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Thursday
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Presidential Documents

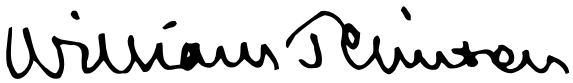
Title 3—

The President

Executive Order 13104 of October 19, 1998

Amendment to Executive Order 13021, Tribal Colleges and Universities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to provide for the continuation of the President's Board of Advisors on Tribal Colleges and Universities, it is hereby ordered that section 7 of Executive Order 13021 is amended to read ''The Board shall terminate on September 30, 1999, unless the Board is renewed by the President prior to that date.''



THE WHITE HOUSE,
October 19, 1998.

[FR Doc. 98–28471
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Billing code 3195–01–P

Rules and Regulations

Federal Register
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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.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581 and 582

RIN 3206–AH43

Processing Garnishment Orders for Child Support and Alimony and Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: On June 26, 1998 (63 FR 34777), the Office of Personnel Management corrected errors that appeared in the list of agents designated to accept legal process for child support and alimony and the list of agents designated to facilitate the service of legal process on Federal employees (Appendices A and B to Part 581) that were published on March 26, 1998 (63 FR 14756). Subsequent to that correction, additional errors have been brought to OPM's attention. This notice corrects those additional errors.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606–1700.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the following corrections are made to the final rule published on March 26, 1998 (63 FR 14756):

The listing for the Department of Agriculture's Food Safety and Inspection Service, on page 14760, columns 1 and 2, is corrected to read as follows: Chief, Employee Relations Branch, Human Resources Division, Food Safety and Inspection Service, Room 3175 South Building, Washington, DC 20250–3700, (202) 720–6287

Note: the listing for the Department of Agriculture's Food Safety remains unchanged.

The listing for the ''agent designated to accept legal process issued by courts in the District of Columbia'', under the heading of ''Headquarters (Washington, DC) and overseas employees'', Federal Aviation Administration, Department of Transportation, on page 14767, column 2, is corrected to read as follows: Assistant Chief Counsel, AGC–100, General Legal Services Division, Federal Aviation Administration, 400 Seventh Street, SW., Suite PL–200A, Washington, DC 20590, (202) 366–4099.

The listing for the ''agent designated to accept legal process issued by courts in the State of Oklahoma'', Headquarters (Washington, DC) and overseas employees, Federal Aviation Administration, Department of Transportation, on page 14767, column 2, is corrected to read as follows: Assistant Chief Counsel, AMC–7, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125, (405) 954–3296.

The listing for the General Services Administration on page 14775, columns 2 and 3, is corrected to read as follows: Director, Kansas City Finance Division—6BC, 1500 East Bannister Road—Room 1107, Kansas City, MO 64131, (816) 926–7625.

The listing for the Merit Systems Protection Board on page 14775, column 3, is corrected to read as follows: Director, Financial and Administrative, Management Division 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653–7263.

The listing for the General Services Administration on page 14787, column 1, is deleted.

The listing for the Merit Systems Protection Board on page 14787, column 2, is deleted.

[FR Doc. 98–28350 Filed 10–21–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–082–2]

Mexican Fruit Fly Regulations; Addition of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by adding an additional area in San Diego County, CA, to the list of regulated areas. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the newly regulated area in San Diego County, CA.

DATES: Interim rule effective October 16, 1998. Consideration will be given only to comments received on or before December 21, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–082–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–082–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly

allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Prior to the effective date of this rule, the only area in California regulated for the Mexican fruit fly was a portion of San Diego County.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that an additional portion of San Diego County, CA, is infested with the Mexican fruit fly. Specifically, since September 16, 1998, inspectors have detected several adult and larval sites in a previously nonregulated area of San Diego County, CA, indicating a reproducing population. The Mexican fruit fly is not known to occur anywhere else in the continental United States except in another portion of San Diego County, CA, and in Texas.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3(c) by designating as a regulated area an additional portion of San Diego County, CA. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portions of the quarantined State of California as a regulated area. Officials of State agencies of California are conducting an intensive Mexican fruit fly eradication program in the regulated areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated areas that are substantially the same as those imposed with respect to the interstate movement of regulated articles.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule restricts the interstate movement of regulated articles from an additional area in San Diego County, CA. Within the regulated area there are approximately 156 small entities that may be affected by this rule. These include 124 fruit sellers, 6 nurseries, 4 mobile fruit vendors, 2 farmer's markets, and 20 farmer's market vendors. These 156 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional costs.

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

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public

inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. In § 301.64–3, paragraph (c), the entry for California is amended by adding a second entry for San Diego County to read as follows:

301.64–3 Regulated areas.

* * * * *

(c) * * *

CALIFORNIA

San Diego County. * * *

Also, that portion of San Diego County in the San Diego area bounded by a line drawn as follows: Beginning at the intersection of Mission Gorge Road and Jackson Drive; then southeast along Jackson Drive to Grossmont Boulevard; then east along Grossmont Boulevard to State Highway 125; then south along State Highway 125 to Spring Street; then southeast along Spring Street to Broadway; then southwest along Broadway to Sweetwater Road; then south along Sweetwater Road to South Bay Parkway; then southwest along South Bay Parkway to State Highway 54; then southwest along State Highway 54 to Interstate Highway 805; then northwest along Interstate Highway 805 to Plaza Boulevard; then west along Plaza Boulevard to Interstate Highway 5; then north along Interstate Highway 5 to State Highway 15; then north along State Highway 15 to National Avenue; then west along National Avenue to 28th Street; then north along 28th Street to State Highway 94; then west along State Highway 94 to Interstate Highway 5; then north along Interstate Highway 5 to Park Boulevard; then north along Park Boulevard to Mission Avenue; then northeast along Mission Avenue to Texas Street; then north along Texas Street to Interstate Highway 8; then northeast along Interstate Highway 8 to Interstate Highway 15; then north along Interstate Highway 15 to Friars Road; then northeast along Friars Road to Mission Gorge Road; then northeast along Mission Gorge Road to the point of beginning.

* * * * *

Done in Washington, DC, this 16th day of October 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–28282 Filed 10–21–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. 28910]

Review of Existing Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Review of Existing Rules; disposition of comments.

SUMMARY: This document summarizes the comments the Federal Aviation Administration (FAA) received in response to the notice inviting participation in its 1997 review of regulations as part of the 3-year Regulatory Review Program. That notice requested the public to identify regulations it believes should be amended, simplified, or eliminated.

In addition, in response to a recommendation by the White House Commission on Aviation Safety and Security (Commission), the FAA requested that the public suggest which rules could be developed as performance-based rather than prescriptive and to suggest plain English language that could be used in writing the regulations. This document also summarizes the FAA's response to the comments and changes it intends to make in its regulatory program as a result of this review. A report of the individual comments and the FAA's disposition of those comments by subject is on file in the docket. A copy of this report may be obtained from the Office of Rulemaking using the contact information listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Gerri Robinson, ARM–24, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9678.

SUPPLEMENTARY INFORMATION:

Three-Year Regulatory Review Program

On May 15, 1997, by notice published in the **Federal Register** (62 FR 26894), the FAA initiated a regulatory review as part of its ongoing Regulatory Review Program, which prescribes that the FAA review existing regulations every 3 years. This action was based on the 1995 Strategic Plan and Presidential recommendation that the FAA perform regulatory reviews consistent with its statutory authority and public interest responsibilities. This review program originally was published for comment through a notice in **Federal Register** on August 24, 1995 (60 FR 44142), soliciting recommendations on the FAA's proposed method of obtaining and analyzing public comments. Comments in response to that notice were received addressing the 3-year review cycle and the method of concluding the review by publishing a summary and general disposition of comments and, where appropriate, indicating how the FAA's regulatory priorities will be adjusted. While some commenters recommended different cycle times, the public was supportive of the FAA's approach to using its regulatory resources wisely, while effectively identifying regulations in need of revision or elimination. All comments were reviewed and final guidelines were published in the **Federal Register** notice dated October 15, 1996 (61 FR 53610).

As a result of past regulatory reviews, the FAA recognizes that there is great value in obtaining public input and adjusting its agenda and priorities accordingly. The FAA's objective in conducting regulatory reviews is to identify any necessary changes to the FAA's regulatory agenda. The regulatory review effort promotes the FAA's objective to improve safety without imposing undue burdens on the public. The comments received in each subsequent review will assist the FAA in determining the direction of its regulatory efforts.

In the FAA's May 15, 1997, notice, the public was asked to identify three regulations, in priority order, that should be amended or eliminated. In addition, the FAA asked the public to identify unnecessary regulations that have a significant impact on small business entities. The comment period closed August 13, 1997.

Comments were received from 21 commenters. The commenters included the following: air carriers, individuals, pilots, rotorcraft operators, aviation trade associations, an airport authority, a parts manufacturer, a pilot school, a

civil aviation authority, and a labor union.

The 21 commenters submitted a total of 82 recommendations. Several parts of Title 14, Code of Federal Regulations (14 CFR) were addressed, including parts 21, 25, 43, 61, 91, 121, and 135; 14 CFR parts 91 and 135 received the majority of responses. Other comments addressed FAA Orders, advisory circulars (ACs), a Special Federal Aviation Regulation (SFAR), and various statutes and FAA programs, such as the Harmonization Program, the Pilot Records Improvement Act, and the Air Carrier Standard Security Program.

The most common issue raised was minimum altitude and visibility requirements, including helicopter instrument flight rules (IFR) alternate airport and congested airspace minimums. Other issues discussed include the Joint Aviation Authorities (JAA)/FAA harmonization efforts; alternate airports, including procedures and fuel requirements; and appeals from emergency revocations of pilot certificates. Also, three commenters suggested that similar regulations for parts 91, 119, 121, and 135 be consolidated to avoid duplication and confusion.

Although no commenters specifically identified regulations that have a significant impact on small entities, one commenter indicated that she is a small business owner and is overwhelmed by certain regulations. The National Air Transportation Association (NATA) commented that its small business members also are burdened by unnecessary regulations, but did not identify specific regulations that should be amended or eliminated.

Each comment was examined carefully to determine if it is being addressed in current rulemaking activities or if it should be a candidate for future actions to amend, initiate, or eliminate rules. The FAA compared the issues addressed by the commenters to those being addressed by its current regulatory program and considered whether to adjust its regulatory priorities in accordance with its statutory authority and responsibilities.

The commenters addressed a variety of topics and provided many suggestions. Some suggestions eventually will result in the initiation of rulemaking action, and other suggestions will be included or considered in current rulemaking activities. The FAA will consider several comments for future rulemaking when resources permit. Each comment has been entered into a data base and will be reviewed then a rulemaking project addressing a particular issue is considered.

Issues That Will Be Considered for Rulemaking

The FAA did not identify any recommendations that required immediate rulemaking; however, several issues will be added to the FAA's regulatory program in the future for considerations as rule changes as resources permit. For instance, the adequacy of minimum fuel and weather minimum requirements will be considered for possible future rulemaking. Several recommendations were received from various commenters regarding these requirements, especially as they apply in determining alternate airports. Some aspects of these recommendations already are being considered by the Aviation Rulemaking Advisory Committee (ARAC).

One commenter requested that the FAA establish a separate part 135 for rotorcraft operators. The suggestion is worthy of close consideration in the future, when resources permit. Other issues that will be considered for future rulemaking activities include consolidating the oxygen requirements for parts 91, 121, and 135; and revising language in 14 CFR part 150 for clarity. In addition, the FAA will consider developing further guidance on ''operational control'' for part 135 air carriers.

Issues Currently Being Addressed

Many of the issues addressed by commenters are being considered by the ARAC. Some of the issues include the following topics:

- Rotorcraft: Alternate Airport and Special VFR Operations
- Fuel requirements: Reserves for IFR and VFR flight
- Alternate airport requirements
- Maintenance
- National parks, wilderness areas, and national forests restrictions

The FAA has several other ongoing regulatory and nonregulatory activities addressing issues similar to those mentioned by commenters, including—

- Emergency revocation of a certificate,
- Crewmember flight and duty time requirements, and
- Enrollment requirements for flight schools.

In addition, the FAA is addressing policies and procedures regarding issues similar to those raised by commenters. For example—

- One commenter raised two issues addressing the requirement for a flight attendant to have a ''direct view'' of the cabin area and seatback strength. The FAA currently is reviewing an AC to describe a means of compliance with the ''direct view'' requirement. The FAA also is discussing the capability of seatbacks to provide a sturdy handhold in a joint effort with the automotive engineer's SEAT committee.
- One commenter recommended revisions to the Aircraft Certification Systems Evaluation Program (ACSEP) process described in FAA Order 8100.70 and AC 21–39, The Aircraft Certification Systems Evaluation Program. The FAA is considering changes to the ACSEP process through an initiative known as ACSEP/Certificate Management Resource Targeting.
- Several commenters expressed support of and urged the FAA to continue its efforts in harmonizing rules, policies, and guidance materials of the JAA and FAA. Air carrier commenters primarily are concerned with foreign repair station issues. The FAA recognizes the impact of harmonization and is committed to continuing its efforts to realize harmonization of regulations between the FAA and JAA as to foreign repair stations.

Issues That May Be Addressed in the Future

The FAA received comments on issues it is considering for future action. One such issue is clarification of airport design requirements, specifically regarding conditions to extend an object-free zone (OFA). In response to these comments, the FAA is reviewing AC 150/5300–13, Airport Design.

Issues That Have Been Addressed

Some recommendations made by commenters already have been addressed and were adopted as final rules before the request for comments for the 1997 Review of Existing Rules was published. One commenter addressed single-engine IFR passenger-carrying operations, which will be allowed as a result of Amendment No. 135–70, published on August 6, 1997 (62 FR 42364), and effective May 4, 1998. Similarly, the FAA received several comments addressing various issues regarding training requirements. The FAA recently revised part 61 (April 4, 1997, 62 FR 16220) following a regulatory review that, among other things, addressed training issues. Overall, the FAA received wide general support in adopting the new part 61.

Issues That Will Not Be Addressed

In some cases, the FAA found that either the current rule was necessary or the recommendations did not address a safety concern. For example, some

commenters made recommendations to consolidate operating rules in parts 91, 121, and 135. The FAA does not agree with these recommendations. The operations conducted under each part are distinct enough to warrant separate rules, and the regulations provide levels of safety appropriate for each applicable operation.

Several suggestions were made to expand definitions and abbreviations. The FAA finds further definition is not needed. The glossary in 14 CFR part 1 fulfills its purpose of providing clarification of terms used in the regulations that are not self-explanatory or where the normal dictionary definition does not exist or does not apply.

White House Commission on Aviation Safety and Security Recommendations; Response to Public Comments

In addition to requesting public comments as a result of the FAA's Regulatory Review Program, in the **Federal Register** notice dated May 15, 1997, the FAA also requested that the public suggest ways in which the agency might simplify its regulations in response to recommendations from the Commission. In its final report to President Clinton, the Commission recommended that the FAA's regulations be ''* * *simplified and, as appropriate, rewritten as plain English, performance-based regulations.''

Thirteen comments addressing how to simplify the regulations were received in response to the notice and were forwarded to the appropriate program offices, which are performing an internal review of their regulations in accordance with the Commission's recommendations.

Conclusion

The FAA finds that reviewing public comments to Federal Aviation Regulations assists the FAA in assessing the effectiveness of its regulatory agenda and adjusting the agenda, if necessary. As a result of the 1997 Review of Existing Rules, the FAA identified several issues that it determined will be addressed in future rulemaking projects. In addition, the review offered the FAA a general understanding of the public's concerns regarding the regulations and guidance material. The public comments addressing the Commission's recommendations to simplify the Federal Aviation Regulations will be considered in conjunction with the agency's overall review of its existing and pending regulations in the future. The FAA intends to continue to request public comments to the Federal Aviation Regulations every 3 years to identify any necessary changes to the FAA's regulatory program.

Issued in Washington, DC, on October 14, 1998.

Margaret Gilligan,

Acting Associate Administrator for Regulation and Certification.

[FR Doc. 98–28377 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–191–AD; Amendment 39–10848; AD 98–22–02]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires replacement of the outboard trunnion pin of the shock strut on the main landing gear (MLG) with a new and improved outboard trunnion pin. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the outboard trunnion pin due to fatigue cracking, which could result in collapse of the MLG.

DATES: Effective November 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on August 26, 1998 (63 FR 45421). That action proposed to require replacement of the outboard trunnion pin of the shock strut on the main landing gear (MLG) with a new and improved outboard trunnion pin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $360, or $120 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–22–02 SAAB Aircraft AB: Amendment 39–10848. Docket 98-NM–191-AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers -002 through -050 inclusive, -052, and -053; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the outboard trunnion pin due to fatigue cracking, which could result in collapse of the main landing gear (MLG), accomplish the following:

(a) Prior to the accumulation of 8,200 total landings, or within 60 days after the effective date of this AD, whichever occurs later, replace the outboard trunnion pin of the shock strut on the MLG with a new and improved outboard trunnion pin, in accordance with Saab Service Bulletin 2000–32–042, dated March 27, 1998, including Attachments 1 and 2, dated June 1997.

(b) As of the effective date of this AD, no person shall install on any airplane an outboard trunnion pin having part number (P/N) AIR132900 or AIR134608.

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

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

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

(e) The replacement shall be done in accordance with SAAB Service Bulletin 2000–32–042, dated March 27, 1998, including Attachments 1 and 2, dated June 1997, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1–3	Original ..	March 27, 1998.
Attachment 1		
1–4	1	June 1997.
Attachment 2		
1–4	2	June 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–123, dated March 30, 1998.

(f) This amendment becomes effective on November 27, 1998.

Issued in Renton, Washington, on October 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28156 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–29–AD; Amendment 39–10851; AD 98–22–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive inspections to detect fatigue cracking of the lower surface panel on the wing center box; and repair, if necessary. This amendment also requires modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane.

DATES: Effective November 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 1998.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was

published in the **Federal Register** on August 26, 1998 (63 FR 45423). That action proposed to require repetitive inspections to detect fatigue cracking of the lower surface panel on the wing center box; and repair, if necessary. That action also proposed to require modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections.

Comments

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

The commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD. It will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $7,200, or $120 per airplane, per inspection cycle.

It will take approximately 2 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. There are no parts necessary to accomplish the modification. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $7,200, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–22–05 Airbus Industrie: Amendment 39–10851. Docket 98–NM–29–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 22418 (reference Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997) has not been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Except as provided by paragraph (e) of this AD: Prior to the accumulation of 20,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later, perform a high frequency eddy current inspection to detect fatigue cracking of the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997. Repeat the eddy current inspection thereafter at intervals not to exceed 7,500 flight cycles until the actions required by paragraph (c) of this AD are accomplished.

(b) Except as provided by paragraph (d) of this AD: If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997. Accomplishment of the repair constitutes terminating action for the repetitive inspections for the repaired area only.

(c) Prior to the accumulation of 25,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection to detect fatigue cracking of the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997.

(1) If no cracking is detected: Prior to further flight, modify the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(2) Except as provided by paragraph (d) of this AD, if any cracking is detected: Prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; and modify any uncracked area in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997. Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of this AD.

(d) If any cracking is detected during any inspection required by paragraph (b) or (c)(2) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(e) The actions required by paragraph (a) of this AD are not required to be accomplished if the requirements of paragraph (c) of this AD are accomplished at the time specified in paragraph (a) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

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

(h) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, and Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, which contains the following list of effective pages:

Page Number	Revision level shown on page	Date shown on page
1–6, 8, 13–14	02	May 14, 1997.
7, 9–12, 15	Original ..	Feb. 16, 1993.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–309–104(B), dated October 22, 1997.

(i) This amendment becomes effective on November 27, 1998.

Issued in Renton, Washington, on October 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28159 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–188–AD; Amendment 39–10849; AD 98–22–03]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires a one-time visual inspection of the main landing gear (MLG) brake assemblies to determine the brake configuration, and reconfiguration, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent an incorrect brake combination configuration of the MLG, and consequent reduced controllability of the airplane during take-off and landing.

DATES: Effective November 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on August 26, 1998 (63 FR 45425). That action proposed to require a one-time visual inspection of the main landing gear (MLG) brake assemblies to determine the brake configuration, and reconfiguration, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 276 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $16,560, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–22–03 Saab Aircraft AB: Amendment 39–10849. Docket 98–NM–188–AD.

