consistent with section 1123A(b)(4)(C) of the Act, we propose that the amount of funds withheld not be deducted from a State's allocation during the implementation period of the program improvement plan, provided the plan conforms to the requirements in the final rule.

The statute also requires that the Secretary rescind the withholding of funds if the State's failure to conform is resolved by successful completion of a corrective action plan. We have addressed this requirement in paragraph (d), and also propose that the Secretary not withhold any portion of funds that applies to individual outcomes or systemic factors that are brought into substantial conformity through partial completion of the program improvement plan.

In paragraph (e)(1), we propose that the statutory requirement that ACF notify the State no later than 10 days following a final determination of substantial failure to conform be interpreted as 10 business days. Although each State will be notified of whether it is, or is not, operating in substantial conformity following the on-site review, this earlier determination shall not be considered final for States which are determined not to be in conformity. These States will be notified of the final determination following the successful or unsuccessful completion of a program improvement plan.

In paragraph (e)(2), we clarify when and under what circumstances the actual withholding of funds will occur. The decision to withhold funds from a State will be directly related to its progress in implementing a program improvement plan. At the completion of the program improvement plan, the amount of funds associated with any remaining areas of nonconformity will be withheld by the Department for the time period beginning with the year under review in which the initial determination of nonconformity was made to the date of the final determination of nonconformity, and from that date forward until substantial conformity is achieved. In paragraph (e)(3), we propose that the amount of funds withheld be computed to the end of the quarter in which substantial conformity is achieved.

In paragraph (e)(4), we propose the penalty structure for States that fail to participate in the development of a program improvement plan, or in the implementation of a plan, as required by ACF.

*Section 1355.37 Opportunity for Public Inspection of Review Reports and Materials*

In this section, consistent with the requirements for State plans at 45 CFR 1355.21(c), we propose that the State make reports and materials related to the child and family services reviews available for public inspection. We think it is critical that States obtain the broadest public involvement in the implementation of child welfare programs. We are particularly interested in comments regarding the method of dissemination of these materials in order to accomplish this goal.

*Section 1355.38 Enforcement of Section 471(a)(18) of the Act Regarding the Removal of Barriers to Interethnic Adoption*

In this section, we implement the provisions of sections 474(d)(1) and (2) of the Act. Section 474(d) contains enforcement provisions applicable to section 471(a)(18) of the Act, which requires the removal of barriers to interethnic adoption. We have chosen to codify the section 1808 enforcement procedures in regulations in conjunction with the 1123A review process because the statute specifically identifies the 1123A review process as a mechanism for assuring State compliance with section 471(a)(18) of the Act. While the 1123A review process is an appropriate mechanism for detecting possible violations of section 471(a)(18) of the Act, the corrective action and penalty structure required by section 474(d) of the Act does not fit within the ''substantial conformity'' standard by which other title IV–B and title IV–E State plan requirements are measured in the 1123A review process. Therefore, ACF has developed a separate process for addressing violations of section 471(a)(18), once identified.

After considering a number of options, we determined that implementing section 474(d) of the Act requires collaboration with OCR because it has significant expertise in investigating alleged civil rights violations. Moreover, a State's noncompliance with section 471(a)(18) of the Act is also a violation of title VI of the Civil Rights Act of 1964. OCR and ACF will collaborate throughout the process of bringing the State into compliance with section 471(a)(18) of the Act which includes consultation during the development, approval, implementation, and evaluation of corrective action plans.

In paragraph (a)(1), we propose that ACF refer all cases involving potential violations of section 471(a)(18) of the Act to OCR for investigation. Such cases may come to our attention during the course of a child and family services review or by other means, such as a letter of complaint. Violations based on a court finding will not be referred to OCR for investigation. Rather, ACF will invoke the appropriate penalty and corrective action procedures described in the regulation.

In paragraph (a)(2), we propose that after OCR completes its investigative procedure, it will make its file available to ACF, which will then make a determination, based on the OCR file, whether there has been a violation of section 471(a)(18). In paragraphs (a)(2)(i) and (a)(2)(ii), consistent with statutory language, we propose that a violation of section 471(a)(18) occurs with respect to a person if the agency delays or denies placement based on race, color, or national origin. In paragraph (a)(2)(iii), we have included as a violation of

section 471(a)(18) of the Act a State's maintenance of any statute, regulation, policy, procedure, or practice that would result in the delay or denial of placement based on race, color, or national origin. The statute requires immediate penalties for violations with respect to a person while providing States the opportunity to implement corrective action to avoid penalties in unspecified circumstances. Logically, circumstances in which States should first have an opportunity for corrective action prior to receiving a penalty include those that have the potential to cause a violation of section 471(a)(18) with respect to a person.

In paragraph (a)(3), we propose that ACF provide written notification to the State or entity of its determination regarding alleged section 471(a)(18) violations.

In paragraph (a)(4), we propose that if ACF determines that no violation has occurred, it will take no further action. However, if ACF determines that a violation has occurred, it will invoke the enforcement process outlined in section 474(d) of the Act, which includes penalties and corrective action. Penalties will be issued in the form of disallowances and will thus be appealable to the Departmental Appeals Board (DAB) under the procedures prescribed in 45 CFR Part 16.

In paragraph (a)(5), we make clear that the implementation of section 471(a)(18) is to have no impact on the State's compliance with the requirements of the Indian Child Welfare Act of 1978.

In paragraph (b)(1), we explain that, in accordance with section 474(d)(1) of the Act, an immediate penalty will be levied against a State found to be in violation of section 471(a)(18) with respect to a person or as the result of a court finding (see paragraph (g)(4) of the proposed regulation and the corresponding preamble language). The penalty will be imposed for the fiscal quarter in which the State receives notification from ACF that it is in violation of section 471(a)(18), and for every subsequent quarter in that fiscal year, or until the State successfully completes a corrective action plan. While penalties resulting from violations of section 471(a)(18) are appealable to the DAB, States that voluntarily engage in corrective action may do so without prejudice during the appeal process in order to correct deficiencies and come into compliance expeditiously. If the violation occurs as a result of a court finding and the State is appealing the court's decision, ACF will notify the State that the violation has occurred and of the appropriate penalty structure, however, it will not impose the penalty until there is a final determination through the appeal process. The State may engage in a corrective action plan during the judicial appeal process if it so chooses.

Paragraphs (b)(2) and (b)(3) describe the approval process for corrective action plans submitted in response to violations of section 471(a)(18) with respect to a person or as the result of a court finding. Approval of such plans is at the sole discretion of ACF. We did not prescribe time lines for submission of corrective action plans. Clearly, it is in a State's best interest to come into compliance in a timely fashion in order to minimize the length of time the penalty is imposed.

In paragraph (c)(1), we explain that any State with a statute, regulation, policy, procedure, or practice in place that, if applied, would likely result in a violation of section 471(a)(18) of the Act with respect to a person will be found in violation of section 471(a)(18). In conformance with the statute, a State will have up to six months from the date it receives notification of the violation from ACF to implement a corrective action plan for complying with section 471(a)(18). We chose to interpret the term ''implement'' to mean ''begin'' rather than ''complete.'' We think this interpretation is consistent with Congress' intent to resolve noncompliance with section 471(a)(18) in a timely fashion and affords States sufficient time to develop and implement corrective action. A State that fails to implement a corrective action plan within the six months allotted, will be assessed a penalty in accordance with section 474(d)(1) of the Act.

Paragraphs (c)(2) and (c)(3) describe the approval process for corrective action plans submitted in response to violations of section 471(a)(18) caused by a statute, regulation, policy, procedure, or practice that could result in a violation with respect to a person. Approval of such plans is at the sole discretion of ACF. We did not prescribe time lines for submission of corrective action plans, but note that it is in a State's best interest to submit the plan at the earliest possible date in order to effect implementation within the six months allotted.

In paragraph (c)(4), we describe what constitutes ''implementing'' a corrective action plan. A corrective action plan will be considered ''implemented'' when a State begins to carry out the action step(s) in the plan. ACF's approval of a corrective action plan is not considered implementation of the plan.

In paragraph (c)(5), once the corrective action plan is implemented, we propose to levy a penalty against a State that fails to complete the corrective action plan within the time allotted in the plan. Although the statute does not specifically address the completion of corrective action plans, Congress clearly intended all States to comply with section 471(a)(18) of the Act. Therefore, States that fail to complete a corrective action plan within the time specified in the plan will be subjected to a penalty in accordance with section 474(d)(1) of the Act.

Subsection (d) proposes requirements for corrective action plans developed in response to a violation of section 471(a)(18).

In paragraph (e), we propose that the evaluation of a State's corrective action plan be completed solely by HHS staff. We believe that a joint evaluation would be inappropriate when a State has been found to be in violation of this title IV-E State plan requirement. We propose to evaluate the State's corrective action plan within 30 calendar days of the latest projected completion date specified in the plan. We think this is a sufficient amount of time since ACF can evaluate action steps as they are completed. Within the 30 days, ACF will determine if the State has completed the corrective action plan. If the corrective action plan has not been completed, ACF will calculate the amount of reduction in the State's title IV-E payment and notify the State agency accordingly.

In paragraph (f), we define ''title IV-E funds'' as the Federal share of all expenditures made under title IV-E.

Paragraph (g)(1) reiterates the circumstances in which a State's title IV-E funds may be reduced as the result of a violation of section 471(a)(18): the delay or denial of a foster or adoptive placement based on race, color, or national origin; or, failure to implement or complete a corrective action plan of the type described in subsection (c).

In paragraph (g)(2), in accordance with section 474(d)(1) of the Act, we propose to reduce the title IV-E funds of a State that has violated section 471(a)(18) with respect to a person for the fiscal quarter in which the State received notification of this violation and for each succeeding quarter that fiscal year or until the State completes a corrective action plan, whichever is sooner.

In paragraph (g)(3), for States that fail to implement or complete a corrective action plan of the type described in subsection (c), we propose to reduce the State's title IV-E funds for the fiscal quarter in which the State received

notification of this violation. The reduction will continue for each succeeding quarter within that fiscal year or until the State completes the corrective action plan, whichever is sooner.

In paragraph (g)(4), a State determined to be in violation of section 471(a)(18) on the basis of a court finding will have its title IV-E funds reduced in accordance with section 474(d)(1) for the fiscal quarter in which the court finding was made, and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan, whichever is sooner.

In paragraph (g)(5), we propose that a State determined not to be in compliance with section 471(a)(18) undergo a reduction in its title IV-E funds for a period not to exceed the four fiscal quarters in the fiscal year in which the State was notified of its noncompliance. Should the State fail to come into compliance with section 471(a)(18) of the Act during the fiscal year in which it was notified of its violation, ACF will treat the violation as a new finding at the beginning of the subsequent fiscal year and impose the penalty and corrective action process accordingly.

In paragraph (h)(1), in accordance with section 474(d)(1) of the Act, we propose the penalty structure for States that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan of the type described in subsection (c).

In paragraph (h)(2), we address the penalty structure for an entity that has received title IV-E funds from a State and has been determined to have violated section 471(a)(18) with respect to a person. We propose that all title IV-E funds received by that entity from a State agency for the quarter in which the entity receives a notification from ACF that it is in violation of section 471(a)(18) be remitted directly to the Secretary by the entity in accordance with section 474(d)(2) of the Act. The penalty against the entity will be calculated based on the State's documentation of expenditures.

Pursuant to section 474(d)(1) of the Act, in paragraph (h)(3) we propose that the reduction of title IV-E funds due to a State's failure to conform to section 471(a)(18) shall not exceed five percent of that State's fiscal year title IV-E payment.

In paragraph (h)(4), we propose holding States or entities liable for any interest accrued on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.13.

*Section 1355.39 Administrative and Judicial Review*

In this section, we implement the statutory provisions (section 1123A(c)(2) and (3) of the Act) under which States may appeal decisions made by the Department with regard to determinations of substantial conformity and the subsequent withholding of funds. We propose that States be afforded the same opportunities for appeal upon being notified by ACF of a violation of section 471(a)(18) of the Act.

In paragraph (c), we propose that no appeal be available to a State when it has been determined to be in violation of section 471(a)(18) of the Act based on a court finding.

**B. Title IV-E Eligibility Reviews**

**Part 1355—General**

*Section 1355.20 Definitions*

1355.20 is being revised to define terms used throughout the proposed rule.

The definition of *child care institution* is primarily a reiteration of the statutory definition at section 472(c)(2) of the Act.

The definition of *original foster care placement* has been removed from § 1356.21, moved to this section, and replaced with *date the child enters foster care* to comply with the ASFA. The date the child enters foster care determines when the case review system requirements in section 475 of the Act have to be met, such as: administrative reviews, permanency hearings, the new requirement for filing or joining a petition for termination of parental rights, and the requirements for providing ''time-limited reunification services'' funded under title IV-B, subpart 2. This term has no significance for claiming Federal financial participation for foster care maintenance payments. The rules for obtaining Federal reimbursement for foster care maintenance payments have not changed. This term should not be confused with the date the child is physically removed from home.

We understand, through our consultation process, that there is a need for clarification of the ''judicial finding of child abuse or neglect'' language. We are interpreting this language as referring to the hearing at which the court finds that the child has been abused or neglected and gives placement and care responsibility to the State agency; this usually takes place at what we refer to as the ''full hearing.'' A finding of abuse or neglect does not occur at a shelter or emergency placement hearing where the State is given temporary custody of the child.

We propose that the date the child entered foster care on the basis of a voluntary placement agreement be the date the agreement is signed by all relevant parties.

We are proposing a revised definition of *foster care* which will change the term ''family foster homes'' to ''foster family homes'', so that it is consistent with the definition of ''foster family home'' in this section. It also clarifies the status of a child as being in foster care, even though an adoption subsidy payment has been made prior to the finalization of the adoption.

The definition of *foster care maintenance payments* is derived from section 475(4)(A) of the Act. In this definition, we elaborate upon the meaning of ''daily supervision'' consistent with a policy interpretation issued by ACYF (ACYF-CB-PIQ–97–01). States may claim reimbursement under title IV-E foster care maintenance for child care provided to title IV-E eligible children during the foster parent's working hours while the child is not in school and in those situations when a foster parent must participate in activities that are beyond the scope of ''ordinary parental duties,'' but consistent with parenting a child in foster care. According to the legislative history of Public Law 96–272, '' * * * payments for the costs of providing care to foster children are not intended to include reimbursement in the nature of a salary for the exercise by the foster family parent of ordinary parental duties * * *'' Since foster care maintenance payments are not salaries, foster parents must often work outside the home; hence the interpretation that licensed child care that provides daily supervision during a foster parent's working hours when the child is not in school is an allowable expenditure under title IV-E. Examples of other allowable activities include licensed child care while the foster parent is attending foster parent training, case conferences, or case review hearings.

States have requested clarification regarding disbursement of funds for allowable child care. States may include the cost of allowable child care in the basic foster care maintenance payment or may make a separate maintenance payment directly to the licensed provider. For example, if, in a particular foster family, both parents work, the State may include the cost of child care in the maintenance payment made to that family or may pay the licensed provider directly. Regardless of the payment method chosen, the State must be able to provide documentation to verify allowable expenditures.

The definition of *foster family home* has been amended to clarify that the statute makes no distinction between approved and licensed foster homes. Consequently, approved foster homes must meet the same standards as licensed homes. To date, there has been confusion in the field regarding the statutory terminology of ''licensed or approved.'' Some States have interpreted this language to allow a type of two-tiered system for approving foster family homes. This is an incorrect interpretation of the statute. The terms ''licensed'' and ''approved'' are treated equally in the statute. Irrespective of the terminology, licensure or approval for foster homes must be based on the same standards. This clarification does not repeal the policy at ACYF-PIQ–85–11 which permits States to waive certain licensing requirements, such as square footage, for relative foster family homes.

Provisional licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may not claim reimbursement until final licensure or approval is granted. The State may, however, claim reimbursement back to the first of the month in which all title IV-E eligibility criteria are met.

The definitions of *full hearing* and *temporary custody proceeding* are being added to clarify the meaning of these terms as used by ACF in these regulations.

We have added a definition of *legal guardianship* which reiterates the statutory language found at new section 475(7) of the Act. In our initial consultations on the implementation of the ASFA, questions were raised regarding the applicability of this term to ''long-term foster care.'' The statute no longer recognizes long-term foster care as a permanency goal. A State is not precluded from establishing placement in a permanent foster family home as a permanency goal if it has a compelling reason to do so. However, placement in a permanent foster family home does not fall within the definition of ''legal guardianship,'' for the obvious reason that foster parents are not granted the rights associated with guardianship.

The definition of *permanency hearing* recognizes the statutory changes in terminology, timing, and purpose of these hearings contained in the ASFA. Since the intent of the law, both prior and subsequent to the ASFA, is to provide judicial oversight for children whom a State has yet to place in a permanent setting, we propose to limit the court-appointed or approved body for the conduct of permanency hearings to one which is not a part of or under the supervision or direction of the State agency. We also propose to exclude any hearings that do not provide parents and other interested parties an opportunity to be heard, as was the legislative intent (Congressional Record-Senate, August 3, 1979, S. 11710).

In order to meet children's permanency needs and to create a child welfare system that is responsive to a child's sense of time, Congress moved the timing for the ''dispositional hearing'' to 12 months, renamed it the ''permanency hearing,'' and clarified its purpose to unequivocally establish that States must set and act on permanency plans for children in foster care without delay. In our early consultation with the field regarding the implementation of the ASFA, we repeatedly heard that it was critical that the field understand that permanency hearings must occur within 12 months of the child entering foster care, but may occur sooner if reunification is appropriate or it becomes clear that an alternate permanency plan must be established.

During the focus groups, we also learned that the language at section 475(5)(C) is being misunderstood as requiring States to cease reunification efforts at the permanency hearing. The State is not obliged to set an alternate permanency plan at the permanency hearing if the child and family are not able to reunify at that time. However, the intent of the ASFA in shortening the time line for holding a permanency hearing was to place greater accountability and responsibility on parents for making their home ready and safe for the child's return. Congress understood that families often present very complicated issues that must be resolved prior to reunification. For example, parents dealing with substance abuse issues may require more than 12 months to resolve those issues. However, a parent must be complying with the established case plan, making significant measurable progress toward achieving the goals established in the case plan, and diligently working toward reunification in order to maintain it as the permanency plan at the permanency hearing. Moreover, the State and court must expect reunification to occur within a time frame that is consistent with the child's developmental needs. If this is not the situation, the State is obliged to establish and act on an alternate permanency plan for the child at the permanency hearing. Too often, reunification is retained as the permanency goal when a parent is negligent in complying with the requirements of the case plan until the months or weeks immediately prior to the permanency hearing. A parent's resumption of contact or overtures toward participating in the case plan in the months or weeks immediately preceding the permanency hearing are insufficient grounds for retaining reunification as the permanency plan. In such situations, the parent must demonstrate a genuine, sustainable investment in completing the requirements of the case plan in order to retain reunification as the permanency goal.

The shortened time frames and increased accountability for parents makes it incumbent on the State to begin providing services to families as soon as it receives responsibility for the child's placement and care. Ideally, the State will begin delivering services to resolve those parental issues which lead to the removal as soon as the child is removed from home.