Applicability: Model SAAB SF340A series airplanes having serial numbers (S/N) –004 through –159 inclusive, and SAAB 340B series airplanes having S/N's –160 through –439 inclusive; on which SAAB Modification 2898 (reference SAAB Service Bulletin 340–32–113, dated November 14, 1997, or Revision 1, dated February 9, 1998) has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an incorrect brake combination of the main landing gear (MLG), and consequent reduced controllability of the airplane during take-off and landing, accomplish the following:

(a) Within 2 months after the effective date of this AD, perform a one-time visual inspection of the MLG brake assemblies to determine the brake configuration, in accordance with Saab Service Bulletin 340–32–114, dated May 4, 1998.

(1) If the configuration of the brake assemblies is specified in Table 1 of the service bulletin as permissible combinations, no further action is required by this AD.

(2) If the configuration of the brake assemblies is not specified in Table 1 of the service bulletin as a permissible combination, prior to further flight, reconfigure the brake assemblies, in accordance with the service bulletin.

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

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

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

(d) The actions shall be done in accordance with SAAB Service Bulletin 340–32–114, dated May 4, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–127, dated May 5, 1998.

(e) This amendment becomes effective on November 27, 1998.

Issued in Renton, Washington, on October 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28157 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–185–AD; Amendment 39–10850; AD 98–22–04]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, that currently requires replacement of the cover of the power control quadrant pedestal with a cover that incorporates slot protection. This amendment requires repetitive inspections for deterioration or damage of the slot protection installed in the cover of the power control quadrant pedestal. This amendment also requires eventual modification of the cover, which constitutes terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent deterioration of the slot protection installed in the cover of the power control quadrant pedestal, which could allow foreign objects to jam or interfere with the power or trim control system and result in reduced controllability of the airplane.

DATES: Effective November 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 87–05–05 R2, amendment 39–5968 (53 FR 26039, July 11, 1988), which is applicable to all CASA Model C–212 series airplanes, was published in the **Federal Register** on August 26, 1998 (63 FR 45419). The action proposed to require repetitive inspections for deterioration or damage of the slot protection installed in the cover of the power control quadrant pedestal. The action also proposed to require eventual modification of the cover, which constitutes terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 38 airplanes of U.S. registry that will be affected by this AD.

The inspection that is required in this new AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,280, or $60 per airplane, per inspection cycle.

The modification that is required in this new AD action will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,200 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $52,440, or $1,380 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5968 (53 FR 26039, July 11, 1988), and by adding a new airworthiness directive (AD), amendment 39–10850, to read as follows:

98–22–04 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–10850. Docket 98–NM–185–AD. Supersedes AD 87–05–05 R2, amendment 39–5968.

Applicability: Model C–212 series airplanes, as listed in CASA C–212 Service Bulletin 212–76–08, dated April 12, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) 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 deterioration of the slot protection installed in the cover of the power control quadrant pedestal, which could allow foreign objects to jam or interfere with the power or trim control system and result in reduced controllability of the airplane, accomplish the following:

(a) Within 300 hours time-in-service or 3 months after the effective date of this AD, whichever occurs first, perform a visual inspection for deterioration or damage of the slot protection installed in the cover of the power control quadrant pedestal.

(1) If no deterioration or damage is detected, repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service or 3 months, whichever occurs first.

(2) If any deterioration or damage is detected, or if no slot protection is installed, prior to further flight, accomplish the modification required by paragraph (b) of this AD.

(b) Within 12 months after the effective date of this AD, modify the cover of the power control quadrant pedestal by installing new, improved slot protection, in accordance with CASA C–212 Service Bulletin SB–212–76–08, dated April 12, 1993. Such modification constitutes terminating action for the inspection requirements of paragraph (a) of this AD.

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 87–05–05 R2, amendment 39–5968, are not considered to be approved as alternative methods of compliance with this AD.

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

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

(e) The modification shall be done in accordance with CASA C–212 Service Bulletin SB–212–76–08, dated April 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 04/96, dated May 13, 1996.

(f) This amendment becomes effective on November 27, 1998.

Issued in Renton, Washington, on October 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28158 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82–CE–36–AD; Amendment 39–10852; AD 83–22–01 R1]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc.; Models PA–23–235, PA–23–250, and PA–E23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment clarifies information contained in Airworthiness Directive (AD) 83–22–01, which currently requires inserting certain zero fuel weight limitations into the Limitations Section of the airplane flight manual (AFM) on certain The New Piper Aircraft, Inc. (Piper) Models PA–23–235, PA–23–250, and PA–E23–250 airplanes. The FAA has received reports that reference in the AD to two of the AFM reports contains incorrect information. In particular, reference to Report 1308, Revision B, contains the words ''normally aspirated''; and reference to Report 1360, Revision B, contains the word ''Turbocharged.'' These references should be removed. This document clarifies AD 83–22–01 by removing the words ''normally aspirated'' and ''Turbocharged'' from the reference to these reports. The actions specified in this AD are intended to continue to prevent possible wing structure damage caused by excessive fuel weight, which could result in loss of control of the airplane.

EFFECTIVE DATE: November 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 82–CE–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

The AFM reports referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 82–CE–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. William Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, GA 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

AD 83–22–01, Amendment 39–4758, currently requires inserting certain zero fuel weight limitations into the Limitations Section of the airplane flight manual (AFM) on The New Piper Aircraft, Inc. (Piper) Models PA–23–235, PA–23–250, and PA–E23–250 airplanes. These limitations are included in the following reports:

Airplane Model	Serial Numbers	Report
PA–23–235	27–505 through 27–622	Report 1207, Rev. B.
PA–23–250	27–1 through 27–1999	Report 1036, Rev. B.
PA–23–250	27–2000 through 27–2504	Report 1204, Rev. C.
PA–23–250	27–2505 through 27–3836; and 27–3838 through 27–3943	Report 1308, Rev. B (4800 lbs. Gross weight).
PA–23–250	27–2505 through 27–3836; and 27–3838 through 27–3943	Report 1360, Rev. B (5200 lbs. Gross weight).
PA–23–250	27–3837, 27–3944 through 27–4425, and 27–4427 through 27–4523	Report 1520, Rev. B.
PA–23–250	27–4426, 27–4574 through 27–7554168	Report 1630, Rev. 17.
PA–23–250	7654001 and up	Report 1948, Rev. 13.
PA–E23–250	27–2505 through 27–3836, and 27–3838 through 27–3943	Report 1378, Rev. B.
PA–E23–250	27–3837, 27–3944 through 27–4425; and 27–4427 through 27–4573	Report 1521, Rev. B.
PA–E23–250	27–4426 and 27–4574 through 27–7554168	Report 1631, Rev. B.
PA–E23–250	27–7654001 and up	Report 2049, Amendment 5.

Need for the Correction

The FAA has received reports that reference in the AD to two of the AFM reports contains incorrect information. In particular, reference to Report 1308, Revision B, contains the words ''normally aspirated''; and reference to Report 1360, Revision B, contains the word ''Turbocharged.'' Both of these reports apply to both normally aspirated and turbocharged airplanes.

Consequently, the FAA has determined that there is a need to clarify AD 83–22–01 to eliminate any confusion concerning the particular report that the owners/operators of the affected airplanes need to incorporate into their AFM.

Correction of Publication

This document clarifies the intent of AD 83–22–01 by eliminating reference to ''normally aspirated'' and ''Turbocharged'' in the applicable reports. 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 intent of AD 83–22–01, 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) 83–22–01, Amendment 39–4758, and by adding a new AD to read as follows:

83–22–01 R1 The New Piper Aircraft, Inc.: Amendment 39–10852; Docket No. 82–CE–36–AD; Revises AD 83–22–01, Amendment 39–4758.

Applicability: The following models and serial numbers, certificated in any category:

Model	Serial Numbers
PA–23–235	27–505 through 27–622.
PA–23–250	27–1 and up.
PA–E23–250	27–2505 through 27–7554168, and 27–7654001 and up

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

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent possible wing structure damage caused by excessive fuel weight, which could result in loss of control of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, unless already accomplished (compliance with AD 83–22–01), insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM), and operate the airplane in accordance with the Zero Fuel Weight Limitations specified below:

(1) Models PA–23–235 and PA–23–250 (S/N's 27–1 through 27–1999) airplanes: Zero Fuel weight—4,000 lbs.

(2) Models PA–23–250 and PA–E23–250 (serial number 27–2000 and up) airplanes: Zero Fuel weight (normally aspirated)—4,400 lbs.; (Turbo-charged)—4,500 lbs.

(b) Within 12 months after November 3, 1983 (the effective date of AD 83–22–01) or prior to further flight after the effective date of this AD, whichever occurs later, incorporate the appropriate AFM report as follows:

Airplane Model	Serial Numbers	Report
PA–23–235	27–505 through 27–622	Report 1207, Rev. B.
PA–23–250	27–1 through 27–1999	Report 1036, Rev. B.
PA–23–250	27–2000 through 27–2504	Report 1204, Rev. C.
PA–23–250	27–2505 through 27–3836; and 27–3838 through 27–3943	Report 1308, Rev. B (4800 lbs. Gross weight).
PA–23–250	27–2505 through 27–3836; and 27–3838 through 27–3943	Report 1360, Rev. B (5200 lbs. Gross weight).
PA–23–250	27–3837, 27–3944 through 27–4425, and 27–4427 through 27–4523	Report 1520, Rev. B.
PA–23–250	27–4426, 27–4574 through 27–7554168	Report 1630, Rev. 17.
PA–23–250	7654001 and up	Report 1948, Rev. 13.
PA-E23–250	27–2505 through 27–3836, and 27–3838 through 27–3943	Report 1378, Rev. B.
PA-E23–250	27–3837, 27–3944 through 27–4425; and 27–4427 through 27–4573	Report 1521, Rev. B.
PA-E23–250	27–4426 and 27–4574 through 27–7554168	Report 1631, Rev. B.
PA-E23–250	27–7654001 and up	Report 2049, Amendment 5.

(c) The actions 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).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, GA 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 83–22–01 (revised by this action) are considered approved as alternative methods of compliance for this AD.

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

(f) The AFM reports referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. These documents may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment revises AD 83–22–01, Amendment 39–4758.

(h) This amendment becomes effective on November 25, 1998.

Issued in Kansas City, Missouri, on October 15, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28301 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–14]

Establishment of Class D Airspace; Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace at Albemarle, NC. The North Carolina Air National Guard has installed a control tower at the Stanly County Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 3,100 feet MSL within a 3.9-mile radius of the Stanly County Airport. Control tower hours of operation are tentatively scheduled for 1300–2100, Tuesday through Saturday.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 27, 1998, the FAA proposed to amend part 71 of the

Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Albermarle, NC (63 FR45777). This action provides adequate Class D airspace for IFR operations at Stanly County Airport. Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Albemarle, NC. The North Carolina Air National Guard has installed a control tower at the Stanly County Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 3,100 feet MSL within a 3.9-mile radius of the Stanly County Airport. Control tower hours of operation are tentatively scheduled for 1300–2100, Tuesday through Saturday.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * * * *

ASO NC D Albermarle, NC [New]

Stanly County Airport
(Lat. 35°24′55″ N, long. 80°09′03″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 3.9-mile radius of Stanly County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 13, 1998.

Rick Mclean,

Acting Air Traffic Division Manager, Southern Region.

[FR Doc. 98–28372 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–16]

Establishment of Class D Airspace; Concord, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace at Concord, NC. The City of Concord, North Carolina, has installed a control tower at the Concord Regional Airport, As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 3,200 feet MSL within a 4-mile radius of the Concord Regional Airport. Control tower hours of operation are tentatively scheduled for 0700–2300, daily.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 31, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Concord, NC (63 FR 46204). This action provides adequate Class D airspace for IFR operations at Concord Regional Airport. Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Concord, NC. The City of Concord, North Carolina, has installed a control tower at the Concord Regional Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 3,200 feet MSL within a 4-mile radius of the Concord Regional Airport. Control tower hours of operation are tentatively scheduled for 0700–2300, daily.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO NC D Concord, NC [New]

Concord Regional Airport
(Lat 35°23′07″ N, long. 80°42′35″ W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4-mile radius of Concord Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 13, 1998.

Rick McLean,

Acting Air Traffic Division Manager, Southern Region.

[FR Doc. 98–28379 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 98–ASO–15]

Amendment of Class E Airspace; Chester, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Chester, SC. A Non-directional Beacon (NDB) Runway (RWY) 35 Standard Instrument Approach Procedure (SIAP) has been developed for Chester Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP at Chester Municipal Airport. The Class E airspace has been increased from a 6.4 to a 7-mile radius of the Chester Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 27, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Chester, SC, (63 FR 45778). This action provides adequate Class E airspace for IFR operations at Chester Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Chester, SC. A NDB RWY 35 SIAP has been developed for Chester Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Chester Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1. of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ASO SC E5 Chester, SC [Revised]

Chester Municipal Airport, SC
(Lat. 34°47′22″N, long. 81°11′45″W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 7-mile radius of Chester Municipal Airport.

* * * * *

Issued in College Park, Georgia, on October 13, 1998.

Rick McLean,

Acting Air Traffic Division Manager, Southern Region.

[FR Doc. 98–28371 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–30]

Amendment to Class E Airspace; Forest City, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Forest City, IA.

DATES: The direct final rule published at 63 FR 42694 is effective on 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 11, 1998 (63 FR 42694). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 1, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–28376 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–32]

Amendment to Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Beatrice, NE.

DATES: The direct final rule published at 63 FR 44125 is effective on 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 18, 1998 (63 FR 44125). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 1, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–28375 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–31]

Amendment to Class E Airspace; Spencer, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Spencer, IA.

DATES: The direct final rule published at 63 FR 42695 is effective on 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 11, 1998 (63 FR 42695). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 1, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–28374 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–34]

Amendment to Class E Airspace; Kearney, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Kearney, NE.

DATES: The direct final rule published at 63 FR 44124 is effective on 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 18, 1998 (63 FR 44124). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 1, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–28373 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Regulations No. 22]

RIN 0960–AE36

Permit the Department of State (DOS) and the Immigration and Naturalization Service (INS) To Collect Information Needed To Assign Social Security Numbers (SSNs) to Aliens

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We describe how DOS and INS will provide us with information, collected as part of the immigration process, to enable us to assign SSNs and issue SSN cards to lawfully admitted aliens. We also are: amending the rule on the presumption of authority of a nonimmigrant alien to accept employment to include circumstances where a Form I–94, ''Arrival-Departure Record,'' has not been issued by INS; removing outdated rules on school and alien legalization enumeration; removing outdated rules on the application for a nonwork SSN; and, specifically acknowledging the requirement to complete a Form SS–5, ''Application For A Social Security Card,'' to obtain a duplicate SSN card.

EFFECTIVE DATE: These rules are effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Currently, SSA assigns an SSN to an alien when the individual submits to an SSA field office (FO) a completed Form SS–5 and documentary evidence of age, identity, and lawful admission for permanent residence or other authority of law permitting work in the United States (U.S.). Any applicant age 18 and older applying for an original SSN card must appear for an in-person interview at any SSA field office.

The second phase of the National Performance Review (NPR), the Federal Reinventing Government effort, was announced by the President and Vice President on December 19, 1994. It was designed to focus attention on what each agency does, examining its mission and looking at its programs and functions to see if there are ways to provide better service to the public and, at the same time, do business in a more cost-effective manner, i.e., ''make government work better and cost less.'' Each agency was asked to assemble a team to review its own programs and functions.

SSA's team worked closely with a team of representatives from the NPR and the Office of Management and Budget (OMB) to develop proposals for consideration. One of these proposals was for INS to assist SSA in enumerating aliens. On April 11, 1995, the President formally approved SSA's reinvention proposals and officially announced them the next day. When we began developing this proposal with INS, we found that we needed to include DOS to take into consideration those aliens who enter the U.S. via foreign service posts.

Final Changes

These final rules describe the process by which elements of DOS and INS will collect and then forward enumeration information to SSA. Based on agreements among the three agencies (SSA, DOS, and INS), DOS and INS will collect this information, and INS will electronically transmit the information to SSA. DOS and INS will modify their forms to collect this information, and INS will retain the forms, which will be made available to SSA when necessary.

Assigning SSNs to aliens when they enter the U.S., based on information collected by DOS and INS as part of the immigration process, will improve the integrity of the SSN process. There is widespread counterfeiting of INS documents, and SSA employees must be familiar with a variety of INS documents and determine if those presented are valid. By having INS transmit enumeration information directly to SSA, the potential for SSA employees to inadvertently accept inappropriate and/or counterfeit documents will be reduced.

This initiative also supports SSA's goal of providing world class service to customers by making the means of dealing with SSA as easy and convenient as possible by providing options for service delivery. Aliens who currently must first contact INS and subsequently contact SSA will be able to accomplish both transactions in a single contact.

Further, the final changes will provide for increased overall Federal government efficiency. The new process will reduce the overall cost to the government of administering the enumeration process for aliens because it will eliminate duplicate work done by DOS, INS and SSA.

Because the involvement of the DOS and INS will improve the integrity of the SSN process for aliens, SSA is eliminating the mandatory in-person interview for aliens age 18 and older for whom INS forwards enumeration information to SSA. SSA will continue to interview aliens who apply for SSNs at SSA offices. This supports a 1995 recommendation from the Office of the Inspector General concerning transferring to INS and DOS the SSA FO interview workload for noncitizens applying for an original SSN card.

As part of the INS alien legalization program required under the Immigration Reform and Control Act of 1986, INS accepted applications and evidence for SSNs from legalization applicants and forwarded the applications to SSA for

assignment of SSNs. Once the legalization program ended on September 30, 1991, INS notified SSA that it was discontinuing the agreement and has since referred all aliens to SSA field offices to apply for SSN cards. These final rules eliminate references in the regulations to procedures which are no longer in effect.

The Tax Reform Act of 1986 required taxpayers to show the Taxpayer Identification Number (TIN) for any dependent age 5 and older listed on tax returns due on or after January 1, 1988. In general, SSNs serve as TINs. In an effort to lessen the burden on SSA field offices, SSA offices initiated school enumeration projects. Subsequent legislation required TINs for all dependents claimed on tax returns, regardless of age, so that most children have been assigned SSNs long before reaching school age and school enumeration projects are no longer practical. These final rules eliminate the reference to SSA entering into agreements with school authorities.

Currently, an alien lawfully in the United States without employment authorization, who wants to obtain an SSN, must provide evidence documenting a valid nonwork reason for needing an SSN, e.g., to receive a Federally-funded benefit or enlist in the uniformed services. Another reason, currently shown in our rules, is the Internal Revenue Service (IRS) requirement relating to the use of SSNs for tax purposes.

However, on July 1, 1996, IRS began assigning Individual Taxpayer Identification Numbers (ITINS) to aliens who are otherwise not eligible for SSNs but who need TINs for tax purposes. Therefore, needing an SSN for IRS tax reporting purposes is no longer a valid nonwork reason for SSA to assign an SSN, and we are eliminating such references.

We also are amending our regulations on the presumption of authority of a nonimmigrant alien to accept employment. As currently written, the regulations do not address the authority of a nonimmigrant alien to accept employment if INS has not issued the alien a Form I–94, which is generally issued by INS to a nonimmigrant alien upon arrival in the United States. Under certain circumstances, INS may grant employment authorization to an alien who has not been issued a Form I–94, e.g., an alien whose lawful alien status is pending, so that the individual may work during the period the application for lawful alien status is pending. The final rules clarify that a nonimmigrant alien who has not been issued a Form I–94, which reflects a classification permitting work, must present a current employment authorization document (EAD) or other document authorized by INS which permits the alien to work. Such authority must be established before an SSN card which is valid for work purposes can be issued. Otherwise, an SSN card will be issued with a nonwork legend (i.e., ''NOT VALID FOR EMPLOYMENT'').

Additionally, we are specifically acknowledging the requirement to complete a Form SS–5 to obtain a duplicate SSN card. Although the completion of this form has been a longstanding requirement, our current rules do not specifically refer to it, as they do so in the sections in this subpart relating to applying for an original SSN card (see § 422.103) or a corrected SSN card (see § 422.110).

Explanation of Revisions

We are changing §§ 422.103, 422.107 and 422.110 to implement the initiative for DOS and INS to collect information to assign SSNs to aliens, and we are changing paragraph § 422.103(e) to provide a specific rule on the requirement to complete a Form SS–5 to apply for a duplicate SSN card.

We are changing §§ 422.104(b) and 422.107(a) to eliminate the references to IRS tax reporting purposes as a valid nonwork reason for SSA to assign an SSN, and we are changing § 422.105 to address the authority of a nonimmigrant alien to accept employment if INS has not issued the alien a Form I–94 which reflects a classification permitting work.

Additionally, we are eliminating references in § 422.106 to procedures concerning legalization applicants and SSA agreements with school authorities which are no longer in effect, and we are amending § 422.107 to eliminate the mandatory in-person interview requirement for aliens for whom INS forwards enumeration data to SSA.

On December 2, 1997, we published these final rules as proposed rules in the **Federal Register** at 62 FR 63681 with a 60-day comment period. We received comments from only one source.

The commenter raised several concerns about what will happen to refugees under the new enumeration process, such as the timeliness of issuing an SSN card, the need for an address to which the SSN card will be sent, and the requirement for documentary evidence. We believe that the overall process will be more timely for refugees as well as for other legally admitted aliens. If no personal mailing address is available, the SSN card will be sent to the sponsoring agency of the refugee. Usually, INS has this address since all refugees must have a sponsoring agency. Also, the process will afford greater national uniformity by issuing the same type of SSN card (i.e., an unrestricted card) to all refugees.

Because of the circumstances causing refugees to flee their homes, when a refugee has no documents other than the one issued by INS, SSA currently accepts the INS document alone as documentary evidence of age, true identity, and alien status to assign an SSN. Under this initiative when INS admits an alien as a refugee and transmits the collected enumeration information to SSA, SSA will assign the refugee an SSN.

We believe that the comments do not warrant any changes in our proposed policy, except to clarify in section 422.103(c)(3) the address to which the SSN card will be mailed. Therefore, we are publishing the final rules essentially unchanged from the proposed rules.

Regulatory Procedures

Executive Order 12866

We have consulted with OMB and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, we have prepared the following assessment of the potential costs and benefits of this regulatory action.

Currently, SSA employees review evidence and process applications for all aliens who are issued SSN cards. INS estimates 1.8 million work-authorized aliens enter the United States yearly. SSA processes about 2 million enumeration actions for aliens annually. In fiscal year 1996, SSA issued 1 million original SSN cards to work-authorized aliens and 774,000 replacement cards to work-authorized aliens. In addition, SSA issued 325,000 original and 40,000 replacement SSN cards to aliens without work authorization. We estimate that the current process costs SSA about 385 workyears in the field for this workload.

Having DOS and INS collect enumeration information for aliens and having INS electronically transmit that information to SSA will provide overall government savings. Aliens who currently first contact DOS (at the foreign service post), INS (at the port-of-entry), and subsequently contact SSA (at an SSA field office) for an SSN card now will be able to apply for an SSN card via their contacts with DOS and/or INS. This process will also improve the integrity of the enumeration process and reduce the potential for assigning an SSN based on a fraudulent INS document.

DOS and INS already collect, as part of the immigration process, some of the information that SSA needs to assign an SSN. This process will eliminate duplicate collection of information by SSA of the data elements already collected by DOS and/or INS for immigration purposes and provide for better overall government efficiency.

DOS and INS will collect the information needed to assign an SSN on an immigration form, adding questions to collect the information that SSA needs to assign an SSN, but which is not collected now for immigration purposes. These agencies will archive the immigration form which documents the alien's request for an SSN and retrieve it upon SSA's request.

INS will be reimbursed for the time spent collecting data not needed for immigration purposes. With the proposed changes, INS has previously estimated that its costs will be about $6 million per year, and SSA has agreed to reimburse INS for its costs. DOS has indicated that it will not ask for reimbursement.

SSA's annual cost for original and replacement SSN cards for those aliens for whom DOS and INS will collect SSN information would be about $12 million or 230 workyears. This leaves a net savings to SSA of about $6 million per year if the INS estimate is accurate. The estimated savings are based on the difference between the current SSA interviewing and information collection costs and the expected INS costs for those aliens who will be subject to the processes described by the agreements among SSA, DOS, and INS.

Initially, INS and DOS will be able to collect information for SSA to enumerate about 60 percent of all lawfully admitted aliens who need SSNs. INS estimates that it will be at least several years before it will be able to collect that information for the other 40 percent. Thus, the full amount of savings will not be realized initially.

We considered outstationing SSA employees at INS offices. In some regions, SSA field offices, working with local INS offices, have implemented this arrangement as an interim measure until INS is able to electronically provide enumeration data centrally to SSA. Outstationing is not a viable alternative to these adopted procedures since it does not result in savings to SSA and since it cannot reach aliens at all ports-of-entry.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities since they affect only individuals and Federal agencies. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

SSA is imposing no additional reporting or record keeping requirements subject to OMB clearance in these final rules.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: June 22, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart B of 20 CFR 422 is amended as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b-1, and 1320b-13).

2. Section 422.103 is amended by adding paragraphs (b)(3) and (c)(3) and revising paragraph (e) to read as follows:

§ 422.103 Social security numbers.

* * * * *

(b) * * *

(3) *Immigration form.* SSA may enter into an agreement with the Department of State (DOS) and the Immigration and Naturalization Service (INS) to assist SSA by collecting enumeration data as part of the immigration process. Where an agreement is in effect, an alien need not complete a Form SS–5 with SSA and may request, through DOS or INS, as part of the immigration process, that SSA assign a social security number and issue a social security number card to him/her. Requests for SSNs to be assigned via this process will be made on forms provided by DOS and INS.

(c) * * *

(3) *Request on immigration document.* Where an alien has requested a social security number as part of the immigration process described in paragraph (b)(3) of this section, INS will electronically transmit to SSA's central office in Baltimore, MD, the data elements collected for immigration purposes, by both INS and DOS, that SSA needs to assign the alien a social security number along with other data elements as agreed upon by SSA and DOS or INS. The data elements received by SSA will be used to establish the age, identity, and lawful alien status or authority to work of the alien. Using this data, SSA will assign a social security number to the alien and send the social security number card to him/her at the address the alien provides to DOS or INS (or to the sponsoring agency of a refugee, if no personal mailing address is available).

* * * * *

(e) *Replacement of social security number card.* In the case of a lost or damaged social security number card, a duplicate card bearing the same name and number may be issued. In the case of a need to change the name on the card, a corrected card bearing the same number and the new name may be issued. In both cases, a Form SS–5 must be completed. A Form SS–5 can be obtained from any Social Security office or from one of the sources noted in paragraph (b) of this section. For evidence requirements, see § 422.107.

3. Section 422.104 is amended by revising paragraph (a)(3) and the heading and text of paragraph (b) to read as follows:

§ 422.104 To whom Social Security numbers are assigned.

(a) * * *

(3) An alien who is legally in the United States but not under authority of law permitting him or her to engage in employment, but only for a valid nonwork purpose. (See § 422.107.)

(b) *Persons without evidence of alien status.* A social security number may be assigned for a nonwork purpose to an alien who cannot provide the evidence of alien status as required by § 422.107(e), if the evidence described in that paragraph does not exist and if the alien resides either in or outside the United States and a social security number is required by law as a condition of the alien's receiving a federally-funded benefit to which the alien has established entitlement.

* * * * *

4. Section 422.105 is revised to read as follows:

§ 422.105 Presumption of authority of nonimmigrant alien to accept employment.

A nonimmigrant alien shall be presumed to have permission to engage in employment if the alien presents a Form I–94 issued by the Immigration and Naturalization Service (INS) that

reflects a classification permitting work. (See 8 CFR 274a.12 for Form I–94 classifications.) A nonimmigrant alien who has not been issued a Form I–94, or whose Form I–94 does not reflect a classification permitting work, must submit a current document authorized by the INS that verifies authorization to work has been granted, e.g., an employment authorization document, to enable SSA to issue an SSN card that is valid for work purposes.

5. Section 422.106 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and by revising paragraph (a) to read as follows:

§ 422.106 Filing applications with other government agencies.

(a) *Agreements.* In carrying out its responsibilities to assign social security numbers, SSA enters into agreements with the United States Attorney General, other Federal officials, and State and local welfare agencies. An example of these agreements is discussed in paragraph (b) of this section.

* * * * *

6. Section 422.107 is amended by revising paragraph (a) and the seventh sentence of paragraph (e) to read as follows:

§ 422.107 Evidence requirements.

(a) *General.* An applicant for an original social security number card must submit documentary evidence which the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity. An applicant for a duplicate or corrected social security number card must submit convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status. An applicant for an original, duplicate, or corrected social security number card is also required to submit evidence to assist us in determining the existence and identity of any previously assigned number(s). A social security number will not be assigned, or an original, duplicate, or corrected card issued, unless all the evidence requirements are met. An in-person interview is required of an applicant who is age 18 or older applying for an original social security number except for an alien who requests a social security number as part of the immigration process as described in § 422.103(b)(3). An in-person interview may also be required of other applicants. All documents submitted as evidence must be originals or certified copies of the original documents and are subject to verification with the custodians of the original records.

* * * * *

(e) *Evidence of alien status.* * * * If the applicant requests the number for a nonwork purpose and provides evidence documenting that the number is needed for a valid nonwork purpose, the number may be assigned and the card issued will be annotated with a nonwork legend.* * *

* * * * *

7. Section 422.110 is revised to read as follows:

§ 422.110 Individual's request for change in record.

(a) *Form SS–5.* An individual who wishes to change the name or other personal identifying information previously submitted in connection with an application for a social security number card may complete and sign a Form SS–5 except as provided in paragraph (b) of this section. The person must prove his/her identity and may be required to provide other evidence. (See § 422.107 for evidence requirements.) A Form SS–5 may be obtained from any local social security office or from one of the sources noted in § 422.103(b). The completed request for change in records may be submitted to any SSA office, or, if the individual is outside the U.S., to the Department of Veterans Affairs Regional Office, Manila, Philippines, or to any U.S. foreign service post or U.S. military post. If the request is for a change in name, a new social security number card with the new name and bearing the same number previously assigned will be issued to the person making the request.

(b) *Assisting in enumeration.* SSA may enter into an agreement with officials of the Department of State and the Immigration and Naturalization Service to assist SSA by collecting as part of the immigration process information to change the name or other personal identifying information previously submitted in connection with an application or request for a social security number card. If the request is for a change in name, a new social security number card with the new name and bearing the same number previously assigned will be issued.

[FR Doc. 98–28289 Filed 10–21–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 95N–0192]

RIN 0910–AA24

Quality Mammography Standards; Correcting Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) is correcting its regulations governing mammography, published in a document entitled ''Quality Mammography Standards'' that appeared in the **Federal Register** of October 28, 1997. The regulations are effective April 28, 1999; except § 900.12(b)(8)(i), (e)(4)(iii)(B), and (e)(5)(i)(B), which become effective October 28, 2002. The October 28, 1997, document was published with some inadvertent typographical errors. Some of those errors were corrected in a document entitled ''Quality Mammography Standards; Correction'' that appeared in the **Federal Register** of November 10, 1997, but additional typographical errors occurred in the publication of this document. In addition, since November 10, 1997, certain other problems with the text of the regulations have been identified that, if uncorrected, would lead to unforeseen and undesirable consequences. This document corrects those errors.

EFFECTIVE DATE: The corrections are effective April 28, 1999, except corrections to § 900.12(b)(8)(i), (e)(4)(iii)(B), and (e)(5)(i)(B), which become effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The Mammography Quality Standards Act (the MQSA) (Pub. L. 102–539) was signed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that, to provide mammography services legally after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, be accredited by an approved accreditation

body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA.

A specific requirement of the MQSA was that quality standards be established for mammographic equipment and practices, including quality assurance and quality control programs. Mammography facilities had to meet these standards to become accredited and certified. The standards were intended to replace the patchwork of Federal, State, and private standards existing in 1992 to ensure that all women nationwide receive high quality mammography services.

On December 14, 1993, the President signed legislation granting interim rule authority to the Secretary (and by delegation to FDA) to issue interim quality standards under the MQSA. In the **Federal Register** of December 21, 1993 (58 FR 67558 and 67565), FDA issued rules establishing interim standards for the approval of accreditation bodies and for the certification of mammography facilities. These standards were amended by another interim rule published in the **Federal Register** of September 30, 1994 (59 FR 49808). Since October 1, 1994, the effective date of the MQSA requirements, these interim standards have governed the approval of accreditation bodies and the accreditation and certification of mammography facilities.

On April 3, 1996, FDA proposed final regulations to replace the interim regulations (61 FR 14856, 14870, 14884, 14898, and 14908). Developed with strong congressional encouragement, these proposed final regulations reflected FDA's belief that more comprehensive quality standards would further optimize facility performance. After analysis of the extensive public comments received on the proposed regulations, revisions were made and a final rule was published on October 28, 1997 (62 FR 55852). The effective date for most of the final rule is April 28, 1999. A few equipment and equipment quality assurance requirements do not become effective until October 28, 2002.

During the preparation of the final rule for publication, a number of typographical errors, some with a significant impact, occurred. Some of these errors were corrected in a republication of November 10, 1997 (62 FR 60614), but in the process additional errors occurred. In the subsequent months, further errors have been discovered and certain other problems, with unforeseen significant consequences, have been identified. The purpose of the amendments is to correct these remaining problems in part 900 (21 CFR part 900).

II. Need for Amendments

A. Section 900.2(d)—Air Kerma

In the definition of ''air kerma,'' an editorial error in the November 10, 1997, republication led to the radiation dose unit, the rad, being identified as an abbreviation for the angular measurement unit of the radian. The amendment eliminates mention of the radian. The opportunity to amend this definition was also used to more precisely state the relationship between the several radiation quantities and units. The equal sign between 1 Gray and 114 roentgens was replaced with the statement that ''In air, 1 Gy of absorbed dose is delivered by 114 roentgens (R) of exposure.''

B. Section 900.12(a)(2)(ii)—Mammography Requirements

This paragraph provides alternative ways for the technologist to meet the requirement to have adequate initial training in the performance of mammography examinations. The technologist must complete at least 40 hours of training specific to mammography, including training and experience in certain identified areas, or ''* * * prior to April 28, 1999 must have qualified as a radiologic technologist under paragraph (a)(2) of this section * * *.'' Under the second option, qualification as a radiologic technologist would have to have been achieved under the interim regulations, as they are effective until April 28, 1999. A reader could, however, misinterpret this reference to paragraph (a)(2) as meaning (a)(2) of the final regulations. To avoid such a misinterpretation, FDA is clarifying this requirement by adding the words ''of FDA's interim regulations'' after the word ''section.'' This would make the wording of this ''grandparenting'' provision identical with that used in defining a similar grandparenting provision for interpreting physicians.

C. Section 900.12(a)(2)(iv) and (a)(3)(iii)(B)—Continuing Experience Requirements of the Radiologic Technologist and the Medical Physicist

The present wording of the final rule requires that these requirements be met ''following the second anniversary date of the end of the calender quarter'' during which the technologist or physicist's initial requirements were met ''or of October 28, 1997, whichever is later.'' For most radiologic technologists and medical physicists, this wording means that they would be checked during inspections for compliance with this requirement beginning after January 1, 2000. This date is well after the effective date of the regulations; however, for some time after this date, the 24-month averaging period, during which compliance would be assessed, begins before the effective date of the final rule. To avoid such a retroactive effect of the regulation, the date in these two provisions is changed from October 28, 1997 (the date of publication of the final rule), to April 28, 1999 (the effective date of the final rule). This means that checking for compliance with these requirements during inspections will begin after June 30, 2001, and in all cases, the 24-month averaging period will fall completely after April 28, 1999.

The phrase ''preceding the inspection,'' which should have modified the calendar quarter by the end of which a radiologic technologist or medical physicist must meet certain requirements, was also erroneously omitted in these two sections. FDA is amending these sections to include this phrase. The options for the continuing experience requirement, thus would read ''* * * the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in between * * *.'' This will eliminate any confusion over what calendar quarter is referred to. It will also make the wording of the end point options identical to those for the continuing experience requirement of the interpreting physician and to those of the continuing education requirement for interpreting physicians, radiologic technologists, and medical physicists, as was intended.

D. Section 900.12(a)(3)(iii)(B)—Continuing Experience of the Medical Physicist

A typographical error led to the word ''or'' in ''* * * within a 10-month period or a specific unit * * *'' being changed to ''on,'' significantly confusing the meaning of the requirement. Similarly the phrase ''the total mammography unit survey,'' preceding the word ''requirement,'' was not replaced with ''this'' as intended, again leading to confusion over the exact requirement. The amendments replace ''on'' with ''or'' and replace ''the total mammography units survey'' with ''this.''

E. Section 900.12(c)(4)(i)—Maintenance of Records

A typographic error of serious consequences was made in the citation in this provision to ''paragraph (c)(3)(ii) of this section.'' The citation should be to ''paragraph (c)(4)(ii).''

F. Section 900.12(c)(4)(ii)—Transfer of Records

The editor's note to move the word ''by'' from this requirement from after to before the words ''on behalf of'' was not accomplished during the final production of the document. The amendment moves this word, thus making the requirement clearer.

G. Section 900.12(d)(2)—Quality Assurance Records

As discussed in the preamble to the final regulations (62 FR 55852 at 55936 and 55937), the recordkeeping requirements for the quality assurance program contained in the proposed final regulations, published April 3, 1996, were simplified in the final regulations. The rewording unfortunately created two possible interpretations of the list of records that must be kept. The intended interpretation is that the records ''concerning employee qualifications to meet assigned quality assurance tasks'' would be the first on the list of categories of required records that continues with the categories of ''mammography techniques and procedures, quality control * * *.'' However, it is also possible to interpret this as saying that the required records are of employee qualifications to meet assigned quality assurance tasks, employee qualifications for mammography techniques and procedures, employee qualifications for quality control, and so forth. Two changes were made in order to leave only the interpretation that the preamble discussion shows was intended. First, the words ''employee qualifications to meet assigned quality assurance tasks'' was moved from first to last in the list of records that must be kept. Second, the word ''these'' beginning the second sentence of the requirement was changed to ''the.''

H. Section 900.12(e)(1)—Daily Quality Control Tests

The preamble to the final regulations (62 FR 55852 at 55938) stated that the agency would replace the word ''examinations'' with ''films'' and the word ''performed'' with ''processed.'' Each word appeared twice in the paragraph, but only one set of words was replaced. FDA is now amending the rule to change the remaining set of words.

I. Section 900.12(e)(4)(iii)(B)—Compression Force After October 28, 2002

The proposed final regulations, published April 3, 1996, required that 5 years after publication, the compression device shall provide a maximum compression from the power drive of between 111 newtons (25 pounds) and 200 newtons (45 pounds). As pointed out at two places (62 FR 55852 at 55942) of the preamble to the final regulations, after a review of the comments received on this portion of the proposal, it was decided to retain this requirement in the final rule. In the regulations themselves, however, the upper limit was mistakenly stated as 209 newtons (47 pounds). FDA is changing this figure to the intended value of 200 newtons (45 pounds).

J. Section 900.12(e)(8)(ii)(A)—Tests Whose Failure Means That Corrective Actions Must be Carried Out Before Use of the Failed Component in Clinical Examinations

The proposed final regulations of April 3, 1996, in § 900.12(e)(8)(ii) had required that corrective action be carried out before further clinical use of the failed component, no matter which of the quality control tests required in other parts of § 900.12(e) was failed. As discussed in (62 FR 55852 at 55942 and 55947) the preamble to the final rule, numerous comments were made on this requirement, which also received significant attention from the National Mammography Quality Assurance Advisory Committee (NMQAAC). After consideration of the information provided to it, FDA concluded that failure of only some tests was serious enough to require corrective action before further use and that to apply this requirement to all tests would disrupt facility operations without achieving a compensating benefit. In the final regulations, the agency divided the quality control tests into two groups. Section 900.12(e)(8)(ii)(A) lists those tests whose failure is considered serious enough that the corrective actions must be carried out before the failed component of the mammography system is used for further patient examinations. Section 900.12(e)(8)(ii)(B) lists those tests for which it was believed the corrective action could be delayed for up to 30 days without presenting a serious threat to the public health.

Some errors were made in the editing of the regulations, however, that caused them to depart from the division of the tests into the two groups described in the preamble. The test required by § 900.12(e)(4)(i) was mistakingly listed in § 900.12(e)(8)(ii)(A) as § 900.12(e)(5)(ii) and the tests in § 900.12(e)(5)(iii) and § 900.12(e)(5)(v) were also mistakenly included in this group. FDA is amending § 900.12(e)(8)(ii)(A) so that it correctly reflects the division of the tests into the two groups described in the preamble.

K. Section 900.12(e)(10)—Mammography Equipment Evaluations

A typographical error will be corrected in the first sentence of this paragraph by changing the word ''dissembled'' to ''disassembled.''

L. Section 900.12(f)(3)—Reviewing Interpreting Physician for the Medical Outcome Audit

An edit in the sequence of words ''for documenting the results and for notifying other interpreting physicians'' in this provision was overlooked in the final preparation of the regulations for publication. As a result, a comma appeared instead of the words ''and for'' making the sentence in which these words occur appear to be incomplete. FDA is amending the regulation to eliminate this error.