Part 1356—Requirements Applicable to Title IV–E

*Section 1356.20(e)(4) State Plan Document and Submission Requirements*

Effective October 16, 1994, the Assistant Secretary of ACF delegated the authority to the Commissioner, ACYF, to disapprove title IV–E State plans which provide for foster care and adoption assistance under section 471 of the Act. Accordingly, we have deleted the pertinent language in this NPRM to conform with the revised delegation.

*Section 1356.21 Foster Care Maintenance Payments Program Implementation Requirements*

In this section, we have clarified certain existing policies and modified others which have a direct impact on determining the eligibility of children in the title IV–E foster care program. We have proposed additional foster care maintenance payment requirements, which are consistent with the law and intent of Congress, that will apply to States as they implement their title IV–E State plans.

*Section 1356.21(a)*

This paragraph remains unchanged from the current regulation.

*Section 1356.21(b) Reasonable Efforts*

We are amending the language at this section of the regulation to implement the ASFA requirement that the State hold the child's health and safety as its paramount concern when making reasonable efforts. The reasonable efforts provision, as amended by the ASFA, has a threefold purpose:

(1) To maintain the family unit and prevent the unnecessary removal a child

from his/her home, when it can be done so without jeopardizing the child's safety;

(2) If temporary out-of-home placement is necessary to ensure the immediate safety of the child, to effect the expeditious reunification of the child and family when reunification is the appropriate permanency goal or plan; and,

(3) When reunification is not appropriate or possible, to effect an alternate permanency goal in a timely manner.

During our consultation with the field, some recommended that we define reasonable efforts in implementing the ASFA. We do not intend to define ''reasonable efforts.'' To do so would be a direct contradiction of the intent of the law. The statute requires that reasonable efforts determinations be made on a case-by-case basis. We think any regulatory definition would either limit the courts' ability to make determinations on a case-by-case basis or be so broad as to be ineffective. In the absence of a definition, courts may entertain actions such as the following in determining whether reasonable efforts were made:

- Would the child's health or safety have been compromised had the agency attempted to maintain him or her at home?
- Was the service plan customized to the individual needs of the family or was it a standard package of services?
- Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?
- Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?
- Are the State agency's activities associated with making and finalizing an alternate permanent placement consistent with the permanency goal? For example, if the permanency goal is adoption, has the agency filed for termination of parental rights, listed the child on State and national adoption exchanges, or implemented child-specific recruitment activities?

In order to strengthen the child welfare system's response to child safety, Congress provided a list of circumstances in which reasonable efforts are required. It also provided States the authority to identify a list of aggravated circumstances in which reasonable efforts are not required. Typically, State child welfare agencies and the courts encounter cases in which it is appropriate to make reasonable efforts to prevent a child's removal from home or to reunify the family. Quite frequently, though, States are faced with circumstances in which it is unclear how much effort is reasonable. At the initial stage of and throughout its involvement with a family, the child welfare agency assesses the family's needs and circumstances. The State agency should make reasonable efforts to prevent the child's removal from home or to reunify the family commensurate with the assessment . If the assessment indicates that it is not reasonable to prevent the child's removal or to reunify the family, the assessment itself satisfies the reasonable efforts requirement, if the court makes such a determination. In such cases, the court is not determining that reasonable efforts are not required. Rather, the court is determining that it is not reasonable to make efforts, beyond completing the assessment, to prevent the child's removal from home or to reunify the family.

In proposing the application of the reasonable efforts requirements for title IV–E eligibility determinations, this proposed rule effects a significant change from existing policy. Under current ACF policy, either a judicial determination regarding the reasonable efforts made prior to the placement of a child or a determination to reunite the child and parents, but not both, has been required for Federal financial participation (FFP). Consistent with the statutory language at section 472(a)(1) of the Act, we propose that, in order to satisfy title IV–E eligibility requirements, there must be a judicial determination that: (1) Reasonable efforts were made to prevent a child from being removed from home; (2) reasonable efforts were made to reunify the child with his/her family if the removal could not be prevented; (3) if reasonable efforts were not made to prevent the child's removal from home or to reunify the child with his or her family, that reasonable efforts are/were not required; and (4) if the permanent plan for the child is adoption, guardianship, or some other permanent living arrangement other than reunification, that reasonable efforts were made to make and finalize that alternate permanent placement.

*Section 1356.21(b)(1) Judicial Determination of Reasonable Efforts To Prevent Removal in Non-emergency Situations*

We propose to clarify the requirement that judicial determinations of reasonable efforts to prevent removal in non-emergency situations must be made prior to the removal of the child from home. If the circumstances of the case were such that reasonable efforts were not required, there must be a judicial determination to that effect.

*Section 1356.21(b)(2) Judicial Determinations of Reasonable Efforts to Prevent Removal in Emergency Situations*

We propose new requirements regarding judicial determinations of reasonable efforts to prevent removal in emergency situations in order to take into account the fact that many children are removed from their homes in emergency circumstances, primarily because of safety issues.

We are permitting State flexibility in the timing of this determination in emergency situations, up to a maximum of 60 days, recognizing that the initial proceeding leading to the removal may not have been a full hearing. Additionally, the agency may not have had time to prepare information regarding its reasonable efforts prior to the emergency proceeding, nor would the judge have had time to make a careful evaluation of such evidence. We think a 60-day period of time is sufficient for involved persons to perform the appropriate duties, while ensuring that a child is afforded the protection of the judicial determination within a reasonable amount of time, irrespective of the emergent circumstances leading to the removal.

While we recognize that concern for the child's safety may preclude efforts to prevent removal, the court must make a reasonable efforts determination. Even when children are removed in emergency circumstances, the court must consider whether appropriate services were or should have been provided. When the court determines that it was reasonable for the agency to make no effort to provide services to prevent removal in light of the exigent circumstances discovered through the assessment of the family, such as the safety or protection of the child, there must be a judicial determination to that effect. If, at the time the court determines that reasonable efforts to prevent a child's removal from home were not required, the court also determines that reasonable efforts are not required to reunify the child with his or her family, there must be a separate judicial determination to that effect.

*Section 1356.21(b)(3) Judicial Determination of Reasonable Efforts to Reunify the Child and Family*

We are proposing that a judicial determination of reasonable efforts to

reunify be made at any time within a 12 month period following the date the child enters foster care when the case plan goal is reunification, and at least once every 12 months thereafter. Since the permanency hearing must be held over the same 12 month interval, States may want to consider seeking a judicial determination of reasonable efforts to reunify at that hearing. Moreover, making reasonable efforts to reunify the child and family affords the State the opportunity to assess the appropriateness of reunification as a case plan goal and determine an alternate permanency goal if necessary. Making reasonable efforts typically provides the State the evidence it needs to support a decision that an alternate permanency plan is appropriate. The State is not precluded from seeking this determination at an earlier point in time if it so chooses.

If the judicial determination regarding reasonable efforts to reunify is not made within the proposed time frame, we propose that the child become ineligible once 12 months has elapsed since the date the child entered foster care or the most recent judicial determination of reasonable efforts to reunify was made, and until such time as the next reasonable efforts to reunify determination is made. We think this is consistent with statutory intent to ensure that a State is continuing to make reasonable efforts, subject to judicial review, to return a child home as soon as it is safe and appropriate to do so.

If there is a judicial determination that reasonable efforts to reunify the child with his or her family are not required and the State has determined that it is not appropriate to attempt to reunify the child with his or her family, a permanency hearing must be held within 30 days to establish an alternate permanent plan for the child. The alternate permanency plan may be established at the same time the court determines that reasonable efforts to reunify are not required.

*Section 1356.21(b)(4) Judicial Determination of Reasonable Efforts to Make and Finalize Placements When the Permanency Goal is Not Reunification*

We are proposing that the judicial determination regarding reasonable efforts to make and finalize a permanent placement be made within 12 months of the date the permanency goal of adoption, guardianship, or some other permanent living arrangement is established, and every 12 months thereafter. We considered requiring this type of reasonable efforts determination to occur every six months in response to the timeliness language in the statute but were concerned about the burden this would impose on the State agency and the courts. We would appreciate comments on the proposed time frame for making judicial determinations of reasonable efforts to make and finalize permanent placements.

If a judicial determination regarding reasonable efforts to make and finalize a permanent placement is not made within the time frame proposed, the child becomes ineligible under title IV–E from the end of the twelfth month following the date the alternate permanency goal is established, or the date of the most recent judicial determination of reasonable efforts to make and finalize a permanent placement, and will remain so until such a determination is made.

*Section 1356.21(b)(5) Circumstances in Which Reasonable Efforts to Prevent a Removal or to Reunify a Child With His or Her Family Are Not Required*

In this paragraph, we propose that the court that has responsibility for hearing child welfare dependency cases must make the determination that reasonable efforts to prevent a child's removal from home or to reunify a child and family are not required. Depending on the circumstances, this determination may be based on the findings of another court or the findings of the court that is determining whether reasonable efforts are required.

In subparagraph (i), the court that hears child welfare dependency cases may find that the child has been subjected to aggravated circumstances, if it has the authority to do so, and that reasonable efforts are not required because the statutory language at section 471(a)(15)(D)(i) of the Act regarding aggravated circumstances does not require a criminal conviction.

In subparagraph (ii), the court's determination that reasonable efforts are not required must be based on the findings of a criminal court. The statutory language at section 471(a)(15)(D)(ii) requires a criminal conviction of one of the felonies identified therein. In circumstances in which the criminal proceedings have not been completed or are under appeal, the court that hears child welfare dependency cases must determine whether reasonable efforts are required based on the developmental needs of the child and the length of time associated with completion of the criminal proceedings or the appeals process.

In subparagraph (iii), when the determination that reasonable efforts are not required is based on a previous involuntary termination of parental rights, that determination is clearly based on the findings of another court decision.

During our consultation process, we heard that States wanted to know if their laws must specifically use the ''aggravated circumstances'' language in the ASFA and if we plan to provide a definition of or parameters for defining ''aggravated circumstances.'' We do not think it is necessary or appropriate to be so prescriptive as to require States to adopt the specific ASFA language in identifying aggravated circumstances in which reasonable efforts are not required.

The ASFA clearly provides States the authority to determine what ''aggravated circumstances'' are. If a State already has laws that would serve to define aggravated circumstances, it would not need to amend or change those laws. We will not, therefore, define ''aggravated circumstances,'' nor will we provide examples beyond those in the statute.

States have expressed concern that the language at section 471(a)(15)(D) of the Act prohibits the State from making reasonable efforts in certain circumstances. This is an incorrect interpretation. The ASFA identifies when reasonable efforts are not required. The ASFA upholds the State agency's authority to make reasonable efforts to prevent a child's removal from home or to reunify a child with the family even in situations in which it is not required to do so, if the child's health and safety can be assured and it is in his/her best interests.

*Section 1356.21(b)(6) Concurrent Planning*

This paragraph reiterates the statutory provision at section 471(a)(15)(F), affording States the option of making reasonable efforts to make and finalize an alternate permanent placement concurrently with reasonable efforts to reunify a child with his/her family. Concurrent planning can be an effective tool for expediting permanency, and Congress intended to offer it as such. However, since it may not be an appropriate approach for every child or family, States are not required to use concurrent planning and the decision to do so must be made on a case-by-case basis. We urge States to obtain technical assistance and provide appropriate training and supervision to agency workers prior to deploying a concurrent planning strategy.

*Section 1356.21(b)(7) Federal Parent Locator Service*

The ASFA amended section 453 of the Act to specifically provide for the

use of the Federal Parent Locator Service (FPLS) in expediting permanency. We have included the use of the FPLS in the reasonable efforts section of the regulation because Congress intended the FPLS to be used as a tool for locating absent parents early in the case planning process as a potential permanency option. Congress also intended the FPLS as a tool for the States in completing termination of parental rights proceedings.

*Section 1356.21(c)(1) Contrary to the Welfare Determination—Non-emergency Situations*

We propose that in non-emergency situations the ''contrary to the welfare'' determination must be made prior to the removal of the child from home, and documented in the initial removal court order to enable the child to be eligible for title IV–E foster care. The ''contrary to the welfare'' determination is an important protection to safeguard the rights of the child and his/her parents and to ensure appropriate action by the State agency.

*Section 1356.21(c)(2) Contrary to the Welfare Determination—Emergency Situations*

With regard to emergency situations, we propose that the ''contrary to the welfare'' determination be included in the first court ruling (including a temporary custody order, whether or not there was a hearing) pertaining to removal.

The ''contrary to the welfare'' determination requirement in section 472(a)(1) was a title IV–A provision dating back to 1961 which was carried over into the title IV–E program. Congress included this requirement in the belief that judicial oversight would prevent unnecessary removal of children from their homes. It relied on the courts to protect children and families, and to provide an important safeguard against potential inappropriate agency action. The purpose of the requirement is to minimize the number of children inappropriately placed in foster care, and increase efforts at keeping families together.

We do not intend to second guess the States as to when an emergency exists and will, therefore, in the absence of contradictory information, presume that there is an emergency when a child is removed without a previously-issued court order (excluding those for previous removals of the child, or in-home supervision orders). However, the reasonable efforts determination must be made within a specified time thereafter.

*Section 1356.21(d) Documentation of Judicial Determinations*

We have proposed modification of current documentation requirements in paragraph (d) based on ACF's review of States' documentation of judicial determinations over the past years. Consistent with language in section 472(a)(1) of the Act, in paragraph (d)(1) we propose that the judicial determinations regarding ''contrary to the welfare'' and ''reasonable efforts'' be stated specifically in the court orders identified in § 1356.21, paragraphs (b) and (c) and must include the evidentiary basis for that determination. The judicial determinations themselves need not necessarily include the exact terms ''contrary to the welfare'' and ''reasonable efforts'', but must convey that the court has determined that reasonable efforts have been made or are/were not required (as described in section 471(a)(15) of the Act), and that it would be contrary to the welfare of a child to remain at home. A transcript of the court proceedings which verifies that the court considered the facts of the case and made a finding with respect to the reasonable efforts and contrary to the welfare requirements is the only other form of documentation that will be accepted.

Given the fundamental importance of the protection of children as required by the Act, we propose in paragraph (d)(2) that affidavits and *nunc pro tunc* orders not be accepted as documentation of ''reasonable efforts'' or ''contrary to the welfare'' findings for eligibility purposes. Considering the large number of children for whom State agencies are responsible, and the large number of cases that go before the courts, affidavits or depositions created months or years after the fact cannot be considered as reliable evidence of prior compliance with Federal requirements. We believe that a prohibition on the use of affidavits and *nunc pro tunc* orders is necessary in order to assure children in foster care of the protections to which they are entitled in a timely fashion.

In light of the significance of the judicial determinations, we are proposing in paragraph (d)(3) that explicit evidence be provided that the judge has made an individual determination which is to be stated in the court order and not merely incorporated by reference to a State law. We believe that judicial determinations should be as meaningful as possible, and should be child-specific in order to ensure that the circumstances of each child are reviewed individually. In the past, it has been our experience that State laws often permit removal of a child from home in a number of circumstances and not solely, for example, based on a determination that remaining in the home would be contrary to the child's welfare. When State law cites a number of circumstances under which a child may be removed, it is not possible for a reviewer to determine for which reason the judge authorized that removal. However, even if State law allows only one reason for removal which does meet Federal requirements, we are still proposing to require an explicit determination.

*Section 1356.21(e) Trial Home Visits*

We believe that six months is a reasonable period of time for States to determine the appropriateness of a child remaining at home or returning to foster care, absent a court order that extends or shortens the period of time. This is consistent with the statutory requirement for the status of the child to be reviewed every 6 months. During the period of time in which the child is on a trial home visit, no title IV–E foster care maintenance payments are made since she/he is not placed in a foster home or child care facility. However, administrative costs may be incurred on behalf of the child and claimed subsequently by the State agency. If the child is returned to foster care within the six month period, the placement is considered continuous and title IV–E foster care maintenance payments may resume, assuming all eligibility requirements continue to be met.

*Section 1356.21(f) Case Review System*

Paragraph (c) in this section of the current regulation has been re-designated paragraph (f).

*Section 1356.21(g) Case Plan Requirements*

Paragraph (d)(1)–(4) in this section of the current regulation has been re-designated paragraph (g)(1)–(4). In paragraph (g)(1), we propose that case plans be developed jointly with parents. We believe this language serves the goal of the ASFA to begin the permanency planning process and service delivery as soon as possible following a child's removal from home. If the parent is not able or willing to participate in the development of the case plan, it should be so noted in the plan. We have also amended paragraph (g)(3) to include the ASFA case plan requirement for States to include a discussion of the reasonable efforts made to make and finalize a permanent placement for the child in the case plan when the permanency goal is adoption or any other permanent arrangement. A State must document its

efforts to make and finalize permanent placements for all permanency goals. States should not interpret the statutory reference to adoption exchanges as meaning this provision only applies to adoptions. The statutory reference to the use of adoption exchanges was an example of the types of efforts a State should make to make and finalize permanent placements. Although placement in a permanent foster family home is not a preferred permanency goal, it can be an appropriate one for some children. Prior to establishing such a goal for a child, the State should exhaust all efforts to place that child in an adoptive home, with a legal guardian, or some other permanent arrangement outside the foster care system.

*Section 1356.21(h) Application of Permanency Hearing Requirements*

We have redesignated paragraph (e) as paragraph (h), revised it to recodify existing language, added four new provisions, and changed the name to *permanency hearing,* consistent with ASFA.

In redesignated paragraph (h)(2), language has been added to clarify that the exception to the requirement for permanency hearings applies only to children placed in a court-specified long-term, permanent *foster family home* placement (not in an institution or other group living arrangement). We also propose that a permanency hearing be conducted within three months of any change in a court-sanctioned long-term, permanent foster family care placement. Under the existing regulations, this exception also applies to children who were legally freed for adoption and placed in a preadoptive home. Consistent with the intent of the ASFA, children in such circumstances must be afforded the protection of permanency hearings until the adoption is finalized.

In new paragraph (h)(3) we describe the requirement of amended section 471(a)(15)(E) of the Act to hold a permanency hearing within 30 days of a judicial determination that reasonable efforts are not required. We have written the regulation to clarify that States need not hold a permanency hearing within 30 days if the court finds that reasonable efforts to prevent a child's removal from home are not required. A determination that reasonable efforts to prevent the child's removal are not required does not negate the State's obligation to make reasonable efforts to reunify the child. Only a judicial determination that reasonable efforts to reunify a child with his or her family are not required relieves the State of that obligation. Consequently, the permanency hearing must be held within 30 days of the determination that reasonable efforts to reunify the family are not required.

The statute allows the State to set an alternate permanency goal of placement in a permanent foster family home only if it demonstrates to the court a compelling reason not to place the child in an adoptive home, with a relative, or with a legal guardian. In new paragraph (h)(4), we follow the statute in requiring the State to document, to the State court, the compelling reason for placement in a permanent foster family home.

In new paragraph (h)(5) we clarify that if an administrative body, appointed or approved by a court, holds a permanency hearing, procedural safeguards extended to parents in court hearings must also be extended to the parents by the administrative body.