III. Environmental Impact

The agency has previously determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement was required. The changes in these amendments do not alter this conclusion.

IV. Analysis of Impacts

FDA has examined the impact of this rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this rule is not a significant regulatory action as defined by the Executive Order and so is not

subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that this final rule will not have a significant negative economic impact on a substantial number of small entities. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

FDA had previously estimated (62 FR 55852 at 55968) that the expected average annual benefits from the final regulations would range between $181.7 to $262.7 million. Average annual compliance costs were estimated at $38.2 million.

The amendment to § 900.12(e)(4)(iii)(B) may act to reduce costs somewhat from the changes estimated as presumably a compression limit of 200 newtons can be achieved at less cost than the present limit of 209 newtons. However, the change in the requirement is relatively minor and so the costs savings are not likely to be significant. None of the other amendments will change the estimates of compliance costs.

In summary, the effect of the amendments, if any, would be to reduce very slightly the estimated average annual compliance level of $38.2 million.

V. Paperwork Reduction Act of 1995

FDA has determined that this final rule contains no additional collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

2. Section 900.2 is amended by revising paragraph (d) to read as follows:

§ 900.2 Definitions.

* * * * *

(d) *Air kerma* means kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For X-rays with energies less than 300 kiloelectron volts (keV), 1 Gy = 100 rad. In air, 1 Gy of absorbed dose is delivered by 114 roentgens (R) of exposure.

* * * * *

3. Section 900.12 is amended by revising the first sentence of paragraph (a)(2)(ii), paragraphs (a)(2)(iv)(A) and (a)(3)(iii)(B); by removing ''(c)(3)(ii)'' from paragraph (c)(4)(i) and adding in its place ''(c)(4)(ii)''; by revising paragraphs (c)(4)(ii), the first sentence of paragraph (d)(2), the introductory text of paragraph (e)(1), paragraphs (e)(4)(iii)(B), and (e)(8)(ii)(A), the first sentence of paragraph (e)(10), and paragraph (f)(3) to read as follows:

§ 900.12 Quality standards.

(a) * * *

(2) * * *

(ii) Mammography requirements. Have, prior to April 28, 1999, qualified as a radiologic technologist under paragraph (a)(2) of this section of FDA's interim regulations of December 21, 1993, or completed at least 40 contact hours of documented training specific to mammography under the supervision of a qualified instructor. * * *

* * * * *

(iv) Continuing experience requirements. (A) Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section were completed or of April 28, 1999, whichever is later, the radiologic technologist shall have performed a minimum of 200 mammography examinations during the 24 months immediately preceding the date of the facility's annual inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 24-month period.

* * * * *

(3) * * *

(iii) * * *

(B) Continuing experience. Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this section were completed or of April 28, 1999, whichever is later, the medical physicist shall have surveyed at least two mammography facilities and a total of at least six mammography units during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calender quarter preceding the inspection or any date in between the two. The facility shall choose one of these dates to determine the 24-month period. No more than one survey of a specific facility within a 10-month period or a specific unit within a period of 60 days can be counted towards this requirement.

* * * * *

(c) * * *

(4) * * *

(ii) Shall upon request by, or on behalf of, the patient, permanently or temporarily transfer the original mammograms and copies of the patient's reports to a medical institution, or to a physician or health care provider of the patient, or to the patient directly;

* * * * *

(d) * * *

(2) *Quality assurance records.* The lead interpreting physician, quality control technologist, and medical physicist shall ensure that records concerning mammography technique and procedures, quality control (including monitoring data, problems detected by analysis of that data, corrective actions, and the effectiveness of the correction actions), safety, protection, and employee qualifications to meet assigned quality assurance tasks are properly maintained and updated. * * *

* * * * *

(e) *Quality assurance—equipment*—(1) *Daily quality control tests.* Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be performed on each day that clinical films are processed before any clinical films are processed that day. The test shall include an assessment of base plus fog density, mid-density, and density difference, using the mammography film used clinically at the facility.

* * * * *

(4) * * *

(iii) * * *

(B) Effective October 28, 2002, the maximum compression force for the initial power drive shall be between 111 newtons (25 pounds) and 200 newtons (45 pounds).

* * * * *

(8) * * *

(ii) * * *

(A) Before any further examinations are performed or any films are processed using a component of the mammography system that failed any of the tests described in paragraphs (e)(1), (e)(2), (e)(4)(i), (e)(4)(ii), (e)(4)(iii), (e)(5)(vi), (e)(6), or (e)(7) of this section;

* * * * *

(10) *Mammography equipment evaluations.* Additional evaluations of mammography units or image processors shall be conducted whenever a new unit or processor is installed, a unit or processor is disassembled and reassembled at the same or a new location, or major components of a mammography unit or processor equipment are changed or repaired.

* * *

* * * * *

(f) * * *

(3) *Reviewing interpreting physician.* Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period (s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results and for notifying other interpreting physicians of their results and the facility aggregate results. If followup actions are taken the reviewing interpreting physician shall also be responsible for documenting the nature of the followup.

* * * * *

Dated: October 6, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–28148 Filed 10–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8787]

RIN 1545–AU71

Basis Reduction Due to Discharge of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide ordering rules for the reduction of bases of property under sections 108 and 1017 of the Internal Revenue Code of 1986. The regulations will affect taxpayers that exclude discharge of indebtedness income from gross income under section 108.

DATES: *Effective Date:* These regulations are effective October 22, 1998.

Applicability Date: These regulations apply to discharges of indebtedness occurring on or after October 22, 1998 and to elections under section 108(b)(5) concerning discharges of indebtedness occurring on or after October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations generally, Sharon L. Hall or Christopher F. Kane of the Office of Assistant Chief Counsel (Income Tax & Accounting) at (202) 622–4930; concerning partnership adjustments under section 1017, Matthew Lay of the Office of Assistant Chief Counsel (Passthroughs & Special Industries) at (202) 622–3050.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1539. Responses to these collections of information are required to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This final regulation contains amendments to the income tax regulations (26 CFR Parts 1 and 301) under sections 108 and 1017 of the Internal Revenue Code of 1986 (Code). The amendments conform the regulations to amendments to sections 108 and 1017 made by the Bankruptcy Tax Act of 1980, Public Law 96–589, §§ 2, 94 (Stat. 3389 (1980)); 1980–2 C.B. 607 (Bankruptcy Tax Act); the Technical Corrections Act of 1982, Public Law 97–448, § 102(h)(1), 96 (Stat. 2365, 2372 (1983)); 1983–1 C.B. 451; the Deficit Reduction Act of 1984, Public Law 98–369, sections 474(r)(5) and 721(b)(2), 98 (Stat. 494, 839, 966 (1984)); 1984–3 C.B. (Vol. 1) 1; the Tax Reform Act of 1986, Public Law 99–514, sections 104(b)(2), 231(d)(3)(D), 822, and 1171(b)(4), 100 (Stat. 2085, 2105, 2179, 2373, 2513 (1986)); 1986–3 C.B. (Vol. 1) 2; and the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, section 13150, 107 (Stat. 312, 446 (1993)); 1993–3 C.B. 1.

On January 7, 1997, proposed regulations (REG 208172–91), were published in the **Federal Register** (62 FR 955). Written comments were received in response to the notice of proposed rulemaking. One speaker provided testimony at a public hearing held on May 29, 1997.

After consideration of all the comments, the proposed regulations under sections 108 and 1017 are adopted, as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

1. Basis Reduction Limited to Fair Market Value

One commentator requested that basis reduction be limited to fair market value as provided by § 1.1016–7(a) (as removed by this regulation). The final regulations do not adopt this recommendation. Section 1017, as enacted by the Bankruptcy Tax Act, fundamentally changed the rules relating to basis reduction where discharge of indebtedness income (cancellation of debt (COD) income) is excluded from gross income. The revised statute, in section 1017(b)(2), provides only one limitation on basis reduction for insolvent and bankrupt taxpayers who do not make an election under section 108(b)(5). Under that rule, the basis reduction may not exceed the excess of the aggregate of the bases of the property held by the taxpayer immediately after the discharge over the aggregate of the liabilities of the taxpayer immediately after the discharge. The fair market value limitation found in the regulations removed by this Treasury decision is not reflected in section 1017. Accordingly, the IRS and Treasury

Department do not believe that a rule limiting basis reduction to fair market value would be appropriate.

2. Section 108(c)(2)(A) Limitation

Section 1.108–5(a) of the proposed regulations described the limitation under section 108(c)(2)(A) and provided that the amount excluded under section 108(a)(1)(D) (concerning discharges of qualified real property business indebtedness) could not exceed the excess of the outstanding principal amount of that indebtedness immediately before the discharge over the net fair market value of the qualifying real property (as defined under § 1.1017–1(c)(1)) immediately before the discharge. Two commentators requested that the regulations clarify that any outstanding accrued and unpaid interest is included in determining the outstanding principal amount of the indebtedness for purposes of this limitation. Given the purpose of this limitation, which is to prevent taxpayers from using the section 108(a)(1)(D) exclusion to the extent that debt cancellation would create equity in property (H.R. Rep. 103–111, 103d Cong., 1st Sess., 622–23 (1993)), the IRS and Treasury Department believe that it is inappropriate to strictly limit the exclusion by reference to the amount stated as principal in the debt instrument. Accordingly, the final regulations provide that, for purposes of section 108(c)(2)(A) and § 1.108–6 only, outstanding principal amount means the principal amount of an indebtedness and all additional amounts owed that, immediately before the discharge, are equivalent to principal, in that interest on such amounts would accrue and compound in the future. Amounts that are subject to section 108(e)(2) are excepted from the definition of principal amount. In addition, principal amount must be adjusted to account for unamortized premium and discount consistent with section 108(e)(3).

3. Allocation of Basis Reduction of Multiple Properties Within the Same Class

The proposed regulations incorporated the limitation described in section 1017(b)(2) which provides that the basis reduction for bankrupt and insolvent taxpayers may not exceed the excess of the aggregate of the bases of the property held by the taxpayer immediately after the discharge over the aggregate of the liabilities of the taxpayer immediately after the discharge. A commentator suggested that this limitation be applied on a class by class basis, so that when a basis reduction applied within a single class of properties described in § 1.1017–1(a) exceeds the amount of basis over the debt secured by the properties in that class, the basis reduction in excess of that amount should default to the next class.

The final regulations do not adopt this comment.

The overall limitation on basis reduction is determined by reference to the adjusted basis of property and the amount of money held by the taxpayer over the liabilities of the taxpayer ''immediately after the discharge.'' By contrast, under the basis reduction rules applicable for purposes of section 108(b)(2)(E), the taxpayer must reduce the adjusted basis of property ''held by the taxpayer at the beginning of the taxable year following the year in which the discharge occurs.'' Section 1017(a). Given the difference in the relevant time for applying the basis limitation and the basis reduction rules, and the relative complexity of the calculations necessary to implement the proposal, the IRS and Treasury Department believe that the suggested limitation is not workable. Accordingly, the final regulations continue to apply the limitation based on the aggregate bases and liabilities of the taxpayer consistent with section 1017(b)(2).

The proposed regulations also provided that a taxpayer must treat a distributive share of a partnership's COD income as attributable to a discharged indebtedness secured by the taxpayer's interest in that partnership. The rule in the proposed regulations for allocating basis reduction among multiple properties under section 108(b)(2)(E) contained parenthetical language cross-referencing the partnership provision for the property classes that included secured real and personal property used in a trade or business or held for investment. This parenthetical language was intended to remind taxpayers that partnership indebtedness is treated as indebtedness secured by the taxpayer's interest in the partnership.

One commentator stated that the cross-reference with respect to secured real property was confusing since a partnership interest presumably should be treated as personal property in reducing basis under section 108(b)(2)(E). This is contrasted with the modified basis reduction rules under sections 108(b)(5) and 108(c) which, assuming the appropriate requests are made and consents are granted, apply a look-through rule to reduce the inside basis of depreciable property or depreciable real property held by a partnership.

In order to eliminate this confusion, the parenthetical language is not included in the final regulations. However, as under the proposed regulations, the final regulations continue to treat a distributive share of a partnership's COD income as attributable to a discharged indebtedness secured by the taxpayer's partnership interest. Accordingly, the elimination of the parenthetical language is not intended to change the substantive results obtained in allocating a basis reduction among multiple properties.

4. Meaning of ''in Connection With'' in Section 108(c)(3)

A commentator requested that the final regulations provide that the phrase ''in connection with'' in section 108(c)(3) does not require that the proceeds of debt incurred or assumed before January 1, 1993 be traced to real property used in a trade or business, but only requires that the debt be secured by real property used in a trade or business as of January 1, 1993. The final regulations do not adopt this comment. Section 108(c)(3)(A) defines *qualified real property business indebtedness as indebtedness* which ''was incurred or assumed by the taxpayer inconnection with real property used in a trade or business and is secured by such real property''. The IRS and Treasury Department do not believe that this sentence should be interpreted to mean only that the debt must be secured by real property used in a trade or business as of January 1, 1993.

5. Basis Reduction With Respect to a Residence

A commentator requested that when the basis of a taxpayer's residence is reduced under section 1017 and is disposed of in a transaction subject to section 1034 (which provided for the deferral of gain on the sale of a personal residence), the potential recapture income arising under section 1245 should be carried into the replacement property. This comment is not adopted in the final regulations. Section 1034 was repealed by the Taxpayer Relief Act of 1997. New section 121, enacted by the Taxpayer Relief Act of 1997, exempts certain gain on the sale of a residence, but does not provide that the potential gain will be transferred to a replacement residence. Therefore, under the new law, there is no mechanism to preserve the potential recapture income with respect to a new residence, and the potential recapture income must be recognized on the sale of the residence under section 1245.

6. Mandatory Request and Consent

The proposed regulations provided that a partner may treat a partnership interest as depreciable property under section 108(b)(5) (or as depreciable real property under section 108(c)) only if the partnership consents to make corresponding adjustments to the basis of the partnership's depreciable property (or depreciable real property). The IRS and Treasury Department generally believe, in this context, that whether or not a partnership consents to make the corresponding adjustments to the basis of its property should be a matter of agreement between the partner and the partnership. Therefore, the proposed regulations generally provided that a partner is free to choose whether or not to request that a partnership reduce the basis of partnership property and that the partnership is free to grant or withhold its consent.

The ability to freely choose whether or not to request or grant consent, however, provides opportunities to avoid the general ordering rules of the proposed regulations through the use of a partnership. Therefore, the proposed regulations provided that, in a limited number of situations; (i) a partner is required to request the partnership's consent, and (ii) the partnership is required to grant that consent. Specifically, the proposed regulations provided that a partner is required to request consent if the partner owns (directly or indirectly) more than 50 percent of the capital and profits interests of the partnership, or if the partner receives a distributive share of COD income from the partnership. In addition, the partnership is required to grant consent if requests are made by partners owning (directly or indirectly) an aggregate of more than 50 percent of the capital and profits interests of the partnership.

One commentator requested revisions to the mandatory request and consent rules contained in the proposed regulations. This commentator argued that the proposed regulations, as written, could unduly burden certain large partnerships in situations where the partnership's refusal to consent was not motivated by tax avoidance. The commentator requested that the mandatory consent rule be revised to require a partnership to consent only if the partnership receives requests from five or fewer partners who own, in the aggregate, more than 50 percent of the capital and profits of the partnership.

To ensure that partnerships are not unduly burdened by the mandatory request and consent rules, the commentator's proposal has been adopted, in part, in the final regulations. However, to preserve the general ordering rules of the regulations, the IRS and Treasury Department believe that it is appropriate to require a partnership to consent to reduce the basis of its depreciable property (or depreciable real property) where a substantial majority of its partners elect to exclude the COD income under sections 108(b)(5) or 108(c). Therefore, the final regulations provide that a partnership must consent to reduce its partners' shares of the partnership's depreciable basis in depreciable property (or depreciable real property) if consent is requested by; (i) partners owning (directly or indirectly) an aggregate of more than 80 percent of the capital and profits interests of the partnership, or (ii) five or fewer partners owning (directly or indirectly) an aggregate of more than 50 percent of the capital and profits interests of the partnership.

As in the proposed regulations, the final regulations do not require a partnership to reduce the basis of its depreciable property (or depreciable real property) in all situations where the partnership is the source of the COD income. However, where a partnership is the source of the COD income and partners elect to exclude such income, such partners are required to request that the partnership reduce its basis in such property.

Accordingly, if partners meeting the requirements in (i) or (ii) above elect to exclude such income, the partnership must consent to reduce the basis of its depreciable property (or depreciable real property).

Commentators also requested that the final regulations clarify that a partnership's consent is not required for basis adjustments under section 108(b)(2)(E). The final regulations make it clear that a partnership's consent to reduce the basis of the partnership's depreciable property (or depreciable real property) is neither required nor relevant where a partner reduces the basis in its partnership interest under section 108(b)(2)(E).

7. Treatment of the Adjustment to the Basis of Partnership Property Under Subchapter K

One commentator requested that the final regulations address a number of issues concerning the treatment of the partnership's adjustments to the basis of partnership property under subchapter K. The final regulations do not address these issues. Instead, the IRS and Treasury Department have addressed these issues in the proposed regulations recently promulgated under sections 743 and 755.

8. Timing and Reporting

The proposed regulations provided that a partner requesting a reduction in inside basis must make the request and receive consent before the due date (including extensions) for filing the partner's Federal income tax return for the taxable year in which the partner has COD income. The proposed regulations also provided that a partnership that consents to a basis reduction must include a consent statement with its Form 1065, U.S. Partnership Return of Income, and provide a copy of that statement to the affected partner on or before the date the Form 1065 is filed. One commentator stated that the final regulations should provide that; (i) partners should not be required to request consent, and (ii) neither the partner nor the partnership should be required to attach statements to their returns, until the filing date of their respective returns for the taxable year following the year that the partner excludes COD income.

The IRS and Treasury Department continue to believe that a partner electing under sections 108(b)(5) or 108(c) must receive the consent of the partnership before the partner excludes the COD income. Therefore, the final regulations provide that the partner must request and receive the consent of the partnership prior to the due date (including extensions) for filing the partner's Federal income tax return for the taxable year in which the partner has COD income. The final regulations do, however, adopt the commentator's suggestion that the partnership is not required to attach a statement to its return until the filing date of its Federal income tax return for the taxable year following the year that ends with or within the taxable year that the partner excludes the COD income.

The commentator also stated that the final regulations should provide that when a partnership recognizes any COD income from qualified real property business indebtedness it should attach a statement to its partners' Forms K–1 stating that the COD income is from qualified real property business indebtedness and the date the cancellation occurred. The final regulations do not adopt this proposal. The IRS and Treasury Department believe that § 1.703–1(a)(1) currently requires partnerships to separately state qualified real property business indebtedness and identify it as such.

The IRS and Treasury Department recognize that a partner might not always have sufficient information with which to decide to request a basis reduction until on, or shortly before, the

due date (including extensions) for filing the partner's Federal income tax return. Therefore, comments were requested as to whether additional rules (such as requiring a partnership to inform partners of COD income prior to the date the Form 1065 is filed) are necessary to ensure that information is exchanged between the partnership and its partners in a timely fashion. The final regulations do not require partnerships to inform their partners of COD income prior to the date the Form 1065 is filed. Instead, the IRS and Treasury Department believe that any additional administrative burdens imposed on partnerships should be the result of an understanding between the partners and the partnership.

9. Methods Used Prior to Issuance of Final Regulations

A commentator requested that, for cancellation of debt events occurring prior to the issuance of final regulations, taxpayers be allowed to use any reasonable method that conforms with existing regulations or the proposed regulations in determining which properties are subject to the basis adjustments under sections 108 and 1017. This suggestion to provide for retroactive application of these regulations has not been adopted.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has been determined that a final regulatory flexibility analysis is required for the collection of information in this Treasury decision under 5 U.S.C. 604. A summary of the analysis is set forth below under the heading ''Summary of Final Regulatory Flexibility Act Analysis.'' Pursuant to section 7805(f) of the Internal Revenue Code, this final regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Summary of Final Regulatory Flexibility Act Analysis

This analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). In certain circumstances, the final regulations will require a partnership to include a statement with its Form 1065, U.S. Partnership Return of Income, for the taxable year following the year that ends with or within the taxable year the taxpayer excludes COD income from gross income, and provide a statement to the taxpayer on or before the due date of the requesting partner's return (including extensions) for the taxable year in which the COD income is excluded under section 108(a), stating the amount of the partner's share of the reduction in the partnership's adjusted bases of depreciable real or personal property (inside basis). This requirement will ensure that the partner knows it is entitled to reduce the adjusted basis of the partnership interest and that the affected partnership knows it must reduce the partner's interest in inside basis. The legal basis for this requirement is contained in sections 1017(b), 6001, and 7805(a).