*Section 1356.21(i) Requirements for Filing a Petition to Terminate Parental Rights per Section 475(5)(E) of the Social Security Act*

In this section, we describe the new requirements at section 475(5)(E) of the Act for termination of parental rights (TPR). Congress passed this provision to compel States to quickly move those children for whom adoption is the appropriate plan to permanency. It is not intended to create a pool of legal orphans. Misinterpretation of the reasonable efforts requirements and other factors have resulted in children remaining in foster care for extended periods of time while the State agency works to make the child's home safe for his or her return. Congress passed this provision to end children's languishing in foster care.

In paragraph (i)(1), we follow the statute in describing under what conditions the State, through its authorized attorney, must file or join a petition for TPR in accordance with section 475(5)(E) of the Act.

In subparagraph (i)(1)(i), we propose the requirements for filing or joining a petition to terminate parental rights when a child has been in foster care for 15 of the most recent 22 months. We are proposing that in such situations, the State must file the petition for TPR by the end of the fifteenth month. We think that 15 months is more than an adequate amount of time for States to assess whether reunification is possible and if adoption is the most appropriate permanent plan.

In subparagraph (i)(1)(i)(A), in accordance with the statute, we propose that States must begin calculating when to file the petition for TPR beginning on the date the child enters foster care under section 475(5)(F).

In subparagraph (i)(1)(i)(B), we propose that for the purpose of implementing the TPR provision for children with multiple foster care placement episodes within the 22 month period, the State must use a cumulative method of calculating 15 months in foster care. For example, a child enters foster care on January 15, 2001 and is discharged from foster care three months later on April 15, 2001. He remains home for six months and then enters foster care again on October 15, 2001. The State must apply the TPR requirement at section 475(5)(E) with respect to this child based on the date he entered foster care for the first foster care episode, or January 15, 2001. If this child remains in foster care for another 12 months, the State will be obliged to comply with section 475(5)(E) on October 15, 2002, because this child will have been in foster care for a cumulative total of 15 out of the previous 22 months. However, the time line for conducting case reviews, permanency hearings, and providing time-limited reunification services for the subsequent foster care episode must be based on the date the child entered foster care for that episode, October 15, 2001.

If the child in the above scenario does not return to foster care until January 15, 2003, the State must begin calculating a new 15 out of 22 month period for applying section 475(5)(E), the other case review requirements, and providing time-limited reunification services as of January 15, 2003, because this most recent date of entry into foster care is more than 22 months after the date the child entered foster care during the prior episode.

In subparagraph (i)(1)(i)(C), we propose that the State not count time spent on trial home visits or runaway episodes when calculating 15 out of 22 months.

Finally, in subparagraph (i)(1)(i)(D), we propose that States need only apply section 475(5)(E) to a child once. If, when a child reaches 15 months in foster care, the State does not file a petition for TPR because one of the exceptions applies, or the State does file such a petition but the court does not sustain that petition, the State does not need to begin calculating another 15 out of 22 months in foster care for that child. We think the requirements at sections 471(a)(15)(C) and (E) and 475(1)(E) of the Act regarding reasonable efforts to make and finalize alternate permanency placements and the requirements at section 475(5)(C) of the Act regarding permanency hearings

provide children sufficient protections with respect to achieving permanency, thereby removing the need to require multiple applications of section 475(5)(E) of the Act. However, this does not preclude the State from filing, or the court from ordering, a petition for TPR upon later review if the permanency plan has not been achieved.

In subparagraph (i)(1)(ii), we propose that, once a court of competent jurisdiction (this could be the court that has responsibility for hearing child welfare dependency cases) determines that a child is an abandoned infant, the State has up to 60 days to file a petition for termination of parental rights. We chose 60 days because this time frame allows the State ample time to hold a permanency hearing, if adoption is not established as the permanency goal at the hearing in which the child is determined to be an abandoned infant, and to complete the necessary procedures associated with filing a petition for termination of parental rights. States have asked if we intend to provide a definition of or parameters for the definition of ''abandoned infant.'' The statute specifically provides that authority to the States. If a State already has a statutory definition of ''abandonment,'' it is not necessary to enact statutory language specific to abandoned infants.

In subparagraph (i)(1)(iii), we propose that the State agency file a petition to terminate parental rights within 60 days of a judicial determination that reasonable efforts to reunify the child and family are not required because the parent has been found by a court of competent jurisdiction to have committed one of the felonies listed at paragraph (b)(5)(ii). We believe that 60 days from the judicial determination that reasonable efforts to reunify the family are not required is ample time for the State to hold a permanency hearing, if adoption is not established as the permanency goal at the time the court determines that reasonable efforts are not required, and to complete the necessary procedures for filing a petition to terminate parental rights. We have attempted to interpret the requirements for filing a petition for TPR when the parent has committed certain felonies based on how we think these circumstances will present themselves in actual practice situations and to demonstrate the relationship between sections 471(a)(15)(D) and (E) of the Act and section 475(5)(E) of the Act. The following examples illustrate how the foregoing procedure would operate:

(1) A parent with two children has been convicted of one of the felonies enumerated at paragraph (b)(5)(ii) with respect to the older child. The State agency petitions the court for jurisdiction of the younger child and recommends that it not be required to make reasonable efforts to reunify the younger child with the parent because of the criminal conviction against the parent with respect to the older child, and it does not believe the parent can be rehabilitated. The court determines, in accordance with section 471(a)(15)(D) of the Act, that reasonable efforts to reunify the younger child with the parent are not required. In accordance with section 471(a)(15)(E) of the Act, the State must hold a permanency hearing within 30 days of the judicial determination that reasonable efforts to reunify the parent and child are not required. If adoption becomes the permanency goal, the State then has 30 days from the permanency hearing to file a petition to terminate parental rights.

(2) A parent is convicted of one of the felonies listed in paragraph (b)(5)(ii), serves his/her sentence and is released from prison, and subsequently comes to the attention of the State agency due to neglect. The State agency petitions the court for jurisdiction of the child and recommends a permanency plan of reunification because it believes the parent can be rehabilitated. The court's approval of reunification as the permanency plan is the compelling reason for the State not to file a petition to terminate parental rights in accordance with section 475(5)(E) of the Act. The State would then be obliged to hold a permanency hearing within 12 months of the child's entry into foster care.

In paragraph (i)(2), we follow the statute in identifying the exceptions to section 475(5)(E) of the Act. The decision to seek termination of parental rights is one of the most difficult to confront social workers and State agencies. Section 475(5)(E) of the Act is intended to be a catalyst for making critical assessments of and decisions regarding the viability and probability of reunification and for expediting the adoption process when it is clear that reunification can not occur and adoption is the appropriate plan. Congress did recognize that, despite a family's diligent efforts, 15 months may be an inadequate amount of time to make the home safe for the child's return. Therefore, it stipulated three exceptions to section 475(5)(E).

In paragraph (i)(2)(i), we propose that the State may exercise its statutory option to not apply section 475(5)(E) of the Act when a child is placed with a relative.

In paragraph (i)(2)(ii), we propose that the State does not have to apply section 475(5)(E) of the Act when there is a compelling reason, documented in the case file and available for court review, for determining that the application of section 475(5)(E) is not in the child's best interests. We have not defined the term ''compelling reason.'' Rather, we provide two broad examples:

(1) Adoption is not the appropriate plan for the child. This category could include cases where an older child expresses a wish not to be adopted and another permanency plan has been identified, a child has a significant bond with a non-family member who wishes to serve as legal guardian, the parent and child have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and another permanency plan has been identified, or the State agency and the Tribe have identified another permanency plan for the child; or,

(2) Insufficient grounds for filing such a petition exist. This category could include cases where the parent has made significant measurable progress and continues to make diligent efforts to complete the requirements of the case plan but needs more than 15 months to do so, the State agency is working with a non-offending biological parent to establish a permanent placement, or the State need not join an existing petition if it does not agree with the arguments presented in the petition or it believes that the petitioner would not serve as an appropriate placement option for the child.

In paragraph (i)(2)(iii), we follow the statute in proposing that the State need not apply section 475(5)(E) when the services identified in the case plan have not been provided.

We think it is critical that we assess States' implementation of this new provision for terminating parental rights, particularly the extent to which States make use of the exceptions discussed above. In the self-assessment completed for the child and family services reviews, States will be asked to document the extent to which they make use of the exceptions provided at section 475(5)(E) of the Act.

During the consultation process we learned of confusion regarding the requirements for the court with respect to the compelling reason. We are not interpreting the statutory language which requires that the documentation of the compelling reason be ''* * * available for court review * * *'' as a requirement that the court make a determination with respect to the compelling reason. To interpret this language as requiring a court

determination with respect to the compelling reason not to file a TPR would place an unnecessary additional burden on the State agency and the courts. We do anticipate, however, that the court will have the opportunity to review the compelling reason not to file for TPR as part of its ongoing oversight.

In paragraph (i)(3), we follow the statute in requiring States to concurrently identify, recruit, process, and approve a qualified adoptive family for the child when it files for or joins a petition to terminate parental rights to that child.

*Section 1356.21(j) Child of a Minor Parent in Foster Care*

In this section, we paraphrase statutory language found in section 475(4)(B) of the Act.

*Section 1356.21 (k) and (l) Removal From the Home of, and Living With, a Specified Relative*

In paragraphs (k) and (l), we propose a new policy regarding the requirements in sections 472(a) (1) and (4) of the Act regarding a child's removal from the home of a relative and the six month ''living with'' exception. The purpose of this new policy is to provide a clear statement about what constitutes a child's home or foster home for the purpose of title IV–E eligibility and to ensure equitable treatment of relative and non-relative foster care providers.

Eligibility for foster care under title IV–E, which is based on the child's eligibility for AFDC (as in effect in the State on July 16, 1996), derives from the title IV–A (AFDC) requirement that the child must be living in the home of a relative specified in section 406(a) of the Act (as in effect on July 16, 1996). To be eligible for title IV–E, the child must have been eligible for AFDC in the month court proceedings leading to removal were initiated or the month in which a voluntary placement agreement was signed. If the child had not been living with a specified relative in the month that removal proceedings were initiated or the voluntary agreement was signed, s/he must have been: (1) Living with such a relative at some time within the previous six months; and (2) AFDC eligible in the month of the initiation of court proceedings leading to removal or the voluntary agreement if the child had still been living with such relative in that month. Obviously, the child must continue to be eligible at the time of entry into foster care as well as throughout the placement.

In the absence of regulations specific to the foster care program, we have previously followed the AFDC regulations at 45 CFR 233.90(c)(l)(v)(B). Under the AFDC definition, the child's home is the family setting maintained or in the process of being established as evidenced by assumption and continuation of responsibility for the day-to-day care and control of the child by a relative with whom the child is living, if the relative is one of specified degree. Under current policy, if a parent who is eligible for AFDC leaves a child with another relative and does not return, the child's home is considered to have shifted to the home of the other relative. If legal custody or responsibility for placement and care is given to the State agency and the child remains with the relative, such transfer of responsibility does not constitute removal, and the child is therefore ineligible for title IV–E foster care. Thus, current policy does not recognize that there can be a temporary or indefinite stay with another relative without that relative's home becoming the child's home.

Under the proposed policy change, an otherwise eligible child who had been living with a parent or other specified relative within six months of the initiation of court proceedings or a voluntary placement agreement would meet the ''living with'' requirement under the title IV–E foster care program, regardless of the child's relationship to the interim caretaker and regardless of whether the interim caretaker becomes the subsequent foster care provider. The removal of the child from the home of a specified relative within the six-month period can be either a physical removal or a court-ordered removal of custody.

The following examples illustrate the operation of the proposed rule:

(1) An AFDC eligible parent leaves the child with either a relative or a non-relative caretaker for the weekend. Two months later the parent has not returned. The caretaker contacts the State agency which petitions the court to remove the child from the parent's custody due to neglect. The court grants the petition and the State agency assumes responsibility for placement and care. The agency licenses the same caretaker's home as a foster home and decides that the child should remain with this caretaker for the purpose of foster care. The AFDC eligible child had been living with the parent within six months of the initiation of court proceedings. Under the proposed regulation (paragraph (j)(1)(iii) of § 1356.21), the court's authorization of the removal of the child from the parent's custody would meet the eligibility requirements in section 472(a)(1) and the fact that the child had been living with the parent within six months of the date of petition would meet the eligibility requirements in section 472(a)(4)(B)(ii). Thus, the child, if otherwise eligible, would be eligible for title IV–E foster care.

(2) The same situation as in (1) above exists, but the caretaker waits seven months to contact the agency and the agency makes the caretaker the foster care provider. The child would not be eligible for title IV–E foster care, regardless of whether the caretaker is or is not a relative, because she/he had not been living with the parent within six months prior to the initiation of court proceedings pertaining to removal. Thus, the requirements of section 472(a)(4)(B) and subsection (j) of § 1356.21 would not be met.

(3) An AFDC eligible parent leaves the child with a relative and does not return. The relative, who meets the AFDC eligibility criteria, keeps the child for seven months, but then requests that the child be removed and placed in a foster home. The State agency petitions the court to remove the child from the parent's custody. The court grants the petition and gives the State agency responsibility for placement and care. Although the court removes custody from the parent, the child is physically removed from the caretaker relative's home and is placed in a licensed foster family home. The child is eligible for title IV–E foster care because she/he has been physically removed from the home of a specified relative within six months of initiation of court proceedings and was eligible for AFDC while living there, and the ''living with'' requirement has been met, thus meeting the requirements of section 472(a)(1) and 472(a)(4)(B).

(4) The same situation as in (3) above exists, but the child had been living with a non-relative caretaker for seven months prior to placement in foster care. She/he would be ineligible for title IV–E foster care since the ''living with'' requirement of section 472(a)(4)(B) would not have been met.

(5) A parent and child live in the home of the parent's mother, all of whom are eligible for AFDC. The parent leaves the home and does not return. Four months later, the child's grandmother contacts the State agency which petitions the court to remove the child from the parent's custody due to her neglect. The court grants the petition and gives the State agency responsibility for placement and care. The agency licenses the grandmother's home as a foster home and decides that the child should remain with this relative caretaker for the purpose of foster care. Since the child had been living with the parent within six months of the initiation of court proceedings

and the court authorized removal of the child from the parent's custody, this would meet the eligibility requirements in sections 472(a)(1) and 472(a)(4)(B) and the otherwise eligible child would be eligible for title IV–E foster care. If the grandmother had waited longer than six months to contact the agency, the child would have been ineligible for title IV–E foster care in her home. However, if the grandmother had waited longer than six months to contact the agency and the agency physically removed the child from the grandmother and placed him/her in another licensed home for the purpose of foster care, the child would be eligible for title IV–E foster care because the child's eligibility is then tied to the grandmother.

We think that the proposed policy which expands the circumstances in which a child may remain with a relative and be eligible for foster care accords with the statutory purposes. Foster care placement with relatives can provide continuity during the period of separation from the parent and enhance the possibility that a child will ultimately be able to return home.

*Section 1356.21 (m) and (n) Review of Payments and Licensing Standards; Foster Care Goals*

Paragraphs 1356.21(g) and (h) in the current regulation have been re-designated paragraphs (m) and (n), respectively.

*Section 1356.21(o) Notice and Opportunity To Be Heard*

In this paragraph, we implement the new requirement for the case review system at section 475(5)(G) of the Act that mandates giving notice to foster parents, preadoptive parents and relative caregivers of hearings and reviews and provides them an opportunity to be heard. While Congress recognizes foster parents, preadoptive parents, and relative caregivers as a valuable resource in obtaining information regarding the progress of a case and in permanency planning, it intended only to provide these individuals an opportunity to provide input regarding the children in their care. Congress did not intend giving notice of and an opportunity to be heard to be construed as providing these individuals standing as a party to the case, as stated in the statute and proposed regulation. This provision does not, however, preclude the court from awarding foster parents, preadoptive parents, and relative caregivers standing. Foster parents, preadoptive parents, and relative caregivers must receive notice of permanency planning hearings and reviews that occur while a child is placed with them. We do not intend to prescribe how this noticing should occur. We presume that a State will use the same procedure for giving notice to foster parents, relative caregivers, and preadoptive parents as it does for parents and others who are parties to the case.

*Section 1356.22 Implementation Requirements for Children Voluntarily Placed in Foster Care*

This section has been redesignated and revised by updating the statutory and regulatory provisions which include the requirements a State must meet in order to receive title IV-E funds for voluntary foster care placements. The ASFA requirements, including expedited termination of parental rights, apply to all children in foster care, regardless of whether the child entered as a result of a voluntary placement agreement.

*Section 1356.30 Safety Requirements for Foster Care and Adoptive Home Providers*

In paragraph (a), we propose that the State conduct or require criminal records checks for prospective foster and adoptive parents unless it elects to ''opt out'' of this provision as provided for at section 471(a)(20)(B) of the Act. Section 471(a)(20) applies to all foster parents, including those foster family homes that operate under the auspices of a child placing agency's license rather than their own license.

In paragraph (b), we propose that the State may not license or approve any prospective foster or adoptive parent, nor may the State claim Federal reimbursement for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that the prospective foster/adoptive parent has been convicted of a felony involving child abuse or neglect, other crimes against children, spousal abuse, or a violent crime.

In paragraph (c), we propose that the State may not license or approve any prospective foster or adoptive parent, nor may the State claim Federal reimbursement for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that the prospective foster/adoptive parent has, within the last five years, been convicted of a felony involving physical assault, battery, or a drug-related offense.

In paragraph (d), we follow the statute in describing the means by which the State can elect not to conduct or require criminal records checks: a letter from the Governor to the Secretary indicating the State has made such an election or through State legislation. States should note that, because of the statutory connection to licensing and reimbursement for foster care maintenance and adoption assistance expenditures, conducting criminal records checks is an allowable title IV-E administrative expenditure.

We used the language ''conduct or require'' with respect to the State agency's role in obtaining criminal records checks because we do not intend to hold the State responsible for conducting criminal records checks on the employees of the child placing agencies with which it contracts for foster family placements. However, the State must have documentation that these checks have occurred before claiming title IV-E reimbursement for children placed with contractors.

In paragraph (e), we propose that, for all foster care placements and prospective adoptive homes where a criminal records check of the caretaker(s) has not been performed, the State must document, in the licensing file of that provider, the process or procedures it has undertaken to meet the safety requirements at section 475(1) of the Act.

This requirement applies to all foster family homes, adoptive homes, relative caregivers, and the staff of child care institutions. Section 475(1), as amended by the ASFA, requires States to ensure the safety of foster care and adoptive placements. The State may claim the cost of conducting this procedure as a title IV–E administrative expenditure, as it would if it elected to conduct criminal records checks.

During the consultative process we learned that there is confusion in the field regarding the ''final approval'' language in section 471(a)(20) of the Act. Final approval means full licensure or approval. Furthermore, States cannot claim Federal financial participation (FFP) for foster care maintenance and adoption assistance payments until all title IV–E eligibility criteria are met. Criminal records checks are a title IV–E eligibility requirement because licensure, in part, is predicated on such checks. Therefore, the State may not claim FFP until the criminal record

check has been completed and the foster or adoptive parent has final approval. The same holds true in those situations where the State chooses to comply with section 475(1) through some procedure or process other than a criminal records check.