Though the final regulations might affect any partnership owning depreciable property, the IRS and Treasury Department believe that partnerships owning depreciable real property are the most likely to be affected. Approximately 1,560,000 partnership returns were filed for 1993. Approximately 620,000 of these were for partnerships owning real property. It is unlikely, however, that many of these partnerships or partners in these partnerships will have COD income in any given year, so it is anticipated that only a small number of these partnerships will be affected by the final regulations in a particular year.

After a partner conveys information concerning the amount of COD income excluded from gross income under section 108(a) to the affected partnership, the partnership must reduce the partner's interest in inside basis. Accordingly, the partnership must prepare and maintain special entries on its books because this basis reduction will reduce the partner's share of the partnership's depreciation deductions, and ultimate gain or loss on the sale of the property, in subsequent years. In many cases, partnership returns are prepared using computer software that can prepare and maintain these special entries after the initial year.

The IRS and Treasury Department are not aware of any federal rules that may duplicate, overlap, or conflict with the rule in the final regulation.

As an alternative to the disclosure described above, the IRS and Treasury Department considered, but rejected as too burdensome, a rule that would have required an affected partnership to disclose the reductions of adjusted basis on a property-by-property basis. There are no known alternative rules that are less burdensome to small entities but that accomplish the purpose of the statute.

Drafting Information

The principal authors of these regulations are Sharon L. Hall, Office of Assistant Chief Counsel (Income Tax and Accounting) and Brian Blum, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.108–4 also issued under 26 U.S.C. 108.

Section 1.108–5 also issued under 26 U.S.C. 108. * * *

Section 1.1017–1 also issued under 26 U.S.C. 1017. * * *

Par. 2. Section 1.108–4 is added to read as follows.

§ 1.108–4 Election to reduce basis of depreciable property under section 108(b)(5) of the Internal Revenue Code .

(a) *Description.* An election under section 108(b)(5) is available whenever a taxpayer excludes discharge of indebtedness income (COD income) from gross income under sections 108(a)(1)(A), (B), or (C) (concerning title 11 cases, insolvency, and qualified farm indebtedness, respectively). See sections 108(d)(2) and (3) for the definitions of *title 11 case* and *insolvent.* See section 108(g)(2) for the definition of *qualified farm indebtedness.*

(b) *Time and manner.* To make an election under section 108(b)(5), a taxpayer must enter the appropriate information on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment),* and attach the form to the timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). An election under this section may be

revoked only with the consent of the Commissioner.

(c) *Effective date.* This section applies to elections concerning discharges of indebtedness occurring on or after October 22, 1998.

§ 1.108(c)-1 [Redesignated as § 1.108–5]

Par. 3. Section 1.108(c)–1 is redesignated as § 1.108–5.

Par. 4. Section 1.108–6 is added to read as follows:

§ 1.108–6 Limitations on the exclusion of income from the discharge of qualified real property business indebtedness.

(a) *Indebtedness in excess of value.* With respect to any qualified real property business indebtedness that is discharged, the amount excluded from gross income under section 108(a)(1)(D) (concerning discharges of qualified real property business indebtedness) shall not exceed the excess, if any, of the outstanding principal amount of that indebtedness immediately before the discharge over the net fair market value of the qualifying real property, as defined in § 1.1017–1(c)(1), immediately before the discharge. For purposes of this section, *net fair market value* means the fair market value of the qualifying real property (notwithstanding section 7701(g)), reduced by the outstanding principal amount of any qualified real property business indebtedness (other than the discharged indebtedness) that is secured by such property immediately before and after the discharge. Also, for purposes of section 108(c)(2)(A) and this section, outstanding principal amount means the principal amount of indebtedness together with all additional amounts owed that, immediately before the discharge, are equivalent to principal, in that interest on such amounts would accrue and compound in the future, except that outstanding principal amount shall not include amounts that are subject to section 108(e)(2) and shall be adjusted to account for unamortized premium and discount consistent with section 108(e)(3).

(b) *Overall limitation.* The amount excluded from gross income under section 108(a)(1)(D) shall not exceed the aggregate adjusted bases of all depreciable real property held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of the discharge) reduced by the sum of any—

(1) Depreciation claimed for the taxable year the taxpayer excluded discharge of indebtedness from gross income under section 108(a)(1)(D); and

(2) Reductions to the adjusted bases of depreciable real property required under section 108(b) or section 108(g) for the same taxable year.

(c) *Effective date.* This section applies to discharges of qualified real property business indebtedness occurring on or after October 22, 1998.

§ 1.108(a)–1 [Removed]

Par. 5. Section 1.108(a)–1 is removed.

§ 1.108(a)–2 [Removed]

Par. 6. Section 108(a)–2 is removed.

§ 1.108(b)–1 [Removed]

Par. 7. Section 1.108–(b)–1 is removed.

§ 1.1016–7 [Removed]

Par. 8. Section 1.1016–7 is removed.

§ 1.1016–8 [Removed]

Par. 9. Section 1.1016–8 is removed.

Par. 10. Section 1.1017–1 is revised to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

(a) *General rule for section 108(b)(2)(E).* This paragraph (a) applies to basis reductions under section 108(b)(2)(E) that are required by section 108(a)(1) (A) or (B) because the taxpayer excluded discharge of indebtedness (COD income) from gross income. A taxpayer must reduce in the following order, to the extent of the excluded COD income (but not below zero), the adjusted bases of property held on the first day of the taxable year following the taxable year that the taxpayer excluded COD income from gross income (in proportion to adjusted basis):—

(1) Real property used in a trade or business or held for investment, other than real property described in section 1221(1), that secured the discharged indebtedness immediately before the discharge;

(2) Personal property used in a trade or business or held for investment, other than inventory, accounts receivable, and notes receivable, that secured the discharged indebtedness immediately before the discharge;

(3) Remaining property used in a trade or business or held for investment, other than inventory, accounts receivable, notes receivable, and real property described in section 1221(1);

(4) Inventory, accounts receivable, notes receivable, and real property described in section 1221(1); and

(5) Property not used in a trade or business nor held for investment.

(b) *Operating rules*—(1) *Prior tax-attribute reduction.* The amount of excluded COD income applied to reduce basis does not include any COD income applied to reduce tax attributes under sections 108(b)(2)(A) through (D) and, if applicable, section 108(b)(5). For example, if a taxpayer excludes $100 of COD income from gross income under section 108(a) and reduces tax attributes by $40 under sections 108(b)(2)(A) through (D), the taxpayer is required to reduce the adjusted bases of property by $60 ($100—$40) under section 108(b)(2)(E).

(2) *Multiple discharged indebtednesses.* If a taxpayer has COD income attributable to more than one discharged indebtedness resulting in the reduction of tax attributes under sections 108(b)(2)(A) through (D) and, if applicable, section 108(b)(5), paragraph (b)(1) of this section must be applied by allocating the tax-attribute reductions among the indebtednesses in proportion to the amount of COD income attributable to each discharged indebtedness. For example, if a taxpayer excludes $20 of COD income attributable to secured indebtedness A and excludes $80 of COD income attributable to unsecured indebtedness B (a total exclusion of $100), and if the taxpayer reduces tax attributes by $40 under sections 108(b)(2)(A) through (D), the taxpayer must reduce the amount of COD income attributable to secured indebtedness A to $12 ($20—($20 / $100 x $40)) and must reduce the amount of COD income attributable to unsecured indebtedness B to $48 ($80—($80 / $100 x $40)).

(3) *Limitation on basis reductions under section 108(b)(2)(E) in bankruptcy or insolvency.* If COD income arises from a discharge of indebtedness in a title 11 case or while the taxpayer is insolvent, the amount of any basis reduction under section 108(b)(2)(E) shall not exceed the excess of—

(i) The aggregate of the adjusted bases of property and the amount of money held by the taxpayer immediately after the discharge; over

(ii) The aggregate of the liabilities of the taxpayer immediately after the discharge.

(c) *Modification of ordering rules for basis reductions under sections 108(b)(5) and 108(c)*—(1) *In general.* The ordering rules prescribed in paragraph (a) of this section apply, with appropriate modifications, to basis reductions under sections 108(b)(5) and (c). Thus, a taxpayer that elects to reduce basis under section 108(b)(5) may, to the extent that the election applies, reduce only the adjusted basis of property described in paragraphs (a)(1), (2), and (3) of this section and, if an election is made under paragraph (f) of this section, paragraph (a) (4) of this

section. Within paragraphs (a)(1), (2), (3) and (4) of this section, such a taxpayer may reduce only the adjusted bases of depreciable property. A taxpayer that elects to apply section 108(c) may reduce only the adjusted basis of property described in paragraphs (a)(1) and (3) of this section and, within paragraphs (a)(1) and (3) of this section, may reduce only the adjusted bases of depreciable real property. Furthermore, for basis reductions under section 108(c), a taxpayer must reduce the adjusted basis of the qualifying real property to the extent of the discharged qualified real property business indebtedness before reducing the adjusted bases of other depreciable real property. The term *qualifying real property* means real property with respect to which the indebtedness is qualified real property business indebtedness within the meaning of section 108(c)(3). See paragraphs (f) and (g) of this section for elections relating to section 1221(1) property and partnership interests.

(2) *Partial basis reductions under section 108(b)(5).* If the amount of basis reductions under section 108(b)(5) is less than the amount of the COD income excluded from gross income under section 108(a), the taxpayer must reduce the balance of its tax attributes, including any remaining adjusted bases of depreciable and other property, by following the ordering rules under section 108(b)(2). For example, if a taxpayer excludes $100 of COD income from gross income under section 108(a) and elects to reduce the adjusted bases of depreciable property by $10 under section 108(b)(5), the taxpayer must reduce its remaining tax attributes by $90, starting with net operating losses under section 108(b)(2).

(3) *Modification of fresh start rule for prior basis reductions under section 108(b)(5).* After reducing the adjusted bases of depreciable property under section 108(b)(5), a taxpayer must compute the limitation on basis reductions under section 1017(b)(2) using the aggregate of the remaining adjusted bases of property. For example, if, immediately after the discharge of indebtedness in a title 11 case, a taxpayer's adjusted bases of property is $100 and its undischarged indebtedness is $70, and if the taxpayer elects to reduce the adjusted bases of depreciable property by $10 under section 108(b)(5), section 1017(b)(2) limits any further basis reductions under section 108(b)(2)(E) to $20 (($100 − $10) − $70).

(d) *Changes in security.* If any property is added or eliminated as security for an indebtedness during the one-year period preceding the discharge of that indebtedness, such addition or elimination shall be disregarded where a principal purpose of the change is to affect the taxpayer's basis reductions under section 1017.

(e) *Depreciable property.* For purposes of this section, the term *depreciable property* means any property of a character subject to the allowance for depreciation or amortization, but only if the basis reduction would reduce the amount of depreciation or amortization which otherwise would be allowable for the period immediately following such reduction. Thus, for example, a lessor cannot reduce the basis of leased property where the lessee's obligation in respect of the property will restore to the lessor the loss due to depreciation during the term of the lease, since the lessor cannot take depreciation in respect of such property.

(f) *Election to treat section 1221(1) real property as depreciable*—(1) *In general.* For basis reductions under section 108(b)(5) and basis reductions relating to qualified farm indebtedness, a taxpayer may elect under sections 1017(b)(3)(E) and (4)(C), respectively, to treat real property described in section 1221(1) as depreciable property. This election is not available, however, for basis reductions under section 108(c).

(2) *Time and manner.* To make an election under section 1017(b)(3)(E) or (4)(C), a taxpayer must enter the appropriate information on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment),* and attach the form to a timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). An election under this paragraph (f) may be revoked only with the consent of the Commissioner.

(g) *Partnerships*—(1) *Partnership COD income.* For purposes of paragraph (a) of this section, a taxpayer must treat a distributive share of a partnership's COD income as attributable to a discharged indebtedness secured by the taxpayer's interest in that partnership.

(2) *Partnership interest treated as depreciable property*—(i) *In general.* For purposes of making basis reductions, if a taxpayer makes an election under section 108(b)(5) (or 108(c)), the taxpayer must treat a partnership interest as depreciable property (or depreciable real property) to the extent of the partner's proportionate share of the partnership's basis in depreciable property (or depreciable real property), provided that the partnership consents to a corresponding reduction in the partnership's basis (inside basis) in depreciable property (or depreciable real property) with respect to such partner.

(ii) *Request by partner and consent of partnership*—(A) *In general.* Except as otherwise provided in this paragraph (g)(2)(ii), a taxpayer may choose whether or not to request that a partnership reduce the inside basis of its depreciable property (or depreciable real property) with respect to the taxpayer, and the partnership may grant or withhold such consent, in its sole discretion. A request by the taxpayer must be made before the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a).

(B) *Request for consent required.* A taxpayer must request a partnership's consent to reduce inside basis if, at the time of the discharge, the taxpayer owns (directly or indirectly) a greater than 50 percent interest in the capital and profits of the partnership, or if reductions to the basis of the taxpayer's depreciable property (or depreciable real property) are being made with respect to the taxpayer's distributive share of COD income of the partnership.

(C) *Granting of request required.* A partnership must consent to reduce its partners' shares of inside basis with respect to a discharged indebtedness if consent is requested with respect to that indebtedness by partners owning (directly or indirectly) an aggregate of more than 80 percent of the capital and profits interests of the partnership or five or fewer partners owning (directly or indirectly) an aggregate of more than 50 percent of the capital and profits interests of the partnership. For example, if there is a cancellation of partnership indebtedness that is secured by real property used in a partnership's trade or business, and if partners owning (in the aggregate) 90 percent of the capital and profits interests of the partnership elect to exclude the COD income under section 108(c), the partnership must make the appropriate reductions in those partners' shares of inside basis.

(iii) *Partnership consent statement*—(A) *Partnership requirement.* A consenting partnership must include with the Form 1065, U.S. Partnership Return of Income, for the taxable year following the year that ends with or within the taxable year the taxpayer excludes COD income from gross income under section 108(a), and must provide to the taxpayer on or before the due date of the taxpayer's return (including extensions) for the taxable year in which the taxpayer excludes

COD income from gross income, a statement that—

(*1*) Contains the name, address, and taxpayer identification number of the partnership; and

(*2*) States the amount of the reduction of the partner's proportionate interest in the adjusted bases of the partnership's depreciable property or depreciable real property, whichever is applicable.

(B) *Taxpayer's requirement.* Statements described in paragraph (g)(2)(iii)(A) of this section must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a).

(iv) *Partner's share of partnership's adjusted basis.* [Reserved]

(3) *Partnership basis reduction.* The rules of this section (including this paragraph (g)) apply in determining the properties to which the partnership's basis reductions must be made.

(h) *Special allocation rule for cases to which section 1398 applies.* If a bankruptcy estate and a taxpayer to whom section 1398 applies (concerning only individuals under Chapter 7 or 11 of title 11 of the United States Code) hold property subject to basis reduction under section 108(b)(2)(E) or (5) on the first day of the taxable year following the taxable year of discharge, the bankruptcy estate must reduce all of the adjusted bases of its property before the taxpayer is required to reduce any adjusted bases of property.

(i) *Effective date.* This section applies to discharges of indebtedness occurring on or after October 22, 1998.

§ 1.1017–2 [Removed]

Par. 11. Section 1.1017–2 is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 12. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.9100–13T [Removed]

Par. 13. Section 301.9100–13T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. Section 602.101(c) is amended by:

1. Adding the following entries in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.108–4	1545–1539
1.108–5	1545–1421
* * * * *	
1.1017–1.	1545–1539
* * * * *	

2. Removing the following entries in numerical order from the table:

* * * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.108(a)–1	1545–0046
1.108(a)–2	1545–0046
1.108(c)–1	1545–1421
* * * * *	
1.1017–2	1545–0028 1545–0046
* * * * *	
301.9100–13T	1545–0046

Approved: September 14, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–28263 Filed 10–21–98; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Mailing OnLine Market Test Implementation Standards; Changes in Domestic Classifications and Fees; Final Rule and Notice

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Market Test of Mailing Online, Docket No. MC98–1.

The Postal Service's Request to the Postal Rate Commission proposed, in part, that the Postal Service be permitted to establish new classifications and fees for Mailing Online on a market test basis. The market test is a limited one involving up to 5,000 customers, starting in the northeastern United States, that will provide a basis for subsequent nationwide experimental and permanent services. The experiment is also the subject of the current Postal Service Request. Mailing Online is a service that allows postal customers with access to a personal computer and the Internet to transmit electronic documents to a postal Web site for subsequent batching and transmission to a contract printer, who creates and enters the consequent physical mailpieces. Payment for postage and mailpiece preparation is made online via credit card.

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Lettmann, (202) 268–6261, or Kenneth N. Hollies, (202) 268–3083.

SUPPLEMENTARY INFORMATION: The Mailing Online market test, an anticipated precursor of a more permanent service offering of the Postal Service, will be of limited impact. Its purpose is to permit testing of Mailing Online as one component of PostOffice Online, a vehicle for the provision of a variety of services, under conditions that approximate those sought for a subsequent experimental service. These conditions include:

- Use of a hardware and software platform that can be adapted to the level of customer use, together with a printer whose contract prices are the basis for Mailing Online fees;
- Use of First-Class and Standard Mail automation presort, rather than First-Class single-piece, rate categories; and
- The collection of information to assist in subsequent mail classification and service design decisions.

This test is the second of four steps consisting of an operations test, market test, and possible experimental and permanent service. Postal Service data collection will be focused on mailpiece information, with collateral emphases upon resource utilization and costing. Additional information will also be collected, such as information concerning expenditures on the data links between the postal Web server and the print site.

The test will be conducted beginning October 22, 1998, until a time tied to action on the Request for a Mailing Online experiment. The test will be limited to 5,000 active PostOffice Online registrants located in certain northeastern ZIP Code areas and in the

operations test areas of Hartford, Connecticut and Tampa, Florida. There are no restrictions on the destinating addresses beyond the fact that only domestic rate categories are available. Market test customer mailpieces will be produced by a printer under contract with the Postal Service and mailed at a Waltham, Massachusetts postal facility.

Background

On July 15, 1998, pursuant to its authority under 39 U.S.C. section 3621, et seq., the Postal Service filed with the Postal Rate Commission (PRC) a Request for a Recommended Decision on a Market Test Classification and Fee Schedule and a Recommended Decision on an Experimental Classification and Fee Schedule for Mailing Online Service. The PRC designated the filing as Docket No. MC98–1 and published a notice of the filing, with a description of the Postal Service's proposals, in the **Federal Register** on July 23, 1998 (63 FR 39600).

The Postal Service's Request to the PRC proposed that the Postal Service be permitted to establish new classifications and fees for Mailing Online, first as a market test and later as an experiment. The market test will permit assessment of the features and viability of the new service while providing input for PRC and Postal Service consideration of the experiment and perhaps a permanent form of Mailing Online.

Service Description

Mailing Online is designed to take advantage of the capabilities of the Internet, a Web browser, and personal computer software to permit customers to create and submit documents and mailing lists in electronic form for subsequent printing, finishing, and entry as hard copy mail. The service will also allow postal customers to pay postage and fees online using a credit card.

The service utilizes technology advances to benefit postal customers, especially individuals and small- and home-based businesses, who would otherwise not have access to sophisticated digital printing technology and to bulk automation mail rates. It is expected to reduce the aggregate cost of producing and entering a small mailing and provide a lower cost and more efficient way to use the mail. There is no minimum number of documents that can be submitted via Mailing Online. However, there is an upper limit of 5,000 addresses per mailing. It will also provide convenient and easy-to-use electronic access to postal services for those small businesses not currently using the mail due to a lack of mail production and preparation capabilities of their own.

A typical customer will compose a document using conventional desktop publishing or word processing software; access a postal Web site and select various printing, finishing, and payment options; submit a mailing list for standardization based on the Postal Service's current address database; and complete submission of the job by sending electronic versions of the document and a mailing list to the Web site. Any addresses that do not comply with postal addressing standards will be purged from the address list prior to quotation of a final price. (Move update requirements for address quality are waived temporarily pending final integration of the FASTforward system with Mailing Online.) Software applications currently supported are MS Word™, WordPerfect™, PageMaker™, Ventura™, and Quark.™ Customers will pay for the service online via credit card. The price of the service includes the creation of physical mailpieces and postage.

Additional features of the service include: online document proofing; provision of a ''file cabinet'' that retains customer mailing jobs for a period of 30 days and offers document and mailing list management capabilities; real-time online status reports of jobs submitted; and a quick calculator that provides immediate price quotations.