We were asked during the consultation process if the ASFA requires criminal records checks at the State level, Federal level, or both. There is no statutory language that would suggest an answer to this question. Therefore, the State may exercise its discretion in choosing whether to conduct criminal records checks at the State or Federal level.

*Section 1356.71 Federal Review of the Eligibility of Children in Foster Care and the Eligibility of Foster Care Providers in Title IV–E Programs*

Although Federal standards and guidelines for title IV-E eligibility reviews have been previously issued in different forms of ACF policy memoranda, this is the first time they have been published in accordance with the rulemaking process. We have taken the opportunity to review these standards in the context of ACF's overall review strategy, and determined that some changes are warranted. The following paragraphs highlight the significant changes which we are proposing in this section, and the underlying rationales.

*Section 1356.71(b) Composition of Review Team and Preliminary Activities Preceding an On-Site Review*

In paragraph (b)(1), we propose that State agency staff participate in eligibility reviews as part of the review team. Our experience when conducting pilot reviews in conjunction with State staff proved to be an excellent example of how Federal and State staff can work together as partners. The experience of reviewing case records to ascertain whether appropriate documentation was in the record was often as useful and enlightening to State staff as it was to their Federal counterparts. As a result of their participation, State representatives could more easily pinpoint deficiencies and plan corrective action accordingly. Federal staff were able to provide immediate technical assistance to State staff as issues presented themselves, thereby increasing their knowledge base.

Paragraph (b)(2) proposes that the State agency provide ACF with the complete payment history for each of the 88 sample and oversample cases (or 165 cases, if a second review is warranted) prior to the on-site review. This information will enable ACF at the exit conference to provide the State agency with preliminary estimates of the potential disallowance (if any) of title IV–E funds based on the number of cases initially determined to be ineligible. Access to this information early in the review process will also prevent later delays in the calculation of final disallowances and the preparation of the final report.

*Section 1356.71(c) Sampling Guidance and Conduct of Review*

We propose that data reported in the Adoption and Foster Care Analysis and Reporting System (AFCARS) and transmitted to ACF by State agencies for the most recent reporting period be used by ACYF statisticians to select the title IV–E foster care sample of children to be reviewed. The ''period of review'' will coincide with the AFCARS reporting period, which is currently six months in duration. This procedure will reduce the burden on States (in the past, some States had elected to draw their own samples), promote uniformity in sample selection, and utilize the AFCARS database in a practical and beneficial way. If the AFCARS data for the most recent reporting period are not available or are deficient, an alternative sampling frame will be selected in conjunction with the State agency for the period of time comparable to the most recent AFCARS reporting period.

In determining the sample size for this new review system, we elected not to rely on or replicate that used in the prior review system, 50 cases. We originally planned to use a ''discovery'' sampling methodology with respect to the initial review. However, by definition, this would have resulted in a State being in non-compliance if one or more cases were found to be ineligible by the review team.

Therefore, after deliberating over various combinations of sample sizes and critical numbers of ineligible cases, a more reasonable ''acceptance'' sampling methodology requiring a sample size of 80 (plus a 10 percent oversample of eight cases) with a critical number of eight (ineligible cases) is proposed based on the following information.

According to Appendix D: Table for Determining Minimum Sample Size and for Evaluating Attributes Sample Results in *Practical Statistical Sampling for Auditors* by Arthur J. Wilburn (A copy is reprinted at Attachment B at the end of this Preamble with permission of the publisher), there is an 88 percent probability that the population ineligibility case error rate (case error rate) in a universe size that exceeds 1000 is less than 15 percent when the number of ineligible cases is less than or equal to eight. (Wilburn's text is found in a 1984 publication by Marcel Dekker Inc. called STATISTICS: Textbooks and Monographs series, volume 52). This probability is sufficiently high for ACF to propose that a case error rate of less than 15 percent be utilized as the standard by which States will be determined to be in compliance. We are proposing a higher case error rate than that previously used in title IV–E reviews (the previous standard was a 10 percent error rate) in recognition of the fact that States will need some time to modify procedures and/or implement system modifications to comply with the proposal requiring documentation of judicial determinations of ''reasonable efforts'' to reunify a child and family, to make and finalize a permanent placement when the case plan goal is not reunification, and that reasonable efforts to prevent a removal or to reunify a child with his or her family are not required. We are proposing that, after a three-year transition period, the case error rate threshold revert to less than 10 percent, with the critical number of ineligible cases equal to four in a sample of 80 cases. Under the proposed rule, States in which cases were determined to be ineligible would be subject to disallowances equivalent to the amount of payments associated with those cases for the entire period of time they have been determined to be ineligible.

We also propose that States in which ACF has made a final determination of substantiated ineligibility for nine or more cases undergo a second eligibility review following the completion of their program improvement plans (see paragraph (i) of this section). It is anticipated that the successful implementation of the program improvement plan will contribute significantly to the correcting of deficiencies identified during the first review and, as a consequence, result in smaller disallowances. Upon completion of the subsequent review consisting of 150 cases, we propose that disallowances be made based on an extrapolation from the sample to the universe of payments made during the period reviewed. (This larger sample size is necessary in order to accommodate the extrapolation procedure and ensure its statistical validity). Critical values that will determine whether an extrapolated disallowance will be assessed against the State will be the same as those utilized in previous eligibility reviews to determine whether a stage two review would be conducted, that is, both the

case and dollar error rates will have to exceed 10 percent. (Case and dollar error rates are determined by dividing the number of cases in the sample, and the total of their associated payments, by the number of ineligible cases and the total of their associated payments, respectively). If either or both of these error rates is less than 10%, there will be no extrapolation and the disallowance amount will be computed only on the basis of payments associated with ineligible cases for the period of time they have been determined to be ineligible.

*Section 1356.71(e) Review Instrument*

The eligibility review checklist which has been used in past on-site reviews has undergone significant modification in order to accommodate policy changes reflected in this proposed rule. It has been repeatedly tested during pilot reviews conducted by ACF in fiscal years 1995 through 1998.

State agencies and ACF Regional Offices participating in these reviews were asked to evaluate the checklist and provided comments on its format, language, and content. ACF will make available to the States copies of the checklist upon publication of the final rule.

*Section 1356.71(f) Eligibility Determination—Child*

In this paragraph, we propose that the case record contain proper and sufficient documentation, in accordance with paragraph (d)(1) to verify a child's eligibility.

*Section 1356.71(g) Eligibility Determination—Provider*

In order to ascertain that children are being properly placed in foster care provider facilities which are in compliance with statutory requirements contained in sections 472(c), 471(a)(20), and 475(1)(A) of the Act, we propose that the State agency make available pertinent licensing files to the review team. These files must contain the licensing history, including documentation in the form of letters of approval or certificates of licensure/approval, and substantiate that for each case being reviewed the facility(ies) in which the child is placed is(are) licensed or approved (during the period of care under review) by the agency in the State responsible for this activity. The licensure or approval must be in accord with standards established by the State which are consistent with recommended standards of national organizations for the licensure of foster homes and institutions and include documentation that safety requirements per § 1356.30 have been met. If the licensing file does not contain sufficient information to support a child's placement in a facility, as determined by the reviewer, then the State agency may provide supplemental information via access to other resources, for example, a computerized database. Failure to provide appropriate documentation supporting a child's placement in a properly licensed or approved facility will result in a finding of ineligibility for the case for a specified period of time. In determining the period of ineligibility, any foster care home or facility that is licensed for a portion of a month will be considered to have been licensed that entire month.

*Section 1356.71(h) Standards of Compliance*

In this section, we propose definitions of ''substantial compliance'' and ''non-compliance'' so that ACF will be able to make this determination, and so that State agencies will know beforehand the standard to which they must adhere. When discussing what a reasonable standard of compliance might be for States to meet, we considered retaining a 10 percent error rate which had been the standard used in earlier reviews to determine whether or not a State had to undergo a stage two review. If we apply this standard in future reviews where we plan to examine a sample of 80 foster care cases, it means that, in accordance with ''acceptance'' sampling methodology, a State's case records could contain no more than four errors (ineligible cases) if it is to be in ''substantial compliance'' with statutory and regulatory eligibility requirements. This determination, in conjunction with the recognition that States in the future will need to document judicial determinations of ''reasonable efforts'' to reunify a child and his/her family and to make and finalize alternate permanent placements, leads us to believe that maintenance of the 10 percent error rate for the initial review would be too stringent under these circumstances. Therefore, we propose as a new standard an acceptable error rate of less than 15 percent, thus permitting a State to have as many as eight errors (ineligible cases) within a sample of 80 cases and still be in ''substantial compliance'' for its initial review. However, we propose that three years after the date the final regulation becomes effective, this error rate decrease to 10 percent based on the expectation that States will have had sufficient time to modify their procedures to accommodate the new requirements regarding the documentation of judicial determinations of ''reasonable efforts'' to reunify the family and to make and finalize alternate permanent placements.

*Section 1356.71(i) Program Improvement Plans*

We propose in paragraph (i)(1) to require that States determined not to be in substantial compliance develop a program improvement plan designed to correct the areas of non-compliance, and that it be developed jointly between the State and ACF in keeping with the desire to promote State and Federal partnerships through the reviews. Under the former title IV–E review process, ineligible title IV–E payments were identified and, if claimed by States, were subsequently disallowed. While this procedure, in most cases, allowed for the recovery of funds by ACF, it did not necessarily lead to correcting the deficiencies identified by reviewers. We propose that the program improvement plan identify action steps to be taken by the State to correct deficiencies identified by the review team, and that each action step have a projected completion date which will not extend more than one year from the date the program improvement plan is approved by ACF. (When a legislative change is necessary to bring a State into substantial compliance, an extension of the one-year time frame may be negotiated between the State agency and ACF). This will assure that proper attention is given to correcting deficiencies in a timely manner. In this way, by identifying the problems, proposing solutions, and implementing corrective action, we expect to remove the basis for future adverse findings of non-compliance.

Approval of the program improvement plan means that ACF is in agreement with the information provided within it, and does not mean that a State can be assured of being in ''substantial compliance'' following a subsequent review of its case records.

In paragraph (i)(2), we propose that the State agency submit a program improvement plan to ACF within 60 days after receiving notification that it is not in substantial compliance. We think a period of 60 days is adequate for a program improvement plan to be developed, since the on-site review will have identified the reasons for disallowing certain cases, and it is our intention to convey this information to the State agency verbally at the exit conference as well as in the letter of notification following the review. However, if the State agency and ACF need more time to submit and/or review additional documentation in support of

cases determined to be ineligible, a 30-day extension may be granted to accommodate this task. We would appreciate comments as to whether the time frame for the joint development of the program improvement plan is adequate as proposed.

*Section 1356.71(j) Disallowance of Funds*

We propose that the amount of funds to be disallowed be determined by the extent to which a State is not in compliance with eligibility requirements. A State which is in ''substantial compliance'' would have its disallowance calculated on the basis of the number of actual cases reviewed and found to be ineligible. We propose that the disallowance be computed on the basis of payments associated with the ineligible cases for the entire period of time that each case has been determined to be ineligible. Thus if, for example, a case was deemed ineligible on the basis that a judicial determination regarding ''contrary to the welfare'' had not been properly made at the time a child was removed from home, all title IV–E payments which were claimed for this case from the time of removal would be disallowed. For States found to be in ''non-compliance'' after the first review (i.e., not in substantial compliance), we propose that they have a disallowance calculated on the same basis, but also be required to develop and implement a program improvement plan and undergo a second review.

Since the implementation and completion of a program improvement plan may take as long as one year, we propose that a second review be conducted during the AFCARS reporting period which immediately follows the latest projected completion date approved in the program improvement plan. For example, if there were three action steps outlined in a program improvement plan with completion dates of January 1, April 1 and July 1, 1998, the second review must be conducted sometime between October 1, 1998 and March 31, 1999. This should allow sufficient time for the planning and preparation that needs to take place by Federal and State agencies prior to an on-site review, as well as provide an opportunity for the review team to examine cases which will have been impacted by a State's corrective action. The review will provide a basis for determining if a State has successfully corrected deficiencies identified in the program improvement plan and continued to meet all other eligibility requirements since the first review was conducted. If the review team determines that a State is in ''substantial compliance'', a second disallowance will be calculated on the basis of actual cases reviewed and found to be ineligible. We propose that this disallowance be computed on the basis of payments associated with the cases from the point in time from which they have been determined to be ineligible.

If a State remains in non-compliance, we propose that the disallowance be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period under review (currently six months). Thus a State should be able to forestall a potentially significant disallowance by focusing its efforts on improving specified aspects of operations identified as needing strengthening. However, in any event, we anticipate that disallowances resulting from the second review of cases made in States determined to be in non-compliance will be smaller than those taken in the past by ACF. This is due to a number of reasons: (1) the required implementation of a program improvement plan for States that are in non-compliance; (2) the provision of technical assistance (upon request) to a State agency by ACF; (3) the State agency's own efforts to correct the deficiencies identified in its program improvement plan; and (4) the fact that any extrapolated disallowance will be for a six-month period of time (corresponding with the reporting period of AFCARS unless, or until such time as, it changes), rather than a one-year period of time as has been the case in past years. More important than the monetary benefits that may accrue to States from ACF's new monitoring approach, however, is the recognition that the protections afforded children under title IV–E are likely to be provided and subsequently documented by States in the future in a more consistent manner.

In paragraph (j)(3), we specify that the State agency will be liable for applicable interest on the amount of funds disallowed by the Department, in accordance with regulations at 45 CFR 30.13.

## XII. Impact Analysis

*Executive Order 12866*

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking presents a revised framework for reviews of Federally-assisted child and family services and for reviews of related eligibility determinations for Federally-assisted foster care programs. The revised review procedures for these programs were developed in response to concerns expressed by the Congress and the States regarding the effectiveness of the current review procedures and the benefits to the States relative to the efforts required of them. ACF had begun revising the review procedures when Congress, through the Social Security Amendments of 1994 (Public Law 103–432), mandated changes in the Federal monitoring of State child and family service programs funded under titles IV–B and IV–E. In conformance with this legislation, we are proposing regulations for child and family service programs which will:

- determine whether these programs are in substantial conformity with applicable State plan requirements and Federal regulations;
- develop a timetable for conformity reviews; and
- specify the State plan requirements subject to review, and the criteria to be used in determining a State's substantial conformity with these requirements.

*Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant number of small entities'' an analysis must be prepared describing the rule's impact on small entities. ''Small entities'' are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. These regulations do not affect small entities because they are applicable to State agencies that administer the child and family services programs and the foster care maintenance payments program.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more. We anticipate that one-third (17) of the States will be reviewed under both review procedures

each year, for an annual cost of $225,420. This estimate was based on the burden hours associated with each information collection identified in the ''Paperwork Reduction Act'' section. We did not include State travel costs in the estimate because these costs will vary significantly based on how a State chooses to structure its participation in the reviews.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This NPRM contains information collection requirements in certain sections which the Department has submitted to OMB for its review.

The sections that contain information collection requirements are: 1355.33(b) on State self-assessments, and (c) on submission of data; 1355.35(a) on program improvement plan; 1355.38 (b) and (c) on corrective action plans; and 1356.71(i) on program improvement plan. Section 1356 on State plan document and submission requirements (OMB Number 0980–0141) and case plan requirements (OMB Number 0980–0140) contains information collections, however, these are approved collections and no changes are being made at this time.

The respondents to the information collection requirements in this rule are State agencies. The Department needs to require this collection of information: (1) in order to review States' compliance with the provisions of the statute and implementing regulations of title IV–E of the Act; and (2) effectively implement the statutory requirement at section 1123A of the Act which requires that regulations be promulgated for the review of child and family services programs, and foster care and adoption assistance programs, for conformity with State plan requirements.

The frequency of State responses will vary. It is known that each State will have to do self assessments at least once every three years. States not in substantial conformity must submit a program improvement plan. Case plans for title IV–E must be done in accordance with the case review system. The following table provides annual estimates of the burden hours associated with each collection.

| Collection | Number of respondents | Number of responses | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| 1355.33(b)—State Agency Self Assessment | 17—State Agencies Administering the Title IV–B & E Programs. | 1 | 240 | 4,080 |
| 1355.33(c)—On-Site Review | 17—State Agencies Administering the Title IV–B & E Programs. | 35 | 8 | 4,760 |
| 1355.35(a)—Program Improvement Plan | 17—State Agencies Administering the Titles IV–B & IV–E Programs. | 1 | 80 | 1,360 |
| 1355.38 (b) and (c)—Corrective Action Plan | 5—State Agencies Administering Titles IV–B and IV–E. | 1 | 80 | 400 |
| 1356.71(i)—Program Improvement Plan | 17—State Agencies Administering the Title IV–E Program. | 1 | 63 | 1,071 |

When the Department publishes its pre-clearance Notice requesting approval of this information collection under the Paperwork Reduction Act, we will publish, in their entirety, the self-assessment and the on-site review instruments.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer.

**List of Subjects**

*45 CFR Part 1355*

Adoption and foster care, child welfare, grant programs—social service programs.

*45 CFR Part 1356*

Adoption and foster care, administrative costs, fiscal requirements (title IV–E).

**Attachment A To The Preamble (For discussion on § 1355.34)—Index of Performance Indicators to Outcomes**

1. *Safety Outcome 1:* Children are, first and foremost, protected from abuse and neglect, and are safely maintained in their homes whenever possible.

*Performance Indicators*

- Services to family to protect child(ren) in home.
- Current risk of harm to child.
- Child deaths due to maltreatment.

2. *Safety Outcome 2:* The risk of harm to children will be minimized.

*Performance Indicators*

- Timeliness of initiating investigations.
- Repeat maltreatment.
- Current risk of harm to child.
- Child maltreatment in foster care.
- Child deaths due to maltreatment.

3. *Permanency Outcome 1:* Children will have permanency and stability in their living situations.

*Performance Indicators*

- Foster care re-entries.
- Stability of foster care placement.
- Unachieved permanency goals.
- Independent living services for youths >16 y.o.
- Use of long term foster care.
- Effectiveness of adoption services.

4. *Permanency Outcome 2:* The continuity of family relationships, culture and connections will be preserved for children.

*Performance Indicators*

- Proximity of current placement.
- Placement with siblings.
- Visiting with parents and siblings in foster care.

- Cultural connections and preservation.
- Relative placement.
- Current relationship of child in care with parents.

5. *Well-Being Outcome 1:* Families will have enhanced capacity to provide for their children's needs.

*Performance Indicators*

- Needs and services of child, parents, foster parents.
- Child and family involvement in case planning.
- Current relationship of child in care with parents.
- Worker visits with child.
- Worker visits with parents.

6. *Well-Being Outcome 2:* Children will receive appropriate services to meet their educational needs.

*Performance Indicators*

- Educational needs of the child.

7. *Well-Being Outcome 3:* Children will receive adequate services to meet their physical and mental health needs.

*Performance Indicators*

- Physical health of the child.
- Mental health of the child.

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**Appendix B to the Preamble discussion on S1356.71(c)**
**Probability That Error Rate in Universe**
**Size of Over 1,000 is Less Than:***

| Size of Sample Examined | Number of Errors Found | 1% | 2% | 3% | 4% | 5% | 6% | 7% | 8% | 9% | 10% | 12% | 14% | 16% | 18% | 20% |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 40 | 0 | 33.10 | 55.43 | 70.43 | 80.46 | 87.15 | 91.58 | 94.51 | 96.44 | 97.70 | 98.52 | 99.40 | 99.76 | 99.91 | 99.96 | 99.99 |
| | 1 | 6.07 | 19.05 | 33.85 | 47.90 | 60.10 | 70.10 | 77.99 | 84.06 | 88.60 | 91.95 | 96.12 | 98.20 | 99.19 | 99.65 | 99.85 |
| | 2 | 0.75 | 4.57 | 11.78 | 21.45 | 32.33 | 43.35 | 53.75 | 63.06 | 71.06 | 77.72 | 87.39 | 93.24 | 96.55 | 98.31 | 99.21 |
| | 3 | 0.07 | 0.82 | 3.14 | 7.48 | 13.82 | 21.73 | 30.63 | 39.93 | 45.08 | 57.69 | 72.32 | 83.02 | 90.16 | 94.58 | 97.15 |
| | 4 | 0.01 | 0.12 | 0.67 | 2.10 | 4.80 | 8.96 | 14.54 | 21.32 | 28.97 | 37.10 | 53.31 | 67.62 | 78.90 | 87.02 | 92.44 |
| | 5 | | 0.01 | 0.12 | 0.49 | 1.39 | 3.09 | 5.82 | 9.67 | 14.65 | 20.63 | 34.64 | 49.58 | 63.46 | 75.04 | 83.87 |
| | 6 | | | 0.02 | 0.10 | 0.34 | 0.91 | 1.99 | 3.76 | 6.39 | 9.95 | 19.80 | 32.45 | 46.31 | 59.71 | 71.41 |
| 50 | 0 | 39.50 | 63.58 | 78.19 | 87.01 | 92.31 | 95.47 | 97.34 | 98.45 | 99.10 | 99.49 | 99.83 | 99.95 | 99.98 | 100.00 | 100.00 |
| | 1 | 8.94 | 26.42 | 44.47 | 59.95 | 72.06 | 81.00 | 87.35 | 91.73 | 94.68 | 96.62 | 98.69 | 99.52 | 99.83 | 99.94 | 99.98 |
| | 2 | 1.38 | 7.84 | 18.92 | 32.33 | 45.95 | 58.38 | 68.92 | 77.40 | 83.95 | 88.83 | 94.87 | 97.79 | 99.10 | 99.65 | 99.87 |
| | 3 | 0.16 | 21.78 | 26.28 | 13.91 | 23.96 | 35.27 | 46.73 | 57.47 | 66.97 | 74.97 | 86.55 | 93.30 | 96.88 | 98.64 | 99.43 |
| | 4 | 0.02 | 0.32 | 1.68 | 4.90 | 10.36 | 17.94 | 27.10 | 37.11 | 47.23 | 56.88 | 73.21 | 84.72 | 91.92 | 96.01 | 98.15 |
| | 5 | | 0.05 | 0.37 | 1.44 | 3.78 | 7.76 | 13.51 | 20.81 | 29.28 | 38.39 | 56.47 | 71.86 | 88.23 | 90.71 | 95.20 |
| | 6 | | 0.01 | 0.07 | 0.36 | 1.18 | 2.89 | 5.85 | 10.19 | 15.96 | 22.98 | 39.35 | 56.16 | 70.81 | 81.99 | 89.66 |
| 60 | 0 | 45.28 | 70.25 | 83.92 | 91.37 | 95.39 | 97.56 | 98.72 | 99.33 | 99.65 | 99.82 | 99.95 | 99.99 | 100.00 | 100.00 | 100.00 |
| | 1 | 12.12 | 33.81 | 54.08 | 69.78 | 80.85 | 88.21 | 92.91 | 95.92 | 97.58 | 98.62 | 99.57 | 99.87 | 99.96 | 99.99 | 100.00 |
| | 2 | 2.24 | 11.87 | 26.85 | 43.24 | 58.26 | 70.60 | 80.02 | 86.83 | 91.54 | 94.70 | 98.04 | 99.32 | 99.79 | 99.93 | 99.98 |
| | 3 | 0.31 | 3.22 | 10.57 | 21.87 | 35.27 | 48.87 | 61.27 | 71.71 | 80.00 | 86.26 | 93.99 | 97.59 | 99.10 | 99.69 | 99.90 |
| | 4 | | 0.73 | 3.40 | 9.17 | 18.03 | 29.11 | 41.15 | 52.98 | 63.73 | 72.90 | 86.12 | 93.57 | 97.27 | 98.93 | 99.61 |
| | 5 | | 0.13 | 0.91 | 3.25 | 7.87 | 14.98 | 24.20 | 34.74 | 45.71 | 56.28 | 74.10 | 86.23 | 93.35 | 97.05 | 98.79 |
| | 6 | | | 0.21 | 0.99 | 2.97 | 6.71 | 12.50 | 20.20 | 29.37 | 39.36 | 59.08 | 75.29 | 86.50 | 93.27 | 96.92 |
| 70 | 0 | 50.52 | 75.69 | 88.14 | 94.26 | 97.24 | 98.69 | 99.38 | 99.71 | 99.86 | 99.94 | 99.99 | 100.00 | 100.00 | 100.00 | 100.00 |
| | 1 | 15.53 | 40.96 | 62.47 | 77.51 | 87.03 | 92.81 | 96.10 | 97.93 | 98.92 | 99.45 | 99.86 | 99.97 | 99.99 | 100.00 | 100.00 |
| | 2 | 3.34 | 16.50 | 35.08 | 53.44 | 68.63 | 79.87 | 87.59 | 92.60 | 95.72 | 97.58 | 99.28 | 99.80 | 99.95 | 99.99 | 100.00 |
| | 3 | 0.54 | 5.19 | 15.87 | 30.71 | 46.61 | 61.15 | 73.07 | 82.10 | 88.53 | 92.88 | 97.48 | 99.19 | 99.76 | 99.93 | 99.98 |
| | 4 | 0.07 | 1.32 | 5.93 | 14.85 | 27.21 | 41.13 | 54.77 | 66.80 | 76.61 | 84.12 | 93.36 | 97.51 | 99.16 | 99.74 | 99.92 |
| | 5 | | 0.28 | 1.86 | 6.12 | 13.72 | 24.27 | 36.58 | 49.24 | 61.06 | 71.28 | 85.94 | 93.92 | 97.64 | 99.17 | 99.73 |
| | 6 | | 0.50 | 0.50 | 2.18 | 6.04 | 12.61 | 21.75 | 32.70 | 44.40 | 55.82 | 74.98 | 87.57 | 94.50 | 97.81 | 99.20 |
| | 7 | | | 0.12 | 0.68 | 2.34 | 5.80 | 11.54 | 19.54 | 29.33 | 40.12 | 61.33 | 78.12 | 89.04 | 95.06 | 98.00 |
| | 8 | | | 0.02 | 0.19 | 0.80 | 2.38 | 5.49 | 10.54 | 17.59 | 26.37 | 46.66 | 66.03 | 80.85 | 90.36 | 95.63 |
| | 9 | | | | 0.05 | 0.25 | 0.88 | 2.36 | 5.14 | 9.60 | 15.86 | 32.88 | 52.46 | 70.10 | 83.23 | 91.55 |
| 80 | 0 | 55.25 | 80.14 | 91.26 | 96.18 | 98.35 | 99.29 | 99.70 | 99.87 | 99.95 | 99.98 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| | 1 | 19.08 | 47.70 | 69.62 | 83.46 | 91.40 | 95.68 | 97.89 | 98.99 | 99.53 | 99.78 | 99.96 | 99.99 | 100.00 | 100.00 | 100.00 |
| | 2 | 4.66 | 21.56 | 43.19 | 62.52 | 76.94 | 86.56 | 92.50 | 95.96 | 97.89 | 98.93 | 99.74 | 99.94 | 100.00 | 100.00 | 100.00 |
| | 3 | 0.87 | 7.69 | 21.93 | 39.84 | 57.16 | 71.42 | 81.50 | 89.11 | 94.69 | 96.47 | 98.99 | 99.74 | 99.99 | 99.99 | 100.00 |
| | 4 | 0.13 | 2.24 | 9.28 | 21.64 | 37.11 | 52.83 | 66.67 | 77.65 | 85.69 | 91.20 | 97.01 | 99.10 | 99.94 | 99.94 | 99.99 |
| | 5 | | 0.55 | 3.33 | 10.12 | 21.08 | 34.78 | 49.18 | 62.50 | 73.66 | 82.31 | 92.91 | 97.52 | 99.76 | 99.78 | 99.95 |
| | 6 | | 0.11 | 1.03 | 4.12 | 10.53 | 20.39 | 32.73 | 46.03 | 58.79 | 69.96 | 58.92 | 94.30 | 99.23 | 99.36 | 99.82 |
| | 7 | | | 0.28 | 1.47 | 4.66 | 10.68 | 19.64 | 30.89 | 43.24 | 55.44 | 75.84 | 88.77 | 97.97 | 98.36 | 99.47 |
| | 8 | | | | 0.47 | 1.84 | 5.02 | 10.65 | 18.88 | 29.21 | 40.73 | 63.29 | 80.54 | 95.44 | 96.37 | 98.69 |
| | 9 | | | | 0.13 | 0.65 | 2.13 | 5.24 | 10.51 | 18.10 | 27.66 | 49.61 | 69.88 | 84.34 | 92.88 | 97.13 |
| | 10 | | | | | 0.21 | 0.82 | 2.35 | 5.36 | 10.31 | 17.34 | 36.86 | 57.45 | 75.28 | 87.43 | 94.35 |
| 90 | 0 | 59.53 | 83.77 | 93.55 | 97.46 | 99.01 | 99.62 | 99.85 | 99.95 | 99.98 | 99.99 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| | 1 | 22.73 | 53.96 | 75.60 | 87.95 | 94.33 | 97.43 | 98.87 | 99.51 | 99.80 | 99.92 | 99.97 | 99.98 | 100.00 | 100.00 | 100.00 |
| | 2 | 6.19 | 26.88 | 50.90 | 70.30 | 83.36 | 91.20 | 95.56 | 97.85 | 98.99 | 99.54 | 99.91 | 99.92 | 99.99 | 100.00 | 100.00 |
| | 3 | 1.29 | 10.68 | 28.49 | 48.74 | 66.42 | 79.55 | 88.26 | 93.59 | 96.65 | 98.31 | 99.61 | 99.69 | 99.93 | 99.99 | 100.00 |
| | 4 | 0.22 | 3.48 | 13.41 | 29.20 | 47.03 | 63.36 | 76.31 | 85.55 | 91.61 | 95.35 | 98.72 | 99.05 | 99.93 | 99.98 | 100.00 |
| | 5 | | 0.96 | 5.39 | 15.19 | 29.48 | 45.60 | 60.84 | 73.52 | 83.05 | 89.68 | 96.63 | 97.58 | 99.77 | 99.97 | 99.99 |
| | 6 | | 0.23 | 1.88 | 6.92 | 16.39 | 29.53 | 44.35 | 58.69 | 71.05 | 80.75 | 92.60 | 94.70 | 99.31 | 99.90 | 99.96 |
| | 7 | | | 0.57 | 2.79 | 8.13 | 17.23 | 29.45 | 43.22 | 50.81 | 68.85 | 85.99 | 89.83 | 98.27 | 99.70 | 99.87 |
| | 8 | | | 0.16 | 1.00 | 3.62 | 9.08 | 17.81 | 24.27 | 42.20 | 55.13 | 76.65 | 82.61 | 96.21 | 99.22 | 99.65 |
| | 9 | | | | 0.32 | 1.45 | 4.32 | 9.83 | 18.21 | 29.03 | 41.25 | 65.05 | 73.09 | 92.64 | 98.20 | 99.14 |
| | 10 | | | | | 0.53 | 1.89 | 4.97 | 10.43 | 18.48 | 28.75 | 52.23 | 61.82 | 87.13 | 96.34 | 98.10 |
| 100 | 0 | 63.40 | 86.74 | 95.25 | 98.31 | 99.41 | 99.80 | 99.93 | 99.98 | 99.99 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| | 1 | 26.42 | 59.67 | 80.54 | 91.28 | 96.29 | 98.48 | 99.40 | 99.77 | 99.91 | 99.97 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| | 2 | 7.94 | 32.33 | 58.02 | 76.79 | 88.17 | 94.34 | 97.42 | 98.87 | 99.52 | 99.81 | 99.97 | 100.00 | 100.00 | 100.00 | 100.00 |
| | 3 | 1.84 | 14.10 | 35.28 | 57.05 | 74.22 | 85.70 | 92.56 | 96.33 | 98.27 | 99.22 | 99.86 | 99.98 | 100.00 | 100.00 | 100.00 |

*This chart is found at Appendix D: Table for Determining Minimum Sample Size and for Evaluating Attributes Sample Results in *Practical Statistical Sampling for Auditors*, by Author J. Wilburn. It is printed with permission of the publisher, *Marcel Dekkes, Inc.*

BILLING CODE 4184–01–C

(Catalog of Federal Domestic Assistance Program Numbers 93.658, Foster Care Maintenance; 93.659, Adoption Assistance and 93.645, Child Welfare Services—State Grants)

Dated: April 30, 1998.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: July 8, 1998.

**Donna E. Shalala,**

*Secretary.*

For the reasons set forth in the Preamble, 45 CFR Parts 1355 and 1356 are proposed to be amended as follows:

## PART 1355—GENERAL

1. The authority citation for Part 1355 continues to read as follows:

**Authority:** 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., 42 U.S.C. 1302.

2. Section 1355.20 is amended by revising the definition of *foster care* and by adding the following definitions to read as follows:

### § 1355.20 Definitions.

(a) * * *

*Child-care institution* means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved by the agency of such State responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing.

This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

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*Date the child enters foster care* means the earlier of: the date of the first judicial finding that the child has been subjected to child abuse or neglect and placement and care responsibility is given to the State by the court; or, the date that is 60 calendar days after the date on which the child is physically removed from the home. When a child enters foster care on the basis of a voluntary placement agreement, the ''date a child enters foster care'' means the date on which the voluntary placement agreement is signed. This definition determines the date used in calculating all time period requirements related to the case review system in section 475 of the Social Security Act and for providing time-limited reunification services described at section 431(a)(7) of the Act.

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*Foster care* means 24 hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

*Foster care maintenance payments* are payments made on behalf of a child eligible for title IV–E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, agency workers, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child-care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. (1) *Daily supervision* for which foster care maintenance payments may be made includes:

(i) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training; and

(ii) *Child-care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

(2) [Reserved]

*Foster family home* means the home of an individual or family licensed or approved by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Provisional licensure or approval is insufficient for meeting title IV–E eligibility requirements. States may not claim title IV–E reimbursement until final licensure or approval is granted.

*Full hearing* (often referred to by State courts as the evidentiary hearing, jurisdictional hearing, fact-finding hearing, merits or adjudication hearing) is the civil hearing in which the allegations, as set forth in the petition, of dependency, abuse or neglect concerning a child are addressed. The hearing enables the court to determine which allegations of the petition have been proven or admitted, if any, and whether court or agency intervention should continue. This is the hearing in which the State agency is assigned responsibility for placement and care of the child. The full hearing is never a shelter care hearing or emergency removal hearing (see definition of *temporary custody proceeding*).

*Full review* means the joint Federal and State review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV–B and IV–E as listed in § 1355.34 of this part. A full review consists of two phases, the State self-assessment and a subsequent on-site review, as described in § 1355.33 of this part.

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*Legal guardianship* means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term ''legal guardian'' means the caretaker in such a relationship.

*National Child Abuse and Neglect Data System (NCANDS)* means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and

Treatment Act (Public Law 93–247), as amended.

*Partial review* means the joint Federal and State review of one or more Federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the State and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the State plan requirements of titles IV–B and IV–E as listed in § 1355.34 of this part.

*Permanency hearing* means: (1) the hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether, and if applicable when:

(i) The child will be returned to the parent;

(ii) The child should be placed for adoption, with the State filing a petition for termination of parental rights;

(iii) The child should be referred for legal guardianship;

(iv) The child should be placed permanently with a fit and willing relative; or

(v) The child should be placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian.

(2) The permanency hearing must be held no later than 12 months after the date the child enters foster care or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not considered permanency hearings.

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*State self-assessment* means the initial phase of a full review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining, in part, the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in § 1355.34 of this part. The self-assessment refers to the completion of the Federally-prescribed self-assessment instrument by members of a review team that meet the requirements of § 1355.33(a)(2) of this part.

*Temporary custody proceeding* (often referred to as the shelter care hearing, detention hearing, preliminary protective hearing, or emergency removal hearing) is the judicial proceeding held at the time of, or shortly after, the emergency removal of a child from the home. This proceeding gives the State agency temporary custody of a child until a full hearing is held.

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3. New sections 1355.31 through 1355.39 are added to read as follows:

**§ 1355.31 Elements of the child and family services review system.**

*Scope*. Sections 1355.32 through 1355.39 of this part apply to reviews of child and family services programs administered by States and Indian Tribes under subparts 1 and 2 of title IV-B of the Act, and reviews of foster care and adoption assistance programs administered by States under title IV-E of the Act.

**§ 1355.32 Timetable for the reviews.**

(a) *Initial reviews*. Each State must complete an initial full review as described in § 1355.33 of this part during the three-year period that begins six months after the final rule becomes effective.

(b) *Reviews following the initial review*. (1) A State found to be operating in substantial conformity during an initial or subsequent review, as defined in § 1355.34 of this part, must:

(i) Complete a full review every five years; and

(ii) Submit a completed State self-assessment to ACF three years after the on-site review. The State self-assessment will be reviewed jointly by the State and the Administration for Children and Families to determine the State's continuing substantial conformity with the State plan requirements subject to review. No formal approval of this interim State self-assessment by ACF is required.

(2) State programs found not to be operating in substantial conformity during an initial or subsequent review will:

(i) Be required to develop and implement a program improvement plan, as defined in § 1355.35 of this part; and

(ii) Complete a full review in the six month period that begins three years after the approval of the program improvement plan.

(c) *Reinstatement of reviews based on information that a State is not in substantial conformity*. (1) ACF may require a full or a partial review at any time, based on information that indicates the State may no longer be operating in substantial conformity.

(2) Prior to conducting a full or partial review, ACF will conduct an inquiry and require the State to submit additional data whenever the following information indicates that the State may not be in substantial conformity:

(i) Information included in the State self-assessment (completed between full reviews) or Annual Progress and Services Reports on the CFSP;

(ii) Information from reports from data bases, including the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS);

(iii) Information from reviews, audits or assessments conducted by ACF, the Office of Inspector General, or other public or private organizations;

(iv) The disposition of class action lawsuits brought against a State, whether such disposition is through the process of litigation or through settlement of the lawsuit through a consent decree; or

(v) Other information brought to the attention of the Secretary.