The Postal Service will batch all submitted jobs and send them via dedicated lines to a commercial digital printing contractor located in the Boston area (a permanent service would involve approximately 25 nationwide printers), who then prints the document, finishes it, places it in a letter or flat envelope bearing a delivery point barcode, and enters it as mail in Waltham, Massachusetts. In keeping with the Mailing Online goal of providing small-volume customers access to the benefits of automation, First-Class Mail and Standard Mail (A) will be entered at the automation basic rates. Special services are not being offered with Mailing Online during this market test.

Test Participation

The Postal Service anticipates that users of the Mailing Online service may include a wide range of individuals, small businesses, and home offices. For example, Mailing Online offers to local merchants a convenient means for getting invoices into customers' hands quickly, thereby accelerating cash flow. While most customers are expected to be small organizations, some individual use is also anticipated, as well as that of larger companies for small volume, high quality mailings.

Availability of Mailing Online during the market test is restricted to a maximum of 5,000 active customers located initially within certain ZIP Codes for the metropolitan areas of Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Hartford, Connecticut; and Tampa, Florida. The latter two areas also participated in an earlier operations test of the service. A registrant's continued participation is contingent on using PostOffice Online at least once each 30 calendar days. Less frequent usage will result in cancellation of a customer's registration and access to Mailing Online.

Customer Procedures

Customers must register as PostOffice Online customers and obtain a customer ID and password by first accessing www.postofficeonline.com on the Internet.

To use the Mailing Online service, a registered customer clicks on the ''Make a Mailing'' button and does the following:

1. Produces a document using one of the supported word processing, office suite, or desktop publishing software programs, and uploads it to the Web site;

2. Produces a database of recipients' names and addresses, ranging from one to 5,000 (maximum limit per mailing), and, optionally including variable data for merger into respective documents. These addresses and data may be obtained by customers from existing commercial vendors or created by the Mailing Online customer.

Rates and Fees

Documents presented through Mailing Online are eligible for the following rate categories only:

- First-Class Mail Letters and Sealed Parcels-Automation Basic Letters and Flats
- Standard Mail (A) Regular—Automation Basic Letters and Flats

Fees are as follows:

Feature	Fee
Paper (per sheet):	
8½×11	$0.006
8½×14	0.009
11×17	0.014
Printing (per impression):	
Simplex (8½×11)	0.026
Simplex (8½×14)	0.026
Duplex (8½×11)	0.026
Duplex (8½×14)	0.026
Spot Color (per impression)	0.013
Finishing:	
Folding (per fold)	0.013

Feature	Fee
Stapling (per staple)	0.010
Saddle Stitch (per finished piece)	0.250
Tape Binding (8½×11) (per finished piece)	0.563
Tape Binding (8½×14) (per finished piece)	0.688
Applying Tabs to Self Mailer	0.088
Envelopes:	
#10 Envelope	0.019
Flat Envelope	0.068
Inserting (per envelope):	
#10 Envelope	0.017
Flat Envelope	0.194

Implementation

Pursuant to 39 U.S.C. 3624, the PRC on October 7, 1998, issued to the Governors of the Postal Service its Opinion and Recommended Decision on the Postal Service's Request. The PRC recommendation generally followed the mail classification structure and fees requested by the Postal Service.

After reviewing the PRC's Recommended Decision and its consequences for the Postal Service and postal customers, the Governors, pursuant to 39 U.S.C. 3625, acted on the PRC's recommendations on October 16, 1998. (Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Market Test of Mailing Online, Docket MC98–1.)

The Governors determined to approve the PRC's recommendations, and the Board of Governors set an implementation date of October 22, 1998, for those fee and classification changes to take effect.

This final rule contains the DMM standards adopted by the Postal Service to implement the Governors' decision.

As described above, market test fees apply only to preparation of Mailing Online mailpieces which must be entered in one of the identified automation basic categories. Mailing Online volume is ineligible for entry at deeper discounts or at single-piece rates.

Because of the limited scope of this market test, the Postal Service finds no need to solicit comment on the standards for Mailings Online or, pending their evaluation, to delay implementation of the market test.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as follows:

E Eligibility

* * * * *

E110 Basic Standards

1.0 CLASSIFICATION AND DESCRIPTION

* * * * *

1.3 Matter Closed Against Postal Inspection

[Amend 1.3 by adding documents created and mailed by means of Mailing Online as follows:]

Matter closed against postal inspection includes First-Class Mail and Express Mail. Electronic documents created by means of Mailing Online (G093) for possible transmission as First-Class Mail are closed against inspection. Hard copy versions of electronic Mailing Online documents, while being prepared for entry as First-Class Mail, also are closed against postal inspection. The USPS may open mail other than First-Class Mail or Express Mail to determine whether the proper rate of postage is paid. Material wrapped or packaged so that it cannot be examined easily or examined without destruction or serious damage is closed against postal inspection and is charged the appropriate First-Class Mail or Express Mail rate.

* * * * *

4.0 FEES

4.1 Presort Mailing

[Amend 4.1 to indicate Mailing Online mailers pay fees in accordance with G093.]

A First-Class Mail presort mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at automation or Presorted First-Class Mail rates and/or Presorted Priority Mail rates. Payment of one fee allows a mailer to enter mail at all those rates. Persons or organizations paying this fee may enter mail of their clients as well as their own mail. Mailing Online customers using pay fees in accordance with G093 and are not required to pay an annual mailing fee.

* * * * *

E140 Automation Rates

1.0 BASIC STANDARDS

[Amend 1.1b by adding a reference to Mailing Online in G093 as follows:]

1.1 All Pieces

All pieces in a First-Class Mail automation rate mailing must:

* * * * *

b. Be part of a single mailing of at least 500 pieces of automation rate First-Class Mail, subject to 1.2, or be provided for entry using Mailing Online service under G093.

* * * * *

E611 All Standard Mail

1.0 BASIC INFORMATION

* * * * *

1.2 Postal Inspection

[Amend 1.2 by adding provision for Standard Mail documents created in electronic form by means of Mailing Online and subsequently mailed as follows:]

Standard Mail is not sealed against postal inspection except that electronic documents retained by the Postal Service in connection with Mailing Online are sealed against postal inspection. Regardless of physical closure, the mailing of articles at Standard Mail rates, including mailpieces entered via Mailing Online mailings, constitutes consent by the mailer to postal inspection of the contents.

* * * * *

E612 Additional Standards for Standard Mail (A)

* * * * *

4.0 BULK RATES

* * * * *

4.7 Annual Fees

[Amend 4.7 by adding a reference to fees in G093 as follows:]

Bulk rate Standard Mail (A) is subject to an annual mailing fee once each 12-month period. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment. Each mailer who enters mail at bulk rates paid with a meter or precanceled stamps must pay an annual bulk mailing fee at each post office of mailing; a mailer paying this fee may enter clients' mail as well as the mailer's own. The mailer whose permit imprint appears on pieces in a mailing paid with a permit imprint must show that permit number on the postage statement and must pay the

annual bulk mailing fee for that permit; this fee is in addition to the fee for an application to use permit imprints.

Mailing Online customers pay fees in accordance with G093 and are not required to pay the annual mailing fee.

* * * * *

4.9 Preparation

Each bulk rate mailing is subject to these general standards:

* * * * *

[Amend 4.9 by adding a reference to Mailing Online in G093 as follows:]

b. Each mailing must contain at least 200 pieces or 50 pounds of pieces or be provided for entry using Mailing Online service under G093. Other volume standards can also apply, based on the rate claimed.

* * * * *

G General Information

* * * * *

[Amend the title to add ''Market Test'' as follows:]

G090 Market Test and Experimental Classifications and Rates

* * * * *

[G091 Reserved.]

* * * * *

[Add new G093 as follows:]

G093 Mailing Online

1.0 BASIC ELIGIBILITY

1.1 Description

The standards in G093 apply to documents produced by a properly registered customer who has paid the appropriate fees established for the Mailing Online market test, and to mailpieces presented for entry by a printer under contract with USPS.

1.2 Customer Eligibility

Test participation is subject to the following conditions:

The customer must be registered as a user of PostOffice Online via the PostOffice Online Web site (www.postofficeonline.com). Registration requires an intent to use PostOffice Online and actual usage at least once each 30 calendar days. Registration is also currently limited based on the customer's ZIP Code.

1.3 Mailings

Electronic documents submitted to the postal Web site will be batched and sent to a commercial printer under contract with USPS, who then prints the document, finishes it, and places it in a letter or flat envelope bearing a delivery point barcode, and enters it as mail at a postal facility. First-Class Mail will be charged postage at the automation basic rates and Standard Mail (A) will be charged postage at the automation basic rates. There is a limit of 5,000 addresses per mailing. Special services are not available during the market test.

1.4 Address Quality

Address quality requirements for automation rate pieces contained in E140 do not apply for customers who submit job orders under the market test.

1.5 Rates and Fees

The rates and fees applicable to documents created using Mailing Online are as follows:

a. Documents presented through Mailing Online during the market test are eligible for the following rate categories only:

- First-Class Mail Letters and Sealed Parcels—Automation Basic Letters and Flats
- Standard Mail (A) Regular—Automation Basic Letters and Flats

b. Fees are as follows:

Feature	Fee
Paper (per sheet):	
8½ x 11	$0.006
8½ x 14	$0.009
11 x 17	$0.014
Printing (per impression):	
Simplex (8½ x 11)	$0.026
Simplex (8½ x 14)	$0.026
Duplex (8½ x 11)	$0.026
Duplex (8½ x 14)	$0.026
Spot Color (per impression)	$0.013
Finishing:	
Folding (per fold)	$0.013
Stapling (per staple)	$0.010
Saddle Stitch (per finished piece)	$0.250
Tape Binding (8½ x 11) (per finished piece)	$0.563
Tape Binding (8½ x 14) (per finished piece)	$0.688
Applying Tabs to Self Mailer	$0.088
Envelopes:	
#10 Envelope	$0.019
Flat Envelope	$0.068
Inserting (per envelope):	
#10 Envelope	$0.017
Flat Envelope	$0.194

1.6 Sealed Against Inspection

Documents will be treated as sealed against postal inspection while they are in an electronic form. Once the documents are printed and entered as mail, they will be treated in accordance with the provisions of E110.1.3 and E611.1.2, which, respectively, state that First-Class Mail is closed against postal inspection and that Standard Mail is not sealed against postal inspection.

* * * * *

P040 Permit Imprints

* * * * *

5.0 MAILINGS

5.1 Minimum Quantity

* * * * *

[Amend 5.1 by adding a provision for Mailing Online as follows:]

Permit imprint mailings must contain at least 200 pieces or 50 pounds, except:

* * * * *

d. A mailing may contain fewer pieces if provided for entry using Mailing Online service in G093.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. As provided by 39 CFR 111.3, notice of issuance will be published in the **Federal Register**.

Neva R. Watson,

Attorney, Office of Legal Policy.

[FR Doc. 98–28348 Filed 10–21–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–065–9623a; FRL–6167–4]

Approval and Promulgation of Implementation Plans; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Dade County, Broward County and Palm Beach County portions of the Florida State Implementation Plan (SIP) submitted on November 15, 1995, through the Florida Department of Environmental Protection (FDEP). The submittal revises emissions budgets for transportation conformity. The purpose of this action is to incorporate revised motor vehicle emissions budgets into the Southeast Florida maintenance plan for use in demonstration of conformity of transportation plans, programs, and projects with the Florida SIP for the Southeast Florida maintenance area. This action is in accordance with the Transportation Conformity Rule promulgated on November 24, 1993, and subsequent amendments.

DATES: This direct final rule will become effective on December 21, 1998, without further notice unless EPA receives adverse comments by November 23, 1998. Should the EPA receive such comments, it will publish a timely document in the **Federal Register** withdrawing this rule and

informing the public that this rule will not take effect.

ADDRESSES: *Written comments should be addressed to:* Kelly Sheckler at the Region 4, Environmental Protection Agency, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file number FL–065–9623. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida, 32399–2400.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at (404) 562–9042. Reference file FL–065–9623.

SUPPLEMENTARY INFORMATION: The Clean Air Act, as amended in 1990 (CAA), defines conformity to an implementation plan to mean conformity to the plan's purpose of reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards. Specifically, the CAA requires determinations that federally funded or approved actions will not cause or contribute to any new violation, increase the frequency or severity of any existing violation, or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Therefore, the emissions expected from implementation of such transportation plans and programs must be consistent with estimates of emissions from a maintenance plan.

The State of Florida through the FDEP submitted an attainment and maintenance plan for the Southeast Florida counties of Dade, Broward and Palm Beach on November 13, 1993. The State of Florida's request for redesignation of the Southeast Florida area was approved by EPA because the area attained the ozone NAAQS, met all relevant requirements under section 110 and part D of the CAA, had a fully approved SIP under section 110(k) of the CAA, demonstrated permanent and enforceable air quality improvement, and had maintenance plan satisfying the requirements of section 175A of the CAA. For further detail on this rulemaking refer to 60 FR 10325, dated February 24, 1995. On November 16, 1992, the State of Florida submitted comprehensive inventories of VOC, NO_x, and CO emissions from the Southeast Florida area. The inventories include biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. EPA approved this revision of the Florida SIP and redesignated the area from nonattainment to attainment for ozone effective April 27, 1995. At the time of this submittal, EPA had not finalized the Transportation Conformity rule which provides the criteria and procedures by which the transportation planning authorities must show that transportation plans and projects conform to the emission estimates in the applicable state maintenance plan. As a result the State's maintenance plan did not provide an explicit motor vehicles emissions budget for the purposes of showing conformity.

The Transportation Conformity regulations at 40 CFR 51.456 were promulgated on November 24, 1993, establishing the criteria and procedures for determining conformity of transportation activities to the SIP. Under these provisions states may revise their emissions budgets at any time through the standard SIP revision process, provided the SIP demonstrates that the revised emissions budget will not threaten attainment and maintenance of the standard or any milestones in the required time frame. The conformity rule provides states the option to revise the emission budget to reallocate emissions among sources or between pollutants and precursors so long as this budget overall maintains total emissions for the area below the attainment inventory levels. The difference between the attainment inventory levels and the projected emissions levels is referred to as a safety margin.

The total emissions in the revised emissions budget for the Southeast Florida maintenance area are below the 1990 levels through the period of projection necessary for the attainment and maintenance plan, 2005. Due to reductions expected from new and/or future federal emission standards, non-road source emissions are projected to decrease below the levels projected in the original maintenance plan. The safety margin created from this category is allotted to the on-road mobile source emissions budget. As provided in the Table below, the reallotted emissions budget maintains the 1990 levels and is consistent with the redesignation/maintenance demonstration SIP.

DADE COUNTY VOC EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	14.24	14.57	11.17	8.09	8.59
Area	158.60	146.39	111.00	111.92	107.18
On-Road Mobile	156.60	96.88	88.89	82.79	79.40
Off-Road Mobile	65.09	66.10	69.98	72.96	77.86
Biogenic	154.89	154.89	154.89	154.89	154.89
Total	549.42	478.83	435.93	430.65	427.92
Available Safety Margin	n/a	70.59	113.49	118.77	121.50
Allocated Safety Margin	n/a	51.89	59.88	65.98	69.37
Total Emissions Budget (includes mobile budget)		530.72	495.81	496.63	497.29
Total Mobile Source Budget (on-road)		148.77	148.77	148.77	148.77

BROWARD COUNTY VOC EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	14.03	15.73	14.87	14.89	14.16
Area	52.55	49.67	38.18	41.23	35.03
On-Road Mobile	109.84	66.46	60.44	55.91	53.31
Off-Road Mobile	37.84	40.29	42.24	44.29	47.95
Biogenic	46.80	46.80	46.80	46.80	46.80
Total	261.06	219.00	246.44	251.56	248.29
Available Safety Margin	n/a	42.06	58.53	57.94	63.81
Allocated Safety Margin	n/a	37.89	43.91	48.44	51.04
Total Emissions Budget (includes mobile budget)	.....	256.89	246.44	251.56	248.29
Total Mobile Source Budget (onroad)	.....	104.35	104.35	104.35	104.35

PALM BEACH COUNTY VOC EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	1.16	1.22	1.29	1.36	1.51
Area	84.06	84.84	81.30	79.02	78.29
On-Road Mobile	70.20	43.49	40.53	38.04	37.54
Off-Road Mobile	26.05	28.42	40.53	32.54	32.54
Biogenic	123.64	123.34	123.34	123.34	123.34
Total	305.11	281.61	277.41	274.60	273.52
Available Safety Margin	n/a	23.50	27.70	30.51	31.59
Allocated Safety Margin	n/a	23.20	26.16	28.65	29.15
Total Emissions Budget (includes mobile budget)	.....	304.81	303.57	303.25	302.67
Total Mobile Source Budget (onroad)	.....	66.69	66.69	66.69	66.69

DADE COUNTY NO_X EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	47.26	48.65	31.97	31.98	32.00
Area	5.97	6.06	6.28	6.43	6.65
On-Road Mobile	117.70	111.19	107.01	101.92	98.99
Off-Road Mobile	47.92	48.13	50.89	52.99	56.52
Total	218.85	214.03	196.15	193.32	194.16
Available Safety Margin	n/a	4.82	17.89	15.63	11.86
Allocated Safety Margin	n/a	.63	4.81	9.90	12.83
Total Emissions Budget (includes mobile budget)	.....	214.66	200.96	203.22	206.99
Total Mobile Source Budget (On-Road)	.....	111.82	111.82	111.82	111.82

BROWARD COUNTY NO_X EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	95.30	92.82	85.16	85.16	85.16
Area	6.94	7.51	7.94	8.21	8.55
On-Road Mobile	80.20	74.24	70.76	66.87	64.47
Off-Road	27.66	30.42	32.06	33.80	36.98
Total	210.10	204.99	195.92	194.04	195.16
Available Safety Margin	n/a	5.11	14.18	16.06	14.94

BROWARD COUNTY NO_X EMISSIONS INVENTORY SUMMARY—Continued

[Tons per day]

Category	1990	1994	1997	2000	2005
Allocated Safety Margin	n/a	1.95	5.43	9.32	11.72
Total Emissions Budget (includes mobile budget)	.....	206.94	201.35	203.36	206.88
Total Mobile Sources Budget (on-road)	.....	76.19	76.19	76.19	76.19

PALM BEACH COUNTY NO_X EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	37.78	42.45	33.75	34.52	34.54
Area	4.19	4.40	4.59	4.74	5.03
On-Road Mobile	56.58	54.27	53.02	51.47	50.88
Off-Road	18.27	19.92	21.47	22.81	25.35
Total	116.82	121.04	112.83	113.54	115.80
Available Safety Margin	n/a	(−)4.22	3.99	3.28	1.02
Allocated Safety Margin	n/a	(−)0.52	.73	2.28	2.87
Total Emissions Budget (includes mobile budget)	.....	120.52	113.56	115.82	118.67
Total Mobile Source Budget (on-road)	.....	53.75	53.75	53.75	53.75

TOTAL 3—COUNTY VOC EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	29.43	31.57	27.33	24.34	24.26
Area	295.21	280.90	230.48	232.17	220.50
On-Road Mobile	336.64	206.83	189.86	176.74	170.25
Off-Road	128.98	134.81	142.87	149.79	158.35
Biogenic	325.33	325.33	325.33	323.33	325.33
Total	1115.59	979.44	915.87	908.37	898.69
Available Safety Margin	n/a	136.98	199.72	207.29	217.21
Allocated Safety Margin	n/a	112.98	129.95	143.07	149.56
Total Emissions Budget (includes mobile)	.....	1092.42	1045.82	1051.44	1048.25
Total Mobile Source Budget (on-road)	.....	319.81	319.81	319.81	319.81

TOTAL 3—COUNTY NO_X EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	1990	1994	1997	2000	2005
Point	180.34	183.92	150.88	151.66	151.70
Area	17.10	17.97	18.81	19.38	20.23
On-Road Mobile	254.48	239.70	230.79	220.26	214.34
Off-Road	93.85	98.47	104.42	109.60	118.85
Total	545.77	540.06	504.90	500.90	505.12
Available Safety Margin	n/a	5.71	40.87	44.87	40.65
Allocated Safety Margin	n/a	2.06	10.97	21.50	27.43
Total Emissions Budget (includes mobile budget)	.....	542.12	515.87	522.40	532.54
Total Mobile Source Budget (on-road)	.....	241.76	241.76	241.76	241.77

Final Action

EPA is approving Florida's revised emissions budget for the Southeast Florida maintenance area. The Agency has determined that this request conforms to those requirements. Therefore, this action revises the motor vehicle emissions budget for the Florida counties of Dade, Broward and Palm Beach.