(3) If the additional information and inquiry indicate to the satisfaction of ACF that the State is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by this inquiry at this time.

(4) ACF may proceed with a full or partial review if the State does not provide the additional information as requested, or the additional information confirms that the State may not be operating in substantial conformity.

**§ 1355.33 Procedures for the review.**

(a) The full child and family services reviews will:

(1) Consist of a two-phase process that includes a State self-assessment and an on-site review; and

(2) Be conducted by a team of Federal and State reviewers that includes:

(i) Staff of the State child and family services agency, including the State and local offices who represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the State, in collaboration with the ACF Regional Office, from those with whom State was required to consult in developing its CFSP, as described and required in 45 CFR 1357.15(l);

(iii) Federal staff of HHS; and

(iv) Other individuals, as deemed appropriate and agreed upon by the State and ACF.

(b) *State self-assessment.* The first phase of the full review will be a State self-assessment conducted by the internal and external State members of the review team. The self-assessment must assess:

(1) The outcome areas of safety, permanency, and well-being of children and families served by the State agency;

(2) The characteristics of the State agency that impact most significantly on the agency's capacity to deliver services to children and families that will lead to improved outcomes; and

(3) The strengths and areas of the State's child and family services programs that require further examination through an on-site review.

(c) *On-site review.* The second phase of the full review will be an on-site review.

(1) The on-site review will cover specific areas of the State's child and family services continuum. It will be jointly planned by the State and ACF, and guided by information in the completed State self-assessment that identifies areas thought to be in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions of the State, as agreed upon by the ACF Regional Office and the State, provided the State's largest metropolitan subdivision is one of the locations selected for the on-site review.

(3) ACF has final approval of the selection of specific areas of the State's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions referenced in paragraph (c)(2) of this section.

(4) Sources of information collected during the on-site review to determine substantial conformity must include, but are not limited to:

(i) Case records on children and families served by the agency;

(ii) Interviews with children and families whose case records have been reviewed and who are, or have been, recipients of services of the agency;

(iii) Social workers, foster parents, and service providers for the cases selected for the on-site review; and

(iv) Interviews with other individuals, such as those representing the sources of consultation for the development of the State's CFSP, as required by 45 CFR 1357.15(l).

(5) The composition of the sample of cases selected for the on-site review, by number of cases and type of cases, will be jointly determined by the ACF Regional Office and the State, based on the findings of the State self-assessment, subject to the following criteria:

(i) Cases comprising the sample, including any sub-samples, of the sample must be randomly selected;

(ii) The number of cases reviewed must be sufficient to evaluate the qualitative issues agreed upon by the ACF Regional Office and the State as the focus of the on-site review based on analysis of the State self-assessment and any other relevant data available to the State;

(iii) The sampling plan used to select cases for the on-site review must be approved by the ACF designated official.

(d) *Partial review.* A partial review, when required, will be planned and conducted jointly by ACF and the State agency based on the nature of the concern.

(e) Within 30 calendar days following either a partial or full review, ACF will notify the State agency in writing of whether the State is, or is not, operating in substantial conformity.

**§ 1355.34 Criteria for determining substantial conformity.**

(a) *Criteria to be satisfied.* A State's substantial conformity with title IV–B and title IV–E State plan requirements will be based on the following:

(1) its ability to meet criteria related to outcomes for children and families;

(2) its ability to meet criteria related to the State agency's capacity to deliver services leading to improved outcomes;

(3) aggregate data in the State self-assessment used to examine each outcome and performance indicator which corroborates the findings of the on-site component of the review, and;

(4) the determination of conformity by the ACF Regional Office based on the criteria described in paragraphs (a) through (c) of this section.

(b) *Criteria related to outcomes.*

(1) A State's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) *In the area of child safety:*

(A) Children are, first and foremost, protected from abuse and neglect, and are safely maintained in their homes whenever possible; and

(B) The risk of harm to children is minimized;

(ii) *In the area of permanency for children:*

(A) Children have permanency and stability in their living situations; and

(B) The continuity of family relationships and connections is preserved for children; and

(iii) *In the area of child and family well-being:*

(A) Families have enhanced capacity to provide for their children's needs;

(B) Children will receive appropriate services to meet their educational needs; and

(C) Children receive adequate services to meet their physical and mental health needs.

(2) A State's level of achievement with regard to each outcome reflects the extent to which a State has implemented the following CFSP requirements or assurances:

(i) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;

(ii) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

(iii) The requirements in section 422(b)(9) of the Act regarding recruitment of potential foster and adoptive families;

(iv) The assurances by the State as required by section 422(b)(10)(C) (i) and (ii) of the Act regarding policies and procedures for abandoned children;

(v) The requirements in section 422(b)(11) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(vi) The requirements in section 422(b)(12) of the Act regarding a State's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

(vii) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement.

(3) A State will be determined to be in substantial conformity if each

outcome listed in paragraph (b)(1) of this section is rated as ''substantially achieved'' in 95 percent of the cases examined during the on-site review (90 percent of the cases for a State's initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome has been achieved for each case reviewed.

(c) *Criteria related to State agency capacity to deliver services leading to improved outcomes for children and families.*

In addition to the criteria related to outcomes contained in paragraph (b) of this section, the State agency must also satisfy criteria related to the delivery of services. Information from the self-assessment and the on-site review must indicate that the State has implemented the referenced State plan requirements related to the State agency's capacity to deliver services leading to improved outcomes, and actually delivered those services, by meeting each of the criteria listed for the following core systemic factors:

(1) *Statewide information system:* The State is operating a statewide information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(10)(B)(i) of the Act);

(2) *Case review system:* The State has procedures in place that:

(i) provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parents' home where such placement is in the child's best interests; for visits with a child placed out of State at least every 12 months by a social worker of the agency or of the agency in the State where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (section 422(b)(10)(B)(ii) of the Act);

(ii) provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (section 422(b)(10)(B)(ii) of the Act);

(iii) assure that each child in foster care under the supervision of the State has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the State agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) (section 422(b)(10)(B)(ii) of the Act);

(iv) provide a process for termination of parental rights proceedings in accordance with section 475(5)(E) of the Act; and,

(v) provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in any review or hearing held with respect to the child.

(3) *Quality assurance system:* The State has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) is in place in the jurisdictions within the State where services included in the CFSP are provided;

(ii) is able to evaluate the adequacy and quality of services provided under the CFSP;

(iii) is able to identify the strengths and needs of the service delivery system it evaluates;

(iv) provides reports to agency administrators on the quality of services evaluated and needs for improvement; and (v) evaluates measures implemented to address identified problems.

(4) *Staff training:* The State is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) supports the goals and objectives in the State's CFSP;

(ii) addresses services provided under both subparts of title IV-B and the training plan under title IV–E of the Act;

(iii) provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed and that includes the basic skills and knowledge required for their positions;

(iv) provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the State's CFSP; and,

(v) provides short-term training for current or prospective foster parents, adoptive parents, and the staff of State-licensed or State-approved child-care institutions providing care to foster and adopted children receiving assistance under title IV–E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the State self-assessment and on-site review determines that the State has in place an array of services (45 CFR 1357.15(n) and section 422(b)(10)(B)(iii) and (iv) of the Act) that include, at a minimum:

(i) services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;

(ii) services that address the needs of the family, as well as the individual child, in order to create a safe home environment;

(iii) services designed to enable children at risk of foster care placement to remain with their families when their safety and well being can be reasonably assured;

(iv) services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;

(v) services that are accessible to families and children in all political jurisdictions covered in the State's CFSP; and,

(vi) services that can be individualized to meet the unique needs of children and families served by the agency.

(6) *Agency responsiveness to the community:* (i) the State, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State and county agencies responsible for implementing the CFSP and other major stakeholders in the services delivery system including, at a minimum, tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(l)(4));

(ii) the agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.15(l)(4));

(iii) there is evidence that the agency's goals and objectives included in the CFSP reflect consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) there is evidence that the State's services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) *Foster and adoptive parent licensing, recruitment and retention:* (i) the State has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) the standards so established are applied by the State to every licensed or approved foster family home or child care institution receiving funds under title IV–E or IV–B of the Act (section 471(a)(10) of the Act);

(iii) the State complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16) and 475(1) of the Act and 45 CFR 1356.30;

(iv) the State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed (section 422(b)(9) of the Act); and,

(v) the State has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(12) of the Act).

(d) *Availability of review instruments.* ACF will make available to the States copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments take place.

**§ 1355.35 Program improvement plans.**

(a) *Mandatory program improvement plan.* States found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

(1) Be developed jointly by State and Federal staff in consultation with the review team;

(2) Identify the areas in which the State's program is not in substantial conformity;

(3) Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

(4) Establish benchmarks that will be used to measure the State's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

(5) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(b) *Voluntary program improvement plan.* States found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The State and Regional Office agree that there are areas of the State's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

(2) ACF approval of the voluntary program improvement plan will not be required; and

(3) No penalty will be assessed for the State's failure to achieve the goals described in the voluntary program improvement plan.

(c) *Approval of program improvement plans.*

(1) A State determined not to be in substantial conformity must submit the program improvement plan to ACF for approval within 60 calendar days from the date the State receives the written notification from ACF that it is not operating in substantial conformity.

(2) Any program improvement plan will be approved by ACF if it meets the provisions of paragraph (a) of this section.

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the State will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the State does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section, or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of § 1355.36 this part will apply.

(d) *Duration of program improvement plans.* A State will have two years to successfully complete the provisions in its program improvement plan. However, a State must complete provisions in its program improvement plan that address child safety in less than two years. The level of risk to child safety will be considered by the State and ACF in determining such time frames. The ACF may grant a one-year extension, for a maximum of three years, when the provisions in the program improvement plan are too extensive for the State to successfully complete within the two-year period.

(e) *Evaluating program improvement plans.* Program improvement plans will be evaluated jointly by the State agency and ACF, in collaboration with other members of the review team, as described in the State's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the State is operating in subsequent substantial conformity;

(2) The frequency of evaluating progress will be determined jointly by the State and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the State's CFSP, as described in paragraph (f) of this section.

(3) Action steps may be jointly determined by the State and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The State and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the State's program determined not to be in substantial conformity;

(ii) The amount of time needed to implement the provisions of the plan does not extend beyond three years from the date the original program improvement plan was approved; and

(iii) The renegotiated plan is approved by ACF.

(f) *Integration of program improvement plans with CFSP planning.* The elements of the program improvement plan must be incorporated into the goals and objectives of the State's CFSP. Progress in implementing the program improvement plan must be included in the annual reviews and progress reports related to the CFSP required in 45 CFR 1357.16.

**§ 1355.36 Withholding Federal funds due to failure to conform following the completion of a State's program improvement plan.**

(a) *For the purposes of this section:* (1) The term ''title IV–B funds'' refers to the State's combined allocation of title IV–B subpart 1 and subpart 2 funds; and

(2) The term ''title IV–E funds'' refers to the State's reimbursement for

administrative costs for foster care under title IV–E.

(b) *Determination of the amount of Federal funds to be withheld.* ACF will determine the amount of the State title IV–B and IV–E funds to be withheld due to a finding that the State is not operating in substantial conformity, as follows:

(1) Title IV–B funds and a portion of title IV–E funds will be withheld for States determined not to be operating in substantial conformity only after the State has had an opportunity to correct the areas of nonconformity through the development and implementation of a program improvement plan.

(2) Title IV–B and IV–E funds will not be withheld from a State if the determination of nonconformity was caused by the State's correct use of formal written statements of Federal law or policy provided the State by DHHS.

(3) A portion of the State title IV–B and IV–E funds will be withheld by ACF for the year under review and for each succeeding year until the State's failure to comply is ended either through the successful completion of a program improvement plan or until a subsequent full review determines the State is operating in substantial conformity.

(4) The amount of title IV–B and title IV–E funds to be withheld by ACF will be computed as follows:

(i) The pool of title IV–B and title IV–E funds from which funds will be withheld due to a determination that a State is not operating in substantial conformity includes:

(A) The State's allotment of title IV–B funds for each of the years to which withholding applies, and

(B) An amount equivalent to 10 percent of the State's Federal claims for title IV–E foster care administrative costs for each of the years to which withholding applies.

(ii) An amount equivalent to one percent of the funds described in paragraph (b)(4)(i) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in § 1355.34(b)(2) of this part that is determined not to be substantially achieved, and

(iii) An amount equivalent to one percent of the funds described in paragraph (b)(4)(i) of this section for each of the years to which withholding applies will be withheld for each of the seven systemic factors listed in § 1355.34(c)(2) of this part that is determined not to be in substantial conformity.

(5) The maximum amount of title IV–B and title IV–E funds to be withheld due to the State's failure to comply is fourteen percent per year of the funds described in paragraph (b)(4)(i) of this section for each year to which the withholding of funds applies.

(c) *Suspension of withholding.* (1) For States determined not to be operating in substantial conformity, ACF will suspend the withholding of the State title IV–B and title IV–E funds during the time that a program improvement plan is in effect, provided that:

(i) The program improvement plan conforms to the provisions of § 1355.35 of this part; and

(ii) The State is actively implementing the provisions of the program improvement plan.

(2) Suspension of the withholding of funds is limited to three years following each review, or the amount of time approved for implementation of the program improvement plan, whichever is less.

(d) *Terminating the withholding of funds.* For States determined not to be in substantial conformity, ACF will terminate the withholding of the State's title IV–B and title IV–E funds related to the nonconformity under the following circumstances:

(1) When the State's failure to conform is ended by the successful completion of a program improvement plan;

(2) Upon determination by the State and ACF that action steps have been completed and goals achieved as specified in the program improvement plan, ACF will rescind the withholding of the portion of title IV–B and title IV–E funds related to those goals as of the date at the end of the quarter in which they were determined to be achieved.

(e) *Withholding of funds.* (1) States determined not to be in substantial conformity which fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the latest completion date specified in the plan, and advised of the amount of title IV–B and title IV–E funds which are to be withheld.

(2) Title IV–B and title IV–E funds will be withheld based on the following:

(i) Funds related to goals and action steps which have not been achieved at the conclusion of a program improvement plan will be withheld by ACF at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made to the latest completion date specified in the program improvement plan; and

(ii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the State to be in substantial conformity.

(3) When the point in time at which the State is determined to be in substantial conformity falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

(4) A State agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum withholding of fourteen percent of its title IV–B and title IV–E funds, as described in paragraph (b)(5) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) *Interest on withheld funds.* The State agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.13.

**§ 1355.37 Opportunity for public inspection of review reports and materials.**

The State agency must make available for public review and inspection all self-assessments (1355.33(b)), report of findings (1355.33(e)), and program improvement plans (1355.35(a)) developed as a result of a full or partial child and family services review.

**§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.**

(a) *Determination that a violation has occurred in the absence of a court finding.* (1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a State or an entity in the State:

(i) has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person, or of the child, involved;

(ii) has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or,

(iii) with respect to a State, maintains any statute, regulation, policy,

procedure, or practice that, if applied, would likely result in a violation against a person as defined in paragraphs (2)(i) and (2)(ii) of this section.

(3) ACF will provide the State or entity involved with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this regulation.

(5) Compliance with the Indian Child Welfare Act of 1978 does not constitute a violation of section 471(a)(18).

(b) *Corrective action and penalties for violations with respect to a person or based on a court finding.*

(1) A State found to be in violation of section 471(a)(18) with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A State determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The State may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the State must revise and resubmit the plan for approval until it has an approved plan.

(c) *Corrective action for violations resulting from a State's statute, regulation, policy, procedure, or practice.*

(1) A State found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop, obtain approval of, and implement a corrective action plan within six months of receiving notification from ACF that it is in violation of section 471(a)(18) of the Act. If the State fails to implement the corrective action plan within six months, a penalty will be imposed in accordance with paragraph (g)(3).

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the State must revise and re-submit the plan until it has an approved plan.

(4) ACF will consider a State to have implemented its corrective action plan when it begins to carry out the action step(s) in the plan.

(5) Once implemented, a State must complete the corrective action plan according to the time frame in the plan. If the State fails to complete the corrective action plan within the specified time, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

(d) *Contents of a corrective action plan.* A corrective action plan must:

(1) identify the issues to be addressed;

(2) set forth the steps for taking corrective action;

(3) identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,

(4) specify dates for completing each action step. Extension of these dates may be negotiated with ACF.

(e) *Evaluation of corrective action plans.* ACF may evaluate action steps in a corrective action plan that address a violation of section 471(a)(18) as they are completed. ACF will evaluate corrective action plans and notify the State (in writing) of its success or failure to complete the plan within 30 calendar days of the latest projected completion date specified in the plan. If the State has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the State's title IV–E payment and include this information in the notification of failure to complete the plan.

(f) *For the purposes of this section:* The term *title IV–E funds* refers to the Federal share of expenditures a State claims for foster care maintenance payments, adoption assistance payments, administrative, and training costs under title IV–E and the State's allotment for the Independent Living program.

(g) *Reduction of title IV–E funds.* (1) Title IV–E funds may be reduced in specified amounts in accordance with subsection (h) under the following circumstances:

(i) a determination that a State is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or;

(ii) after a State's failure to implement or complete a corrective action plan described in paragraph (c) of this section.

(2) Once ACF notifies a State that it has committed a section 471(a)(18) violation with respect to a person, the State's title IV–E funds will be reduced for the fiscal quarter in which the State received such notification and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan, whichever is sooner.

(3) For States that fail to implement or complete a corrective action plan as described in paragraph (c) of this section, title IV–E funds will be reduced by ACF for the fiscal quarter in which the State received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the State completes the corrective action plan, whichever is sooner.

(4) If, as a result of a court finding, a State is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the State is notified of the violation, its title IV–E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan, whichever is sooner.

(5) The maximum number of quarters that a State will have its title IV–E funds reduced due to the State's failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV–E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) of the Act.

(1) State agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the State is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the State comes into compliance with section 471(a)(18). The reduction in title IV–E funds will be computed as follows:

(i) 2 percent of the amount of title IV–E funds claimed by the State for the fiscal year in which the first finding of noncompliance was made;

(ii) 3 percent of the amount of title IV–E funds claimed by the State for the fiscal year in which the second finding of noncompliance was made;

(iii) 5 percent of the amount of title IV–E funds claimed by the State for the fiscal year in which the third or

subsequent finding of noncompliance was made.

(2) Any entity (other than the State agency) which violates section 471(a)(18) of the Act during a fiscal quarter with respect to any person must remit to the Secretary all title IV–E funds paid to it by the State during the quarter in which the entity is notified of its violation.

(3) No fiscal year payment to a State will be reduced by more than 5 percent where the State has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The State agency or entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.13.

**§ 1355.39 Administrative and judicial review.**

States determined not to be in substantial conformity with titles IV–B and IV–E State plan requirements, or in violation of section 471(a)(18) of the Act:

(a) May appeal the final determination and any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in § 1355.36(e)(1) of this part, or receipt of a notice of noncompliance by ACF as described in § 1355.38(b) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the State receives notice of the decision by the Board. The State must appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a State has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

## PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

4. The authority citation for Part 1356 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 et seq., and 42 U.S.C. 1302.