EPA is publishing this action without a prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 21, 1998 without further notice unless the Agency receives relevant adverse comments by November 23, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 21, 1998 and no further action will be taken on the proposed rule.

The ozone SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. Approval of this motor vehicle emissions budget should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plans cannot be made unless a revised maintenance plan is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation [section 173(b) of the CAA] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 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 E.O. 12875 do not apply to this rule.

C. 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.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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, 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule

that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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**. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 21, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: September 3, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

Part 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 et seq.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(95) to as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(95) The maintenance plan for Southeast Florida submitted by the Florida Department of Environmental Protection on November 15, 1995, as part of the Florida SIP.

(i) Incorporation by reference. Revision of the Attainment/Maintenance Plan for the Southeast Florida Ozone Nonattainment Area (Dade, Broward, and Palm Beach Counties) effective on November 15, 1995.

(ii) Other material. None.

[FR Doc. 98–28232 Filed 10–21–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 26

[ET Docket No. 94–32; FCC 98–213]

Allocation of Spectrum Below 5 GHz Transferred From Federal Government Use 4660–4685 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Fourth Report and Order in the matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use 4660–4685 MHz, the Commission adopts its proposals to replace service-specific auction rules for the General Wireless Communications Service (GWCS) with the streamlined auction rules. (See Proposed Rules, 63 FR 770, January 7, 1998.) With regard to auction provisions for designated entities, we simplify the definition of ''small business,'' eliminate installment payments, and increase the bidding credit. These actions will enable the Commission to run a more efficient GWCS auction.

DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Kathryn Garland, Bob Reagle, or Arthur Lechtman, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Order was released on September 24, 1998, and is available in its entirety, including all appendices, for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Introduction

1. The rules the Commission adopts herein will apply to the auction of GWCS and potentially any auction of adjacent spectrum in the 4635–4660 MHz band, after the rulemaking on that band is complete. The Commission notes that the Wireless Telecommunications Bureau (''Bureau'') is currently working on a notice of proposed rulemaking for the 4.6 GHz band, including the adjacent band at 4635–4660 MHz. That item is likely to consider changes in allocations, service rules, and auction rules affecting the entire 50 megahertz of spectrum, such as combining the 4635–4660 MHz and 4660–4685 MHz bands together and adopting common service and auction rules. Upon the completion of this rulemaking proceeding, the Commission may then be in a position to commence an auction of the 50 megahertz of spectrum in the 4635–4685 MHz frequency band as a unit. The Commission postponed the GWCS auction on April 24, 1998. (See Wireless Telecommunications Bureau Announces Postponement of General Wireless Communications Service (GWCS) Auction, Public Notice, DA 98–792 (rel. April 24, 1998)).

Competitive Bidding Issues

A. Competitive Bidding Design

2. *Discussion.* The Commission continues to believe that the simultaneous multiple-round auction

methodology will allow bidders to better express the value of the interdependency among licenses than if they are auctioned separately, and thus reaffirm the decision to use this methodology.

3. However, the Commission will eliminate the reduced bid withdrawal payment rule and associated auction conduct procedures largely for administrative reasons. The only party to have expressed an interest in nationwide aggregations, In-Flight, did not file any comments in this proceeding. When the Commission adopted the Second Report and Order, it observed that the reduced bid withdrawal payment and modified auction activity rules were ''somewhat complex'' yet still ''simpler and easier to administer than combinatorial bidding.'' Since then, the Commission has not yet devised a practical means of implementing combinatorial bidding, although the Commission has sought comment on the issue and secured the services of a private sector consultant to examine theoretical and applied combinatorial bidding approaches. The Balanced Budget Act of 1997 requires the Commission, for testing purposes, to design and conduct an auction in which a system of combinatorial bidding is used. Rather than implement untested and complex rules in the GWCS auction, especially in light of no apparent public interest in them, the Commission feels that the public interest will benefit from the use of the standard bid withdrawal rule that it adopted in the Part 1 Third Report and Order. Bidders who desire nationwide license aggregations may still pursue such a strategy, but reduced bid withdrawal payments will not be available to them in the event of withdrawal.

B. Application, Procedural, and Payment Issues

4. *Discussion.* The Commission will adopt the Part 1 rules for GWCS. Thus, the Part 1 rules concerning short-form and long-form applications (including the anti-collusion rule), withdrawal and default payments, down payments, full payment, late payment fees, and unjust enrichment will now replace all analogous rules for GWCS. The Commission also will apply to GWCS the Part 1 rule allowing pre-license grant construction of systems. This decision eliminates the discrepancies between our current Part 1 rules and the older GWCS rules. Streamlining the rules increases the efficiency of the competitive bidding process and will provide more specific guidance to auction participants.

5. Consistent with the Part 1 Third Report and Order, the Commission directs the Bureau to establish day-to-day auction conduct procedures for the GWCS auction. These procedures include upfront payment determination, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension, or cancellation. The Commission notes that the Bureau recently sought comment on a proposed minimum opening bid for GWCS. The authority the Commission is delegating here is consistent with the authority that the Bureau has for all other auctionable services.

C. Petitions To Deny

6. *Discussion.* The Commission will not truncate the petition to deny period for GWCS licenses to five days because the statutory deadline has passed. As noted above in paragraph 1, the Commission postponed the GWCS auction on April 24, 1998, until further notice. Thus, once the Commission announces the long-form applications that have been accepted for filing, the time period for filing petitions to deny will be specified by Public Notice.

Designated Entities

A. Small Business Definition

7. *Discussion.* The Commission received no comments or replies specifically addressing the small business definition for GWCS. The Commission notes that the Small Business Administration recently approved this definition for GWCS. Therefore, the Commission will retain the $40 million size standard for small businesses, without any tiers. However, the Commission will use the Part 1 definitions of gross revenues and affiliate for determining the small business status of GWCS applicants.

8. The Commission will simplify the GWCS size attribution rules and still enable small businesses to attract adequate financing. Consistent with our proposal in the Part 1 Third Report and Order, rather than an all-inclusive attribution rule with ''control group'' exceptions as used in broadband and narrowband PCS, the Commission will use a controlling interest threshold to determine whether an entity qualifies to bid as a small business. Thus, in calculating gross revenues for purposes of small business eligibility, applicants will be required to count the gross revenues of the controlling interests of the applicant and its affiliates. The term ''controlling interest'' will include individuals or entities with both de jure and de facto control of the applicant. (See Ellis Thompson Corp., 76 Rad. Reg. 2d (P&F) 1125, 1127–28 (1994) (''Ellis Thompson'') (in which the Commission identified factors used to determine control of a business. Specifically, the Commission identified the following indicia of control:

(1) use of facilities and equipment;
(2) control of day-to-day operations;
(3) control of policy decisions;
(4) personnel responsibilities;
(5) control of financial obligations; and
(6) receipt of monies and profits.

Ellis Thompson, 76 Rad. Reg. 2d (P&F). See also Intermountain Microwave, 24 Rad. Reg. (P&F) 983 (1963). The Commission believes that this controlling interest threshold will function effectively to ensure that only those entities truly meriting small business status are eligible for small business provisions. In particular, the Commission believes that the de jure and de facto concept of control used to determine controlling interest in an applicant and the application of our affiliation rules will effectively prevent larger firms from seeking status as a small business illegitimately. This approach is consistent with attribution rules the Commission has employed for the recent LMDS and 800 MHz SMR auction proceedings.

9. The Commission will better encourage small business participation in the GWCS auction by adopting rules that provide for the greatest flexibility in business structuring. Therefore, in defining controlling interest, the Commission includes de facto as well as de jure control of the applicant. De jure control is 50.1 percent of the voting stock of a corporation or, in the case of a partnership, the general partners. De facto control includes the criteria set forth in Ellis Thompson. Thus, once principals or entities with a controlling interest are determined under these standards, only the revenues of those principals or entities and their affiliates will be counted for small business eligibility. When an applicant cannot identify controlling interests under these standards, the revenues of all interest holders in the applicant and their affiliates will be counted. For example, if a company is owned by four entities, each of which has 25 percent voting equity and no shareholders' agreement or voting trust gives any one of them control of the company, the revenues of all four entities must be counted. Treating such a corporation in this way is similar to our treatment of

a general partnership—all general partners are considered to have a controlling interest. The rule that the Commission adopts here, the Commission believes, looks to substance over form in assessing eligibility for small business status.

10. The Commission notes that our intent here is to provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace. The Commission believes that by structuring our standard in this manner it will invite only legitimate small businesses. While this rule will not specify a minimum amount of equity that a small business controlling interest must hold, the absence of equity will raise an issue as to whether de facto control exists. For purposes of calculating equity held in an applicant, the Commission provides for full dilution of certain stock interests, warrants, and convertible debentures. The Commission also provides a means of determining the level of control that is held through indirect ownership. Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. Finally, the Commission requires detailed reporting of all ownership interests as part of the general application requirement adopted in the Third Report and Order, and under the controlling interest standard the Commission will apply the comprehensive affiliation rule to all investors in a GWCS applicant. Under this standard, all auction applicants will be required to disclose the real party or parties in interest by including as an exhibit to their short-form applications detailed ownership information. Applicants must list controlling interests as well as all parties holding a 10 percent or greater interest in the applicant and any affiliates of these interest holders. Thus, passive interests that were otherwise non-attributable will be attributed if they are affiliates under this rule. Applicants claiming small business status must disclose on their short-form applications the names of each controlling interest and affiliate, as these terms are defined herein, and provide gross revenues calculations for each. On their long-form applications, such applicants will be required to disclose any additional gross revenues calculations, any agreements that support small business status, and any investor protection agreements. The Commission believes that this detailed reporting requirement, in combination with our comprehensive affiliation rules, permits us to determine the ''real party or parties in interest'' when parties apply to participate in an auction. Finally, the Commission reserves the right to conduct random audits of auction applicants and licensees in order to verify information provided regarding eligibility for small business provisions.

B. Installment Payments

11. *Discussion.* The Commission hereby eliminates the use of installment payments for GWCS. After careful review of the comments in response to the Part 1 proceeding, the comments in response to the Installment Payment Public Notice, and our recent decisions in the broadband PCS C block, LMDS and 800 MHz SMR services, the Commission has determined that installment payments should not be used in the immediate future as a means of financing small business participation in our auction program. As the Commission indicated in the Second Report and Order in the Part 1 docket, the Commission must balance competing objectives in Section 309(j) that require, inter alia, that it promote the development and rapid deployment of new spectrum-based services and ensure that designated entities are given the opportunity to participate in the provision of such services. While the Commission is not ruling out the possibility that installment payments may return as a means of assisting designated entities for other auctionable services, their use will be suspended for the foreseeable future until the Commission resolves all attendant issues. The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants. To balance the impact on small businesses of our decision to discontinue the use of installment payments, the Commission is adopting a higher bidding credit than that adopted in the Second Report and Order, as discussed in paragraph 12 below.

C. Bidding Credits

12. *Discussion.* The Commission will offer a higher bidding credit than that adopted in the Second Report and Order for small businesses. Although no commenters addressed this issue, the Commission believes a greater bidding credit is appropriate in the absence of installment payments, as discussed in Section V(B) above. Consistent with the schedule of bidding credits adopted in the Part 1 Third Report and Order, the bidding credit for small business applicants in the GWCS auction will be 15 percent.

Conclusion

13. Based on our auction experience, the Commission believes bidders in the GWCS auction will benefit from the use of the streamlined Part 1 rules. The Commission has adjusted its auction procedures for different services as it gained experience with the process, resulting in the adoption of different procedures for different auctionable services. Therefore, this Fourth Report and Order replaces the competitive bidding rules adopted for GWCS with Subpart Q of Part 1 of the Commission's rules (47 CFR 1.2101 *et seq.*) to reflect substantive amendments and modifications intended to simplify these regulations. The Commission believes that the rules it adopts today will benefit GWCS bidders and the GWCS auction process generally.

Ordering Clauses

14. *Accordingly, it is ordered that,* pursuant to sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 155(c)(1), 303(r), and 309(j), this Fourth Report and Order is hereby adopted, and Part 26, Subparts A, E, and F of the Commission's rules are revised as set forth, and become effective December 21, 1998.

15. *It is further ordered that* pursuant to 47 U.S.C. 155(c) and 47 CFR 0.131(c) and 0.331, the Chief of the Wireless Telecommunications Bureau is granted delegated authority to prescribe and set forth procedures as set forth herein, including mechanisms relating to the day-to-day conduct of the GWCS auction.

16. *It is further ordered that* the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Fourth Report and Order, including the Final Regulatory Flexibility Analysis at Attachment, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 26

Competitive bidding procedures, Radio.

Attachment

Final Regulatory Flexibility Analysis (Fourth Report and Order)

As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Second Further Notice of Proposed Rule Making in WT Docket No. 97–82 and ET Docket No. 94–32. The Commission sought written public comment on the proposals in the Second Further Notice of Proposed Rule Making, including comment on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') in this Fourth Report and Order (Order) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (''CWAAA''), Public Law No. 104–121, 110 Stat. 847 (1996). The Commission received no public comments on the IRFA.

A. Need for, and objectives of, this Order. The General Wireless Communications Service (''GWCS'') was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. This Order replaces most of the auction rules adopted in 1995 for GWCS with the streamlined Part 1 rules. With regard to auction provisions for designated entities, the Commission simplifies the definition of ''small business,'' eliminates installment payments, and increases the bidding credit. While retaining the $40 million definition of ''small business,'' the Commission will use the Part 1 definitions of gross revenues and affiliate for determining the small business status of GWCS applicants. The Commission believes that these rule changes will further simplify and streamline the rules and regulations and increase the overall efficiency of the competitive bidding process for GWCS.

B. Summary of significant issues raised by public comments in response to the IRFA. The Commission received no comments in response to the IRFA.

C. Description and estimate of the number of small entities to which the proposed rules will apply. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules here adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were 85,006 such jurisdictions in the United States.

In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA''). The Commission sought and obtained SBA approval of a refined definition of ''small business'' for GWCS. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than $40 million.

The Commission will offer 875 geographic area licenses, based on Economic Areas, for GWCS. In estimating the number of small entities that may participate in the GWCS auction, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction winning bidders.

D. Description of reporting, recordkeeping, and other compliance requirements. The Order adopts no additional compliance requirements for auction participation. As noted previously in this docket, however, all GWCS license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for the GWCS auction by filing a short-form application and will file a long-form application at the conclusion of the auction. Additionally, entities seeking treatment as ''small businesses'' will need to submit information pertaining to the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant.

E. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered. Among other goals, Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Section 309(j), directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. At the same time, Section 309(j) requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.

The Commission received no comments with respect to the issue of eliminating installment payments for GWCS. The Commission has determined, consistent with its decision to suspend the use of installment payments for the immediate future, that installment payments should not be offered in the GWCS auction as a means of financing small businesses and other designated entities. The Commission notes that installment payments are not the only tool available to assist small businesses, and that section 3007 of the Balanced Budget Act requires that the Commission conduct certain future auctions in a manner that ensures that all proceeds from such bidding are deposited in the U.S. Treasury not later than September 30, 2002.

In assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. In this Order, the Commission adopts the Part 1 uniform definitions of ''gross revenues'' and ''affiliate'' for GWCS; eliminates the use of installment payments for GWCS; provides for a higher bidding credit, in lieu of installment payments, to encourage and facilitate the participation of designated entities in future auctions; and adopts the Part 1 unjust enrichment rule. With respect to the attribution rules for GWCS, the Commission adopts a ''controlling interest'' standard. Under this standard, determination of eligibility for small business provisions would be made by attributing the gross revenues only of principals of the applicant who exercise both ''de jure'' and ''de facto'' control, and their affiliates. The Commission believes the standard is sufficient to calculate size so that only those entities truly meriting small business status qualify for bidding credits. The Commission chooses not to impose a minimum equity requirement for the GWCS auction. The Commission wants rules that provide for the greatest flexibility in business structuring.

By this Order, the Commission applies to GWCS the general auction rules contained in Part 1 of its rules. These rules include a uniform definition of major amendments to the short-form application; general ownership disclosure requirements; a provision to refund upfront payments before the end of an auction to bidders that lose eligibility; uniform default rules; a rule that permits auction winners who have submitted a timely down payment to submit final payments 10 business days after the applicable deadline, provided the appropriate late fee is paid; a rule that modifies the attributable investor threshold of the anti-collusion rule to include controlling interests and/or holders of a 10 percent or greater interest in the applicant and to permit an entity that has invested in an applicant that withdraws from an auction to invest in other applicants that have applied to bid in the same markets; and permits all auction winners to begin construction at their own risk upon issuance of a public notice announcing the auction winners.

The Balanced Budget Act of 1997 provides for shortened periods for the filing of petitions to deny and for the grant of licenses. Under this provision, the Commission is permitted to grant any application for authorization assigned under competitive bidding not earlier than seven days following public notice that an application has been accepted for filing, and may specify a period of not less than five days for filing petitions to deny. The Commission received no comments on its proposal to truncate the petition to deny period for GWCS. After the Commission announces that long form applications have been accepted for filing, it will announce by Public Notice the length of the period for filing petitions to deny. Finally, consistent with the Part 1 Third Report and Order, the Commission directs the Wireless

Telecommunications Bureau to establish day-to-day auction conduct procedures for the GWCS auction. These procedures include upfront payment determination, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension, or cancellation.

The Commission believes that the objectives of section 309(j) are met by the rule changes in this Order. In addition, this Order serves the public interest by simplifying regulations, eliminating unnecessary rules, increasing the efficiency of the competitive bidding process, and providing more specific guidance to auction participants while also giving them more flexibility.

The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Rule Changes

Part 26 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for Part 26 continues to read as follows:

Authority: 47 U.S.C. sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Amend § 26.4 by adding the definitions of ''Affiliate'' and ''Controlling interest'' and revise the definitions of ''Gross revenues,'' ''Rural telephone company,'' and ''Small business: consortium of small businesses,'' to read as follows.

§ 26.4 Terms and definitions.

Affiliate. See § 1.2110(b)(4) of this chapter.

* * * * *

Controlling interest. (a) For purposes of this section, controlling interest includes individuals or entities with both *De jure* and *De facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *De facto* control of the applicant:

(1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(2) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(3) The entity plays an integral role in management decisions.

(b) Calculation of certain interests.

(1) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(2) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(3) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(4) Non-voting stock shall be attributed as an interest in the issuing entity.

(5) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(6) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(7) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(8) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person or its affiliate pursuant to § 1.2110(b)(4), has authority to make decisions or otherwise engages in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such an applicant or licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(9) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such an applicant or licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

* * * * *

Gross Revenues. See § 1.2110(m) of this chapter.

* * * * *

Rural telephone companies. A rural telephone company is any local exchange carrier operating entity to the extent that such entity—

(a) Provides common carrier service to any local exchange carrier study area that does not include either

(1) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or

(2) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(b) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Small business: consortium of small businesses.

(a) A small business is an entity that, together with its affiliates and entities holding controlling interests in the entity, has average annual gross revenues that are not more than $40 million for the preceding three years.

(b) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each business shall not be aggregated.

(c) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

* * * * *

3. Revise § 26.203 to read as follows:

§ 26.203 Competitive bidding mechanisms.

See § 1.2104 of this chapter.

4. Remove and reserve section 26.204.

5. Revise § 26.205 to read as follows:

§ 26.205 Bidding application (FCC form 175 and 175–S short-form).

See § 1.2105 of this chapter.

6. Revise § 26.206 to read as follows:

§ 26.206 Submission of upfront payments and down payments.

See § 1.2106 of this chapter.

7. Revise § 26.207 to read as follows:

§ 26.207 Long form applications.

See § 1.2107 of this chapter.

8. Revise § 26.208 to read as follows:

§ 26.208 License grant, denial, default, and disqualification.

See § 1.2109 of this chapter.

9. Revise § 26.210 to read as follows:

§ 26.210 Provisions for small businesses.

(a) Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter.

(b) Demonstrating small business qualifications. See § 1.2110(i) of this chapter.

(c) Audits.

See § 1.2110(l) of this chapter.

(d) Unjust enrichment.

See § 1.2111 of this chapter.

10. Amend § 26.307 by revising paragraphs (a) to read as follows:

§ 26.307 General application requirements.

(a) See § 1.2112 of this chapter.

* * * * *

§ 26.313 [Removed]

11. Remove and reserve section 26.313.

12. Amend § 26.317 by revising paragraph (b) to read as follows:

§ 26.317 Public notice period.