5. Section 1356.20 is amended by revising paragraph (e)(4) to read as follows:

**§ 1356.20 State plan document and submission requirements.**

* * * * *

(e) * * *

(4) *Action.* Each Regional Administrator, ACF, has the authority to approve State plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval.

* * * * *

6. Section 1356.21 is revised to read as follows:

**§ 1356.21 Foster care maintenance payments program implementation requirements.**

(a) To implement the foster care maintenance payments program provisions of the title IV–E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

(b) *Reasonable efforts.* In order to satisfy the ''reasonable efforts'' requirements of section 471(a)(15) as implemented through section 472(a)(1) of the Act, the State must meet the requirements of paragraphs (b), (d) and (g)(4) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

(1) *Judicial determination of reasonable efforts to prevent removal in non-emergency situations.* When a child is removed from home pursuant to a court order, the court must determine, before issuing such an order, whether reasonable efforts had been made to prevent removal prior to the removal of the child from home. Except as specified in paragraph (b)(2) of this section, if a judicial determination regarding reasonable efforts to prevent removal is not made prior to the child's removal from the home, as evidenced in the court order initiating that removal, the child is not eligible under the title IV–E foster care maintenance payments program for the duration of that stay in foster care.

(2) *Judicial determinations of reasonable efforts to prevent removal in emergency situations.* (i) A child will be considered to be removed from his/her home in an emergency situation when a court order has not been obtained in advance of the removal.

(ii) When it is necessary to remove a child from his/her home prior to obtaining a court order, the judicial determination as to whether reasonable efforts were made to prevent removal or that reasonable efforts to prevent removal were not required in accordance with paragraph (b)(5) of this section must be made at the first full hearing pertaining to removal of the child or no later than 60 days after a child has been removed from home, whichever is first. A State may claim Federal financial participation from the first day of the month in which all eligibility criteria have been met.

(iii) If the determination concerning reasonable efforts to prevent removal is not made as specified in clause (ii) above, the child is not eligible under the title IV–E foster care maintenance payments program for the duration of that stay in foster care.

(3) *Judicial determination of reasonable efforts to reunify the child and family.* (i) The court must determine that the State agency made reasonable efforts to reunify the family within twelve months of the date the child enters foster care when the permanent plan or goal for the child is to reunify the family, and at least once every twelve months thereafter as long as the permanent plan or goal is reunification. If such a judicial determination regarding reasonable efforts to reunify is not made, the child becomes ineligible under title IV–E from the end of the twelfth month following the date the child entered foster care or the most recent judicial determination of reasonable efforts to reunify, and remains ineligible until such a determination is made.

(ii) When, in accordance with paragraph (b)(5), the court determines that reasonable efforts to reunify the child and family are not required, the State must hold a permanency hearing within 30 days of such a determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the aforementioned determination was made.

(4) *Judicial determination of reasonable efforts to make and finalize permanent placements other than reunification.* The court must determine that the State agency made reasonable efforts to make and finalize a child's permanent placement at least once every twelve months from the date the permanency goal becomes adoption or placement in another permanent home. If such a judicial determination regarding reasonable efforts to make and finalize a permanent placement is not made, the child will become ineligible under title IV–E from the end of the

twelfth month following the date the alternate permanency goal was established or the most recent judicial determination of reasonable efforts to make and finalize a permanent placement, and will remain so until such a determination is made.

(5) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) a court of competent jurisdiction has determined that the parent has:

(A) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(D) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) the parental rights of the parent to a sibling have been terminated involuntarily.

(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to reunify.

(7) The State may use the Federal Parent Locator Service to search for absent parents in order to facilitate the permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interests, of the child.

(1) *In nonemergency situations.* When a child is removed from home pursuant to a court order, the court must make the ''contrary to the welfare'' determination prior to the removal of the child from home. The judicial determination must be documented in the court order which removes the child from home. If such a judicial determination is not made prior to the removal, the child is not eligible for title IV–E foster care maintenance payments for the duration of his/her stay in foster care.

(2) *In emergency situations.* When it is necessary to remove a child from home prior to obtaining a court order, the ''contrary to the welfare'' determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding ''contrary to the welfare'' is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV–E foster care maintenance payments for the duration of his/her stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding ''contrary to the welfare'' and ''reasonable efforts'' to prevent removal, reunify the family, make and finalize a permanent placement, and that reasonable efforts are not required must be explicit and must be made on a case-by-case basis and so stated in the court order.

(1) If the ''reasonable efforts'' and ''contrary to the welfare'' judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits *nor nunc pro tunc* orders will be accepted as verification documentation in support of ''reasonable efforts'' and ''contrary to the welfare'' judicial determinations.

(3) Court orders which reference and rely on State law to substantiate that judicial determinations have been made are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit must not exceed six months in duration, unless a longer visit is ordered by a court. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to a foster care setting, that placement must then be considered a new placement and title IV–E eligibility must be re-established. Under these circumstances, a new court order removing the child from the home, including judicial determinations regarding ''contrary to the welfare'' and ''reasonable efforts'' to prevent removal, is required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the time the State agency assumes responsibility for providing services including placing the child; and

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interest and special needs of the child; and

(4) Include a description of the services offered and the services provided to prevent removal of the child from the home, to reunify the family, and to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act.

(This requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 0980–0140)

(h) *Application of permanency hearing requirements.* (1) If a State chooses to claim Federal financial participation (FFP) for the costs of foster care maintenance payments, it must, among other requirements, comply with those in section 475(5)(C) of the Act.

(2) The provisions of this paragraph and section 475(5)(C) of the Act apply to all children under the responsibility of the title IV–E State agency for placement and care, except for a child with special needs or circumstances which prevent his or her return to the home or being placed for adoption. If this child is placed in a court-sanctioned permanent foster family home with a family caregiver specified by the court, no permanency hearings are required during that specified permanent placement. If the foster care placement of this child is subsequently changed, the State is again required to hold permanency hearings, the first of which must be held within three months of the date of such change.

(3) In accordance with paragraph (b)(5) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the aforementioned determination was made.

(4) If the State concludes, after considering other permanency options, that the most appropriate permanency plan for a child is placement in a permanent foster family home, the State must document, to the State court, the compelling reason which prevented the child from being placed in an adoptive home, with a relative, or with a legal guardian. An example of a compelling reason for establishing such a permanency goal is the case of an older teen who specifically requests that such a goal be established.

(5) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Unless one of the exceptions at subparagraph (2) exists, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:

(A) must use the date the child entered foster care as defined at section 475(5)(F) of the Act as the date from which the 22 month clock begins for calculating the 15 months in foster care;

(B) must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) need only apply section 475(5)(E) to a child once if the State does not file a petition because one of the exceptions at paragraph (2) of this section applies;

(ii) whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) who has been found, by a court of competent jurisdiction, to have committed one of the felonies listed at paragraph (b)(5)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) at the option of the State, the child is being cared for by a relative;

(ii) the State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child. Two examples of compelling reasons for not filing a petition to terminate parental rights are:

(A) that adoption is not the appropriate permanency goal for the child; or,

(B) insufficient grounds for filing a petition to terminate parental rights exist; or,

(iii) the State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child-care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of *foster care maintenance payments.*

(k) *Removal from the home of a specified relative.*

(1) For the purposes of meeting title IV–E eligibility under the requirements of section 472(a)(1) of the Act, the term *removal from the home* applies if a child had been living with a parent or other specified relative within six months of:

(i) a voluntary placement agreement entered into by such parent or relative which leads to physical removal of the child from the home;

(ii) a State agency's initiation of court proceedings which results in a judicial removal of the child from such parent or relative; or

(iii)the State agency's physical removal of the child from the home of another specified relative, or a court-ordered removal of custody from the specified relative while the child was residing in the home of an interim caretaker.

(2) Under the circumstances described in paragraph (k)(1) of this section, the act of ''removal from the home'' must have occurred for the purposes of title IV–E eligibility. This does not include situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), either of the two following situations may apply:

(1) The child was living with and physically removed from the home of the parent or specified relative and was AFDC eligible in that home in the month of initiation of court proceedings, as well as at the time of removal; or

(2) The child was removed from the custody of the parent or specified relative with whom the child had been living within six months of the month in which court proceedings were initiated and the child would have been AFDC eligible in that month if he/she had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific,

time-limited periods to be established by the State:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation provided such administrative regulation has the force of law.

(o) *Notice and opportunity to be heard.* The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with notice of and an opportunity to be heard in permanency planning hearings and reviews held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not provide a foster parent, preadoptive parent, or a relative caring for the child with standing as a party to the case.

7. Section 1356.30 is redesignated as section 1356.22 and paragraphs (a) and (b) revised to read as follows:

**§ 1356.22 Implementation requirements for children voluntarily placed in foster care.**

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the State must meet the requirements of:

(1) Section 472 of the Act, as amended;

(2) Sections 422(b)(10) and 475(5) of the Act;

(3) 45 CFR 1356.21(h), (i), and (j); and

(4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the date the voluntary placement agreement was signed by all pertinent parties unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of the date the voluntary placement agreement was signed, to the effect that the continued voluntary placement is in the best interests of the child.

(c) The State agency must establish and maintain a uniform procedure or system, consistent with State law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

8. New § 1356.30 is added to read as follows:

**§ 1356.30 Safety requirements for foster care and adoptive home providers.**

(a) Unless an election provided for in paragraph (d) of this section is made, the State must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

(1) child abuse or neglect;

(2) spousal abuse;

(3) a crime against children (including child pornography); or,

(4) a violent crime, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

(1) physical assault;

(2) battery; or,

(3) a drug-related offense.

(d) (1) The State may elect not to conduct or require criminal records checks on prospective foster or adoptive parents by:

(i) notifying the Secretary in a letter from the Governor; or

(ii) enacting State legislation.

(2) Such an election also removes the State's obligation to comport with paragraphs (b) and (c) of this section.

(e) In all cases where no criminal records check was conducted, the licensing file for that foster family, adoptive family, child care institution, or relative placement must contain documentation that safety considerations with respect to the caretaker(s) have been addressed.

**§§ 1356.65, 1356.70 [Removed]**

8. § 1356.65 and § 1356.70 are removed.

9. New § 1356.71 is added to read as follows:

**§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV–E programs.**

(a) *Purpose and scope.* (1) This section sets forth requirements governing Federal reviews of State compliance with the title IV–E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to State agencies that receive Federal payments for foster care under title IV–E of the Act.

(b) *Composition of review team and preliminary activities preceding an on-site review.* (1) The review team must be composed of representatives of the State agency, and ACF's Regional and Central Offices.

(2) The State must be responsible for providing ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) *Sampling guidance and conduct of review.* (1) The list of sampling units in the target population (i.e., the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the State agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a State's most recent AFCARS data submission. If these data are not available or are deficient, an alternative sampling frame will be selected by ACF in conjunction with the State agency.

(2) A sample of 80 cases (plus a 10 percent oversample of eight cases) from the title IV–E foster care program will be selected for the first review utilizing probability sampling methodologies. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate.

(3) Cases from the oversample will be substituted and reviewed for each of the original sample of 80 cases which is listed in error in AFCARS.

(4) At the completion of the first eligibility review, the review team will determine the number of ineligible cases. When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent. (Three years after the date the final rule becomes effective, the acceptable population ineligibility case error rate threshold will be reduced from less than 15 percent (eight ineligible cases) to less than 10 percent (four ineligible cases)). A State agency which meets this standard is considered to be in ''substantial compliance'' (see paragraph (h) of this section). A disallowance will be assessed for the ineligible cases for the period of time the cases have been determined to be ineligible.

(5) A State which has been determined to be in ''non-compliance'' (i.e., not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a second on-site review. For the second review, a sample of 150 cases (plus a 10 percent oversample of 15 cases) will be drawn from the most recent AFCARS submission. Cases from the oversample will be substituted and reviewed for each of the original sample of 150 cases which is listed in error in AFCARS.

(6) At the completion of the second eligibility review, the review team will calculate both the sample case ineligibility and dollar error rates for the cases determined ineligible during the review. An extrapolated disallowance equal to the lower limit of a 90 percent confidence interval for the population total dollars in error for the amount of time corresponding to the AFCARS reporting period will be assessed if both the child/provider (case) ineligibility and dollar error rates exceed 10 percent. If neither, or only one, of the error rates exceeds 10 percent, a disallowance will be assessed only for the ineligible cases for the period of time the cases have been determined to be ineligible. The State must provide the payment history for all 165 cases at the beginning of the eligibility review.

(d) *Requirements subject to review.* States will be reviewed against the requirements of title IV–E of the Act regarding:

(1) The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)–(4) of the Act).

(2) The eligibility of the providers of foster care (see sections 471(a)(20), 472(b) and (c), and 475(1) of the Act).

(e) *Review instrument.* A title IV–E foster care eligibility review checklist will be used when conducting the eligibility review.

(f) *Eligibility determination—child.* The case record of the child must contain proper and sufficient documentation to verify a child's eligibility in accordance with paragraph (d)(1), in order to substantiate payments made on the child's behalf.

(g) *Eligibility determination—provider.*

(1) For each case being reviewed, the State agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the providers in the following categories:

(i) Public child-care institutions with 25 children or less in residence;

(ii) Private child-care institutions;

(iii) Group homes; and

(iv) Foster family homes, including relative homes.

(2) The licensing file must contain documentation that the State has complied with the safety requirements for foster, relative, and adoptive placements in accordance with § 1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the State agency may provide supplemental information from other sources (e.g., a computerized database).

(h) *Standards of compliance.* (1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR Parts 1355 and 1356.

(2) Substantial compliance and non-compliance are defined as follows:

(i) *Substantial compliance*—For the first review (of the sample of 80 cases), eight or fewer of the title IV–E cases reviewed must be determined to be ineligible. (This critical number of ''errors'', i.e., ineligible cases, is reduced to four errors or less, three years after the final rule becomes effective). For the second review (if required), *substantial compliance* means either the case ineligibility or dollar error rate does not exceed 10 percent.

(ii) *Noncompliance*—means not in substantial compliance. For the first review (of the sample of 80 cases), nine or more of the title IV–E cases reviewed must be determined to be ineligible. (This critical number of ''errors'', i.e., ineligible cases, is reduced to five or more three years after the final rule becomes effective). For the second review (if required), *noncompliance* means both the case ineligibility and dollar error rates exceed 10 percent.

(3) The ACF will notify the State in writing within 30 calendar days after the completion of the on-site eligibility review of whether the State is, or is not, operating in substantial compliance.

(4) States which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) *Program improvement plans.* (1) States which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by State and Federal staff;

(ii) Identify the areas in which the State's program is not in substantial compliance;

(iii) Not extend beyond one year (i.e., a State will have a maximum period of one year in which to implement the provisions of the program improvement plan); and

(iv) Include:

(A) specific goals;

(B) the action steps required to correct each identified weakness or deficiency; and,

(C) a date by which each of the action steps is to be completed.

(2) States determined not to be in substantial compliance as a result of the first review must submit the program improvement plan to ACF for approval within 60 calendar days from the date the State receives the written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a State agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the State agency, the State's progress in completing the prescribed action steps in the program improvement plan.

(4) If a State agency's program improvement plan is not submitted for approval in accordance with the provisions of paragraph (i)(1) and (2) of this section, funds will be disallowed

pursuant to the provisions of paragraph (k) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR Parts 1355 and 1356.

(1) States which are in found to be in *substantial compliance* during the first or second review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. The amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time that each case has been determined to be ineligible.

(2) States which are found to be in *noncompliance* during the first review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A second review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the State's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent the State is in non-compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period. If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The State agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.13.

(4) States may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR Part 16.

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## Part VI

# Department of Education

**Special Education: Personnel Preparation to Improve Services and Results for Children with Disabilities and Technology and Media Services for Individuals with Disabilities; Notice**

## DEPARTMENT OF EDUCATION

## Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities; and Special Education—Technology and Media Services for Individuals with Disabilities

**ACTION:** Notice inviting applications for new awards for fiscal year 1999.

**SUMMARY:** On June 4, 1997, the President signed into law Public Law 105–17, the Individuals with Disabilities Education Act Amendments of 1997, amending the Individual with Disabilities Education Act (IDEA).

This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1999 competitions under two programs authorized by IDEA, as amended. The two programs are: (1) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (five priorities); and (2) Special Education—Technology and Media Services for Individuals with Disabilities (one priority).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

### Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice. In order to make awards on a timely basis, the Secretary has decided to publish these priorities in final under the authority of section 661(e)(2).

### 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);

(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; and

(d) In a single application, an applicant is required to address only one absolute priority in this notice.

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

### Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities [CFDA 84.325]

*Purpose of Program*

The purposes of this program are to: (1) Help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children.

*Eligible Applicants*

Institutions of higher education are eligible applicants for Absolute Priorities 1–4 under this program. Eligible applicants for Absolute Priority 5, Projects of National Significance, are: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

*Applicable Regulations*

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The selection criteria for Absolute Priorities 1–4 will be drawn from the EDGAR menu—TRAINING program area; and (c) The selection criteria for Absolute Priority 5 will be drawn from the EDGAR menu—MODEL DEMONSTRATION AND PROJECTS OF NATIONAL SIGNIFICANCE program area. Information collection resulting from this notice has been submitted to OMB for review under the Paperwork Reduction Act and has been approved under control number 1820–0028, expiration date July 31, 2000.

*General Requirement For All Personnel Preparation Program Priorities*

Student financial assistance is authorized only for the preservice preparation of special education, related services, early intervention, and leadership personnel to serve children ages 3 through 21, and early intervention personnel who serve infants and toddlers.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Priority:* Under section 673 of the Act and 34 CFR 75.105 (c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only those applications that meet these absolute priorities:

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities (84.325A).

*Background:* The national demand for educational, related services, and early intervention personnel to serve infants, toddlers, and children with low-incidence disabilities exceeds available supply. However, because of the small number of these personnel needed in each State, institutions of higher education and individual States are reluctant to support the needed professional development programs. Of the programs that are available, not all are producing graduates with the prerequisite skills needed to meet the needs of the low-incidence disability population. Federal support is required to ensure an adequate supply of personnel to serve children with low-incidence disabilities and to improve the quality of appropriate training programs so that graduates possess necessary prerequisite skills.

*Priority:* The Secretary establishes an absolute priority to support projects that increase the number and quality of personnel to serve children with low-incidence disabilities. This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level.

A preservice program is defined as one that leads toward a degree, certification, or professional licence or standard, and may be supported at the associate, baccalaureate, master's or specialist level. A preservice program may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licences.

The term ''low-incidence disability'' means a visual or hearing impairment, or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

Applicants may propose to prepare one or more of the following types of personnel:

(1) Special educators including early childhood, speech and language, adapted physical education, and assistive technology personnel;

(2) Related services personnel who provide developmental, corrective, and other support services that assist children with low-incidence disabilities to benefit from special education. Both comprehensive programs, and specialty components within a broader discipline, that prepare personnel for work with the low-incidence population may be supported; or,

(3) Early intervention personnel who serve children birth through age 2 with low-incidence disabilities and their families. For the purpose of this priority, all children who require early intervention services are considered low-incidence. Early intervention personnel include persons who train, or serve as consultants to, service providers and case managers.

The Secretary particularly encourages projects that address the needs of more than one State, provide multi-disciplinary training, and include collaboration among several institutions and between training institutions and public schools. In addition, projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings are encouraged.

Each project funded under this absolute priority must—

(a) Prepare personnel to address the specialized needs of children with low-incidence disabilities from different cultural and language backgrounds;

(b) Incorporate best practices in the design of the program and the curricula;

(c) Incorporate curricula that focus on improving results for children with low-incidence disabilities;

(d) Promote high expectations for students with low-incidence disabilities and foster access to the general curriculum in the regular classroom, wherever appropriate; and

(e) Develop linkages with Education Department technical assistance providers to communicate information on program models used and program effectiveness; and

(f) If the project prepares personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, prepare those individuals to provide those services in Braille;

To be considered for an award, an applicant must satisfy the following requirements contained in Section 673(f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development (CSPD) under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide, special education and related services to children with disabilities, or early intervention services to infants and toddlers with disabilities, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority.

Under this absolute priority, the Secretary plans to award approximately:

- 50 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 15 percent of the available funds for projects that support careers in educational interpreter services for hearing impaired individuals;
- 20 percent of the available funds for projects that support careers in related services, other than educational interpreter services; and
- 15 percent of the available funds for projects that support careers in early intervention.

*Competitive priority:* Within this absolute priority, the Secretary under 34 CFR 75.105(c)(2)(ii), and Section 673(g)(3)(B) of the Act will give preference to applications from an institution of higher education that is successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals over an application of comparable merit that does not meet the priority.

*Project Period:* Up to 36 months.

*Maximum Award:* The Secretary rejects and does not consider an application that proposes a budget exceeding $300,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

*Page Limits:* Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 2—Preparation of Leadership Personnel (84.325D)

This priority supports projects that conducts leadership personnel activities such as: (a) preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services for children with disabilities; and (b) providing interdisciplinary training for various types of leadership personnel,

including teacher preparation faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

To be considered for an award, an applicant must satisfy the following requirements contained in Section 673(f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Meet State and professionally-recognized standards for the preparation of leadership personnel in special education, related services or early intervention fields, if the purpose of the project is to assist personnel in obtaining degrees; and

(d) Ensure that individuals who receive financial assistance under the proposed project will subsequently perform work related to their preparation for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(2) of the Act (20 U.S.C. 1473(h)(2)). The requirement must be implemented consistently with section 673(h)(2) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority.

The Secretary intends to make approximately seven awards to projects that prepare students for careers in administration in which they provide leadership in addressing the needs of children with disabilities.

*Invitational priorities:* Within Absolute Priority 2, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, pursuant to 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(a) Projects designed to foster successful coordination among administrators, special education and regular education teachers, related services personnel, infant intervention specialists, and parents.

(b) Projects that coordinate professional development programs for regular and special education leadership personnel.

(c) Projects that include recruitment of leadership personnel from groups that are underrepresented, including individuals with disabilities.

*Project Period:* Up to 48 months.

*Maximum Award:* The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

*Page Limits:* Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 3—Preparation of Personnel in Minority Institutions (84.325E).

This priority supports awards to institutions of higher education with minority student enrollments of at least 25 percent, including Historically Black Colleges and Universities, for the purpose of preparing personnel to work with children with disabilities. Awards must be made consistent with the objectives in section 673(a) of the Act.

To be considered for an award, an applicant must satisfy the following requirements contained in Section 673(f)-(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive system of personnel development under Parts B and C of the Act.

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel, if the purpose of the project is to assist personnel in obtaining degrees; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities, or early intervention services for infants and toddlers, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority.

*Competitive preference:* Within this absolute priority, the Secretary under 34 CFR 75.105(c)(2), will give a competitive preference to applicant institutions that are otherwise eligible for funding under this priority, and which have not received an FY 1998 or FY 1999 award under the IDEA personnel preparation program.

Applicants who fulfill the requirements of the competitive preference will be awarded a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant

meeting the competitive preference could earn a maximum total of 120 points.

*Project Period:* Up to 48 months.

*Maximum Award:* The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

*Page Limits:* Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 4—Improving the Preparation of Personnel to Serve Children with High-Incidence Disabilities (84.325H)

*Background:* State agencies, university training programs, local schools, and other community-based agencies and organizations confirm both the importance and the challenge of improving training programs for personnel to serve children with high-incidence disabilities and of meeting the staffing needs of localities experiencing chronic shortages of these personnel.

This priority is intended to improve personnel preparation programs throughout the Nation and help meet shortages in particular areas. The project requirements, in conjunction with the identified competitive priorities, also reflect a number of important factors that are common to effective personnel preparation programs. These factors are:

(a) Collaboration among governmental, educational and community-based organizations on the Federal, State, and local levels in meeting personnel needs;

(b) Field-based training opportunities for students to use acquired knowledge and skills in schools reflecting wide contextual and student diversity, including high poverty schools;

(c) Multi-disciplinary training of teachers, including regular and special education teachers, and related services personnel;

(d) Coordinating personnel preparation programs aimed at addressing chronic personnel shortages with State practices for addressing such needs;

(e) Addressing shortages of teachers in particular geographic and content areas;

(f) Integration of research based curriculum and pedagogical knowledge and practices; and

(g) Meeting the needs of trainees, and of children with disabilities, from diverse backgrounds.

*Priority:* Consistent with section 673(e) of the Act, the purpose of this priority is to develop or improve, and implement, programs that provide preservice preparation for special and regular education teachers and related services personnel in order to meet the diverse needs of children with high incidence disabilities and to enhance the supply of well-trained personnel to serve these children in areas of chronic shortage. The term ''high-incidence disabilities'' includes disabilities such as mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disability. Training of para-professionals to serve children with high-incidence disabilities is authorized under this priority. (Training of early intervention personnel is addressed under the preparation of personnel to serve children with low-incidence disabilities, and therefore, is not included as part of this priority).

A preservice program is defined as one that leads toward a degree, certification, or professional licence or standard, and may be supported at the associate, baccalaureate, master's or specialist level. A preservice program may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licences.

Projects funded under this priority must —

(a) Develop or improve, and implement, partnerships that are mutually beneficial to grantees and LEAs in order to promote continuous improvement of preparation programs;

(b) Use research-based curriculum and pedagogy to prepare personnel able to assist students with disabilities in achieving under the general education curricula and able to improve student outcomes;

(c) Develop or improve, and implement, strategies for instructing students on how special education, related services, and regular education personnel can collaborate to improve results for children with disabilities; and

(d) Include field-based training opportunities for students in schools reflecting wide contextual and student diversity, including high poverty schools.

An applicant must satisfy the following requirements contained in Section 673(f)-(h) of the Act:

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development (CSPD) under Part B of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education and related services personnel; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority.

*Competitive preferences:* Within this absolute priority the Secretary under 34 CFR 75.105(c)(2), will give a competitive preference to applications that are otherwise eligible for funding under this priority, and that meet the following competitive preferences:

(a) Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations, including students with disabilities.

(b) Up to ten (10) points based on the extent to which an application demonstrates that the majority of the graduates of its program consistently enter jobs in which they serve children with disabilities in high poverty rural or inner city areas.

Under the competitive preferences applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting both of these competitive preferences could earn a maximum total of 120 points.

*Project Period:* The maximum funding period for awards is 36 months.

*Maximum Award:* The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 in Federal funding for any single budget period of twelve months.

*Page Limit Requirements:* Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½'' x 11'' (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 5—Projects of National Significance (84.325N)

The Secretary establishes an absolute priority to support projects that address issues of national significance and have broad applicability. Projects supported under this priority must develop, implement, and evaluate innovative models that will serve as blueprints for improving the recruitment, preparation, retention and ongoing development of early intervention personnel, general and special education teachers, administrators, related service personnel, and paraprofessionals who have responsibility for ensuring that children with disabilities achieve to high standards and become independent, productive citizens.

*Priority:* A project of national significance must:

(a) Include a detailed description of a personnel preparation model, including descriptions of: the population(s) that the model is designed to serve; the content and expected outcomes of the model; the processes for, and costs involved with, implementation and ongoing evaluation; and the organizational and contextual factors that may either facilitate or impede implementation of the model. The model must —

(1) Be guided by a conceptual framework that integrates all proposed model components; and

(2) Incorporate relevant, research-based curricular content and pedagogical practice;

(b) Provide substantial evidence that the proposed model will serve a broad-based need;

(c) Establish an advisory panel of relevant stakeholders and potential users to provide guidance that will help to assure that the model developed has broad applicability;

(d) Conduct ongoing formative evaluations of project activities, and a final evaluation to assess the success of the model in enhancing the skills, knowledge, and practices of professional personnel that will lead to improved results for children with disabilities;

(e) Produce a model ''blueprint'' or case study that would permit others to replicate the model and includes comprehensive information related to paragraphs (a) and (b) of this priority, and comprehensive outcomes of the final evaluation required under paragraph (d) of this priority; and

(f) In addition to the annual two day Project Directors' meeting in Washington, D.C. mentioned in the General Requirements section of this notice, budget for another annual two-day trip to Washington, D.C. to collaborate with the Federal project officer and other projects funded under this priority by sharing information and discussing model development, implementation, evaluation and dissemination issues, including the carrying out of cross-project dissemination activities.

To be considered for an award, an applicant must satisfy the following requirements contained in Section 673(f)–(h) of the Act—

(a) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services to plan, carry out, and monitor the project; and

(b) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel, if the purpose of the project is to assist personnel in obtaining degrees; and

(c) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities, or early intervention services for infants and toddlers, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority.

*Invitational Priorities:* Within this absolute priority, the Secretary is particularly interested in applications that meet one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(a) Projects that improve the ability of school principals and other local educational agency administrators to provide leadership in meeting the needs of children with disabilities through:

(1) Model preservice programs for the training and certification of school administrators (including principals and other instructional leaders) that

incorporate relevant special education content and provide for trainees to apply special education knowledge in field-based practice opportunities.

(2) Model projects that provide ongoing training for practicing school principals, LEA administrators, local school board members, and other local decision makers in order to improve the ability of such individuals to make informed instructional and policy-related decisions regarding the provision of appropriate, beneficial services and supports for children with disabilities.

(b) Projects that improve the training of paraprofessionals to meet the needs of children, K through age 21, with high- or low-incidence disabilities, in general education classrooms through:

(1) Model preservice programs for the training and certification of paraprofessionals that incorporate relevant special and regular education content and provide opportunities for trainees to apply their knowledge and skills in field-based practice.

(2) Model inservice programs for current paraprofessionals to improve their knowledge, skills, and practices.

(3) Model pre- or inservice programs that incorporate content for teachers to supervise and work more effectively with paraprofessionals.

*Project Period:* Up to 36 months.

*Maximum Award:* The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

*Page Limits:* Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″×11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

*Special Education—Technology and Media Services for Individuals with Disabilities [CFDA No. 84.327]*

*Purpose of Program:* The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

*Eligible Applicants:* State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria for the Closed Captioned Television Programs will be drawn from the EDGAR menu—DIRECT SERVICES program area.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Priority:* Under section 687 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:

Absolute Priority—Closed Captioned Television Programs (84.327U)

*Background:* This priority supports cooperative agreements to provide closed captioning of television programs in a variety of areas: (1) national news and public information programs; (2) children's programs; and (3) syndicated television programs.

*National News and Public Information.* This activity will continue and expand closed captioned national news, public information programs, and emergency programming, so that persons with hearing impairments can have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information, including, emergency programming. Funds provided under this category may be used to support no more than 50 percent of the captioning costs.

*Children's Programs.* This activity will provide closed captioning of children's programs shown on national commercial and public broadcast networks, as well as syndicated and basic cable programs shown nationally, so that children who are deaf or hard of hearing will have access to popular children's programs. In making awards the Secretary will consider the extent to which children's programs on each major national commercial and public broadcast network, syndicated children's programs, and basic cable children's programs continue to be captioned.

*Syndicated Television Programming.* This activity will provide for closed captioning of syndicated television programs, thereby making a variety of programs available at different times, depending on local distribution. Syndicated programming will be limited to off-network or evergreen programming (popular previously-broadcast programs or series). In making awards the Secretary considers the anticipated shelf-life and the range of distribution of the captioned programs possible without further costs to the project beyond the initial captioning costs.

*Priority:* Under this competition, the Secretary intends to make one or more awards in each of the four areas of activity identified above. Each application may address only one of the areas of activity.

Projects must—

(a) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, and cultural experiences of individuals with hearing impairments;

(b) Provide a flexible plan to assure closed captioning of television programs without interruption, while accommodating last-minute program substitutions and new programs;

(c) Identify the total number of hours and the projected cost per hour for each of the programs to be captioned;

(d) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(e) Identify the methods of captioning to be used for each program—indicating

whether captioning is provided in real-time, live display, offline, or reformatted—and the projected cost per hour for each method used;

(f) Provide and maintain back-up systems that will ensure successful, timely captioning service, despite national or regional emergency situations;

(g) Demonstrate the willingness of each major network or providers of syndicated programs included in the project to permit captioning of their programs;

(h) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations; and

(i) Identify the anticipated shelf-life, and the range of distribution of syndicated programs captioned without further costs to the project beyond the initial captioning costs.

Captions produced under these awards may be reformatted or otherwise adapted by owners or rights holders of programming, including networks and syndicators, for future airings or other distributions.

*Project Period:* Up to 36 months.

*Maximum award:* The Secretary rejects and does not consider an application that proposes a budget exceeding $500,000 for National News and Public Information; $250,000 for Children's Programs; and $350,000 for Syndicated Television Programming, for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

*Page Limits:* Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½'' x 11'' (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

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*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, S.W., room 3317, Switzer Building, Washington, D.C. 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.

*Intergovernmental Review*

All programs in this notice are 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.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those programs.

Individuals With Disabilities Education Act Application Notice for Fiscal Year 1999

| CFDA Number and name | Applications available | Application deadline date | Deadline for intergovernmental review | Maximum award (per year)* | Page Limit** | Estimated number of awards |
|---|---|---|---|---|---|---|
| 84.325A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities | 09/28/98 | 11/09/98 | 01/08/99 | $300,000 | 40 | 26 |
| 84.325D Preparation of Leadership Personnel | 09/28/98 | 11/16/98 | 01/15/99 | $200,000 | 40 | 18 |
| 84.325E Preparation of Personnel in Minority Institutions | 09/28/98 | 02/01/99 | 04/02/99 | $200,000 | 40 | 15 |
| 84.325H Improving the Preparation of Personnel to Serve Children with High-Incidence Disabilities | 09/28/98 | 12/07/98 | 02/05/99 | $200,000 | 40 | 32 |
| 84.325N Projects of National Significance | 09/28/98 | 11/30/98 | 01/29/99 | $200,000 | 40 | 12 |
| 84.327U Closed Captioned Television Programs | | | | | | |
| National News & Public Information | 09/28/98 | 11/23/98 | 01/22/99 | $500,000 | 40 | 15 |
| Children's Programs | | | | $250,000 | | |
| Syndicated Television Programming | | | | $350,000 | | |

*The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

** Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included under each priority and competition description in this notice. The Secretary rejects and does not consider an application that does not adhere to this requirement.

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

Dated: August 20, 1998.

**Curtis L. Richards,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 98–25088 Filed 9–17–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
September 18, 1998

## Part VII

# Department of Education

**Office of Postsecondary Education; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; Notice**

## DEPARTMENT OF EDUCATION

**(CFDA No.: 84.038, 84.033, and 84.007)**

## Office of Postsecondary Education; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

**AGENCY:** Department of Education.

**ACTION:** Notice of the closing date for institutions to submit a request for a waiver of the allocation reduction for the underuse of funds under the Federal Perkins Loan, Federal Work-Study (FWS), or Federal Supplemental Educational Opportunity Grant (FSEOG) programs (known collectively as the campus-based programs).

**SUMMARY:** The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the allocation reduction being applied to its Federal Perkins Loan, FWS, or FSEOG allocation for the 1999–2000 award year (July 1, 1999 through June 30, 2000) because the institution returned more than 10 percent of its allocation for that program for the 1997–1998 award year (July 1, 1997 through June 30, 1998).

**DATES:** *Closing Date for Submitting a Waiver Request and any Supporting Information or Documents.* For an institution that returned more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for the 1997–1998 award year to be considered for a waiver of the allocation reduction for its 1999–2000 award year allocation, it must request a waiver of the underuse penalty, provide a written explanation of the circumstances that caused the underuse of its allocation, and submit any additional documentation to support the explanation by October 1, 1998.

An institution may request a waiver of the underuse penalty by selecting the ''Yes'' box in Part II of Section E of its Fiscal Operation Report for 1997–98 and Application to Participate for 1999–2000 (FISAP), and provide a written explanation of the circumstances that caused the underuse of its allocation on the electronic FISAP ''Additional Information Screen.'' This request and explanation must be transmitted electronically by the established FISAP deadline of October 1, 1998.

In addition, an institution may mail or have hand-delivered any additional documentation that supports its written explanation of the circumstances that caused the underuse of its allocation. The documentation may be included with the FISAP signature page and certification forms. The documentation must be mailed or delivered by hand to one of the addresses indicated below by the established deadline date of October 1, 1998.

**ADDRESSES:** *Supporting Documents Delivered by Mail.* If these documents are delivered by mail, they must be addressed to Electronic FISAP Administrator, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing these documents by October 1, 1998. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If these documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

*Supporting Documents Delivered by Hand.* If these documents are delivered by hand, they must be taken to Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland.

Documents that are hand-delivered will be accepted between 9 a.m. and 5 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. Documents that are hand-delivered will not be accepted after 5 p.m. on October 1, 1998.

**SUPPLEMENTARY INFORMATION:** Under sections 413D(e)(2), 442(e)(2), and 462(j)(4) of the Higher Education Act of 1965, as amended, if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the second succeeding award year for that program reduced by the dollar amount returned. The Secretary may waive this requirement for a specific institution if the Secretary finds that enforcement of the requirement would be contrary to the interest of the affected campus-based program. The institution must provide a waiver request and any supporting information or documents by the established October 1, 1998 closing date. If the institution submits a waiver request and any supporting information or documents after the closing date, the request will not be considered.

### Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.

(3) Federal Perkins Loan Program, 34 CFR Part 674.

(4) Federal Work-Study Programs, 34 CFR Part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(7) New Restrictions on Lobbying, 34 CFR Part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(9) Drug-Free Schools and Campuses, 34 CFR Part 86.

**FOR FURTHER INFORMATION CONTACT:** For technical assistance concerning the waiver request or other operational procedures of the campus-based programs, contact: Ms. Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. Telephone (202) 708–9751.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m., Eastern time, Monday through Friday.

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

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

Dated: September 14, 1998.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 98–25089 Filed 9–17–98; 8:45 am]

BILLING CODE 4000–01–P

# Reader Aids

**Federal Register**

Vol. 63, No. 181

Friday, September 18, 1998

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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