* * * * *

(b) The Commission will not grant an application filed on Form 601 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of not less than seven (7) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of this chapter.

* * * * *

13. Revise § 26.320 to read as follows:

§ 26.320 Opposition to applications.

See § 1.2108 of this chapter.

[FR Doc. 98–28132 Filed 10–21–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–138, RM–8855, 8856, 8857, 8858, 8872; FCC 98–175]

Main Studio and Public Inspection File of Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This rule announces the effective date of the rules published on September 16, 1998. Those rules amended the Commission's rules governing main studio and local public inspection file requirements for broadcast licensees. The Commission relaxed the standard governing the location of the main studio to allow a station to locate within the principal community contour of any station licensed to the community of license, and required the local public inspection file to be located at the broadcast station's main studio, wherever located. The Commission also amended the public inspection file rules to streamline the contents of the public inspection file.

DATES: Sections 73.1125 and 73.3526 and 73.3527 published at 63 FR 49487 (September 16, 1998) are effective on October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley or Kim Matthews, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: On October 7, 1998 the Office of Management and Budget (''OMB'') approved the amendments to the main studio rule pursuant to OMB Control No. 3060–0171, and on October 13, 1998, OMB approved the amendments to the public file rules pursuant to OMB Control Nos. 3060–0214 and 3060–0215. Accordingly, the rules in Sections 73.1125, 73.3526 and 73.3527 will be effective on October 30, 1998.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28405 Filed 10–21–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 204
Thursday, October 22, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 310, T310, 320, 401, 402, 411, and 421 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have applied to certain Cessna 310, T310, 320, 401, 402, 411, and 421 series airplanes. The previous document would have superseded AD 72–14–08 R1, which currently requires repetitively inspecting the fuel and oil flexible hose lines for leakage or evidence of any damaged or deteriorated hose assembly on the above-referenced airplanes, and replacing any discrepant part. This document would retain from the previous proposed AD the requirement of replacing the fuel and oil flexible hose assemblies in the engine compartment on Cessna 401, 402, and 421 series airplanes with Cessna hose assemblies of improved design, as terminating action for the repetitive inspection requirement of AD 72–14–08-R1; and would provide for the replacement of assemblies of equivalent design to that of the Cessna parts. The proposed AD is the result of the Federal Aviation Administration's policy on commuter class aircraft, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. The actions specified by the proposed AD are intended to prevent deterioration of the fuel and oil hose assemblies, which could result in fuel or oil leakage with consequent engine shutdown. Since sufficient time has passed (more than 12 months) since the issuance of the original proposal, the FAA is reopening the comment period and allowing the public additional time to comment.

DATES: Comments must be received on or before December 22, 1998.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 90-CE–35-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 the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277, telephone: (316) 941–7550, facsimile: (316) 942–9008. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone: (316) 946–4143; facsimile: (316) 946–4407.

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 supplemental 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 supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 90-CE–35-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 90-CE–35-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 310, T310, 320, 401, 402, 411, and 421 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 23, 1990 (55 FR 42726). The NPRM proposed to supersede AD 72–14–08 R1, Amendment 39–4215, with a new AD that would:

—initially retain the requirement of repetitively inspecting the fuel and oil flexible hose lines for leakage or evidence of any damaged or deteriorated hose assembly on all of the affected airplanes, and replacing any discrepant part; and

—eventually require, regardless if damage or deterioration was found, replacing the fuel and oil flexible hose assemblies in the engine compartment with Cessna hose assemblies of improved design for the Cessna 401, 402, and 421 series airplanes, as terminating action for the repetitive inspection requirement. The 310, T310, 320, and 411 series airplanes could either be inspected repetitively provided no damage or deterioration was found or have the fuel and oil flexible hose assemblies replaced.

The NPRM was the result of the Federal Aviation Administration's policy on commuter class aircraft, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification

should be incorporated. For the purposes of the NPRM, the 401, 402, and 421 series airplanes are considered commuter class and would be affected by the proposed mandatory parts replacement.

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

Comment Disposition

The commenter feels that mandatory replacement of the fuel and oil flexible hoses is unjustified if the hoses are showing no signs of damage or deterioration. The commenter states that he has had no problems with his Cessna Model 402B for 5,600 hours time-in-service (TIS) and that he shouldn't be penalized with an expensive hose replacement AD.

The FAA does not concur that mandatory replacement of the fuel and oil flexible hoses is unjustified. The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. Therefore, the FAA has determined that replacement of the fuel and oil hose assemblies should be mandatory instead of relying on repetitive inspections to detect damage or deterioration.

Events Since Issuance of the NPRM

Since issuance of the NPRM, the FAA has received information about equivalent fuel and oil hose assemblies to that of the improved design Cessna parts. The FAA has determined that the proposed AD should provide the option of installing the Cessna parts or FAA-approved equivalent parts.

The FAA's Determination

After examining all information related to the subject described in this document, the FAA has determined that:

—the NPRM should be revised to add the option of installing fuel and oil hose assemblies that are equivalent to the improved design Cessna parts on Cessna 401, 402, and 421 series airplanes; and

—AD action should be taken to incorporate these changes to continue to prevent deterioration of the fuel and oil hose assemblies, which could result in fuel or oil leakage with consequent engine shutdown.

The Supplemental NPRM

Since sufficient time has passed (more than 12 months) since the issuance of the original proposal, the FAA is reopening the comment period to provide additional time for public comment.

Cost Impact

The FAA estimates that approximately 2,617 of the 401, 402, and 421 series airplanes and 5,023 of the 310, T310, 320, and 411 series airplanes would be affected by the proposed AD.

The cost of installing the improved hose assemblies (parts and labor) is estimated to be $3,520 per airplane (7 workhours at $60 per hour = $420 plus $3,100 (average price) for parts). With these figures in mind, the cost impact upon the public for the entire fleet of 401, 402, and 421 series airplanes would be approximately $9,211,840. The cost impact upon the public if every airplane owner/operator of the entire fleet of 310, T310, 320, and 411 series airplanes were to choose to replace the fuel and oil hose assemblies would be approximately $17,680,960.

The proposed initial inspection for all affected airplanes would take approximately 2 workhours to accomplish at an average labor rate of $60 per hour. The cost impact for the proposed initial inspection would be $314,040 for the 401, 402, and 421 series airplanes; and $602,760 for the 310, T310, 320, and 411 series airplanes. These figures only take into account the cost of the proposed initial inspection and do not take into account the cost of any repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the 310, T310, 320, and 411 series airplanes would incur over the life of his/her airplane; or how many repetitive inspections each owner/operator of the 401, 402, and 421 series airplanes would incur over the 12 months until the proposed mandatory parts replacement occurs.

In addition, the FAA estimates that around 75 percent of the 401, 402, and 421 series airplanes already have the proposed mandatory parts replacement, and that numerous 310, T310, 320, and 411 series airplanes have the proposed optional parts replacement. This would substantially reduce the cost impact upon the public for both the inspection and parts replacement aspects of this proposed AD.

Compliance Time of This Proposed AD

The compliance time for the proposed fuel and oil flexible hose assembly replacement for the Cessna 401, 402, and 421 series airplanes is 12 calendar months after the effective date of the proposed AD. The FAA has determined that a calendar time for compliance is the most desirable method because yearly operational times vary so greatly throughout the fleet. According to FAA data, yearly operational times vary from a low of approximately 64 hours TIS to a high of approximately 2,824 hours TIS.

Based on this information, the FAA has determined that using a compliance time based upon hours TIS is unrealistic from a safety standpoint since the hoses deteriorate over time. Therefore, to maintain continuity and assure that all flexible fuel and oil hose assemblies are replaced in a timely manner, the FAA is proposing a compliance based upon calendar time.

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 removing Airworthiness Directive (AD) 72–14–08 R1, Amendment 39–4215, and adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 90–CE–35–AD. Supersedes AD 72–14–08 R1, Amendment 39–4215

Applicability: The following models and serial number airplanes, certificated in any category, that do not have Cessna improved design fuel and oil flexible hose assemblies (or Stratoflex equivalent parts or other FAA-approved equivalent parts) installed in accordance with either Cessna Service Information Letter ME81–17, dated July 10, 1981; Cessna Service Information Letter ME81–17, Revision 1, dated November 5, 1982; or the applicable maintenance manual:

Model(s)	Serial number
310, 310B, 310C, 310D	35000 through 39299.
310F	310–001 through 310–0156.
310G through 310Q	310G0001 through 310Q1160.
310A (U–3A)	38001 through 38160.
310E (U–3B)	310M0001 through 310M0036.
T310P and T310Q	310P0001 through 310Q1160.
320	320–0001 through 320–0110.
320A through 320F	320A0001 through 320F0045.
401	401–0001 through 401–0322.
401A and 401B	401A0001 through 401B0221.
402	402–0001 through 402–0322.
402A and 402B	402A0001 through 402B1384.
411	411–0001 through 411–0250.
411A	411A0251 through 411A0300.
421	421–0001 through 421–0200.
421A and 421B	421A0001 through 421B0970.

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 prevent deterioration of the fuel and oil hose assemblies, which could result in fuel or oil leakage with consequent engine shutdown, accomplish the following:

(a) Within the next 60 hours time-in-service (TIS) after the effective date of this AD or within the next 60 hours TIS after the last inspection required by AD 72–14–08 R1, whichever occurs first, and thereafter at intervals not to exceed 60 hours TIS, accomplish the following in accordance with the applicable Cessna 300 and 400 Series Service Manuals:

(1) Visually inspect the flexible fuel lines as follows:

(i) Pressurize the fuel lines with the boost pump momentarily operating in the prime position. When accomplishing this test, assure that the mixture control is in the idle cutoff position. While the lines are pressurized, examine all hose exteriors in the engine compartment for evidence of leakage such as wetness and fuel stains.

(ii) After pressure testing fuel hoses, allow sufficient time for excess fuel to drain overboard from the engine manifold before attempting an engine start.

(iii) Examine externally all fuel hoses in the engine compartment for evidence of deterioration or damage such as cracks, cuts, bulges, discoloration, hardness, chafing, and excessive wear.

(2) Visually inspect flexible oil lines, as follows:

(i) Examine all hose exteriors in the engine compartment for evidence of leakage.

(ii) Examine externally all oil hoses in the engine compartment for evidence of deterioration or damage such as cracks, cuts, bulges, discoloration, hardness, chafing, and excessive wear.

(b) If, during any inspection required by this AD, leakage or other evidence of any deteriorated or damaged hose assembly is found, prior to further flight, replace that particular fuel or oil flexible hose assembly with a Cessna improved design fuel or oil flexible hose assembly (or Stratoflex equivalent parts or other FAA-approved equivalent parts).

(1) Accomplish this replacement in accordance with either Cessna Service Information Letter ME81–17, dated July 10, 1981; Cessna Service Information Letter ME81–17, Revision 1, dated November 5, 1982; or the applicable maintenance manual.

(2) Repetitive inspections are no longer necessary on any fuel or oil flexible hose assembly replaced with improved design parts, as specified in paragraphs (b) and (b)(1) of this AD.

(c) For the affected Models 401, 401A, 401B, 402, 402B, 421, 421A, and 421B airplanes, within the next 12 calendar months after the effective date of this AD, unless already accomplished in accordance with paragraph (b) of this AD, replace all fuel and oil flexible hose assemblies with Cessna improved design fuel and oil flexible hose assemblies (or Stratoflex equivalent parts or other FAA-approved equivalent parts).

(1) Accomplish these replacements in accordance with either Cessna Service Information Letter ME81–17, dated July 10, 1981; Cessna Service Information Letter ME81–17, Revision 1, dated November 5, 1982; or the applicable maintenance manual.

(2) Repetitive inspections are no longer necessary when these replacements are accomplished.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm. 100, Mid-

Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) Questions or technical information related to the service information specified in this AD should be directed to the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277, telephone: (316) 941–7550, facsimile: (316) 942–9008. 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.

Issued in Kansas City, Missouri, on October 15, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28300 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–10–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 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 all de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers aft of the flight idle stop while the airplane is in flight. This AFM amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. None of the incidents or accidents involved de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned aft of the flight idle stop while the airplane is in flight.

DATES: Comments must be received on or before December 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–10–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.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Flight Test Pilot, New York Aircraft Certification Office, FAA, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone: (516) 256–7536; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications 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. 97–CE–10–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. 97–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of 14 occurrences in recent years of incidents or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop. None of the incidents or accidents involved de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propellers that were operating in the beta range drove their respective engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers aft of the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers aft of the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers aft of the flight idle stop while the airplane is in flight, including

a statement of consequence if the limitation is not followed; and

Because de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers aft of the flight idle stop, and do not contain information in the Limitations Section of the AFM that prohibits and explains the consequences of such operation, AD action should be taken. The proposed AD is intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned aft of the flight idle stop while the airplane is in flight.

Explanation of Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other de Havilland Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require amending the Limitations Section of the AFM to prohibit the positioning of the power levers aft of the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers aft of the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

Compliance Time of the Proposed AD

The FAA has determined that the compliance time of the proposed AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by the proposed AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The proposed compliance time of ''30 days after the effective date of this AD'' would not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish the proposed action in a reasonable time period.

Cost Impact

The FAA estimates that 114 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to incorporate the proposed AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to amend the AFM.

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:

De Havilland Inc: Docket No. 97–CE–10–AD.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

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

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

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

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Positioning of power levers aft of the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, 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).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Systems and Flight Test Branch, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 1158. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

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

(f) 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.

Issued in Kansas City, Missouri, on October 14, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28276 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N–0038]

RIN 0910–AA01

Sunscreen Drug Products for Over-the-Counter Human Use; Amendment to the Tentative Final Monograph; Enforcement Policy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that amends the tentative final monograph (proposed rule) for over-the-counter (OTC) sunscreen drug products. This amendment would establish conditions under which products containing zinc oxide as a sunscreen active ingredient are generally recognized as safe and effective and not misbranded at concentrations of up to 25 percent alone and 2 to 25 percent in combination with any proposed Category I sunscreen active ingredient except avobenzone. OTC marketing of such drug products is being permitted pending establishment under the OTC drug review of a final monograph covering sunscreen drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by January 20, 1999; written comments on the agency's economic impact determination by January 20, 1999. FDA is proposing that any final rule based on this proposal become effective 12 months after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donald Dobbs, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 25, 1978 (43 FR 38206), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC sunscreen drug products. Proposed § 352.10 listed the active ingredients to be generally recognized as safe and effective for use in these products. The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Panel) reviewed zinc oxide as both a sunscreen and skin protectant. The Panel classified zinc oxide at concentrations of 1 to 25 percent as a Category I skin protectant (43 FR 34628 at 34648, August 4, 1978). Although zinc oxide was a labeled ingredient in a marketed sunscreen product, the Panel classified zinc oxide as an inactive ingredient (43 FR 38206 at 38208).

In the **Federal Register** of May 12, 1993 (58 FR 28194), FDA published a notice of proposed rulemaking (tentative final monograph) for OTC sunscreen drug products. The agency discussed a study submitted to the Panel using zinc oxide alone and in combination with phenyl salicylate, another sunscreen ingredient (58 FR 28194 at 28213). The study was designed to measure the ability of zinc oxide (15 to 33.3 percent) to absorb ultraviolet (UV) radiation over a broad range of wavelengths. The agency concluded that the data were not adequate to determine the effectiveness of zinc oxide because the effectiveness data for zinc oxide used alone were limited to one subject. Therefore, the agency classified zinc oxide in Category III (available data are insufficient to determine safety or effectiveness) (58 FR 38213) and requested data to support the effectiveness of zinc oxide as a sunscreen ingredient.

In the proposed rule, the agency also discussed the public health significance of ultraviolet A (UVA) radiation and the characteristics and proposed labeling of OTC sunscreen drug products that claim to provide protection from UVA radiation (58 FR 28194 at 28232 and 28233). Testing procedures for sunscreen drug products with UVA radiation protection claims were discussed in the proposed rule (58 FR 28194 at 28248 to 28250) and at a public meeting on May 12, 1994 (as noted in the **Federal Register** of April 5, 1994 (59 FR 16042)).

In response to the proposed rule, four manufacturers submitted data to support the effectiveness of zinc oxide as an OTC sunscreen active ingredient for both ultraviolet B (UVB) and UVA protection. Copies of the comments received are on public display in the Dockets Management Branch (address above). The four comments requested that the agency reclassify zinc oxide from Category III to Category I status.

II. The Agency's Evaluation of the Comments and Other Data

A. Effectiveness of Zinc Oxide

1. Several comments evaluated the effectiveness of zinc oxide as a sunscreen active ingredient in various formulations utilizing the sun protection factor (SPF) test method in the Panel report (43 FR 38206 at 38265 and 38266). Using the testing procedures in the proposed rule (58 FR 28194 at 28298), the agency recalculated the SPF test results (as stated in the tables in section II.A of this document) after eliminating those results where the homosalate control was out of range.

Two studies evaluated the ability of zinc oxide-containing sunscreen drug products to block sunburning radiation (Ref. 1). In both studies, formulations containing either 4 percent or 25 percent zinc oxide, 2 percent oxybenzone (a proposed Category I sunscreen ingredient (58 FR 28194 at 28295)), and a placebo were tested. The vehicles consisted of commonly utilized oils and emulsifiers and varied only in the concentration of the active ingredients and the amount of purified water. The results of these studies were as follows:

TABLE 1.—SPF TEST DETERMINATIONS FOR FOUR FORMULATIONS

Sunscreen	Anticipated SPF	Test SPF (Study 1)	Test SPF (Study 2)
4% Zinc oxide	SPF 2.5	SPF 3.01	2.79
25% Zinc oxide	SPF 15.0	SPF 16.74	16.14

TABLE 1.—SPF TEST DETERMINATIONS FOR FOUR FORMULATIONS—Continued

Sunscreen	Anticipated SPF	Test SPF (Study 1)	Test SPF (Study 2)
2% Oxybenzone	SPF 3.0	SPF 3.98	3.39
Placebo	SPF 1.5	SPF 1.46	1.33

These results indicate that the 4-percent zinc oxide formulation provides more protection against sunburning radiation than does the placebo. However, as expected, the 25-percent zinc oxide formulation provides the most protection against sunburning radiation. The agency believes that these results demonstrate the effectiveness of zinc oxide (up to 25 percent) as an OTC sunscreen active ingredient in providing protection against sunburning radiation.

Formulations containing 15 percent and 20 percent zinc oxide were tested against a control containing no zinc oxide (Ref. 2). The 3 formulations contained the same 12 ingredients at the same concentrations except for the active ingredient, two inactive ingredients (octyl palmatate and volatile silicone DC–245), and deionized water. The 15-percent zinc oxide formulation contained 11 percent octyl palmatate, 7.5 percent volatile silicone DC–245, and 53.3 percent deionized water; the 20-percent zinc oxide formulation contained 9 percent octyl palmatate, 6.5 percent volatile silicone DC–245, and 51.3 percent deionized water; and the placebo contained 17 percent octyl palmatate, 7.5 percent volatile silicone DC–245, and 62.3 percent deionized water. The results were as follows:

TABLE 2.—SPF TEST DETERMINATIONS FOR THREE FORMULATIONS

Sunscreen	Test SPF
15% Zinc oxide	15.29
20% Zinc oxide	16.57
Placebo	3.57

The agency believes these data also support the effectiveness of zinc oxide as a sunscreen active ingredient.

Five studies, done at two different laboratories, were designed to demonstrate the effectiveness of zinc oxide as a sunscreen active ingredient in different formulations (Ref. 3). In three studies, zinc oxide (2 percent in one formulation and 6 percent in two formulations) was the only active ingredient. In two studies, zinc oxide (2.5 percent or 7.5 percent) was combined with titanium dioxide (2.5 percent), a proposed Category I sunscreen ingredient (58 FR 28194 at 28295). The vehicle formulations without zinc oxide were not tested. The results of the SPF testing were as follows:

TABLE 3.—SPF TEST DETERMINATIONS FOR FIVE FORMULATIONS

Sunscreen	Test SPF
2% Zinc oxide	2.99
6% Zinc oxide	6.16
6% Zinc oxide	5.91
2.5% Zinc oxide and 2.5% titanium dioxide	11.77
7.5% Zinc oxide and 2.5% titanium dioxide	20.52

Although these studies did not include a placebo, the agency believes that the data support the effectiveness of 2 percent zinc oxide as a sunscreen active ingredient.

The SPF of two formulations containing 5 and 10 percent fine particle size (10 to 70 nanometer (nm), average 30 nm), pH neutral (7.3) zinc oxide was studied using testing procedures that were slightly modified by the addition of a range-finding technique (Ref. 4). The two formulations contained the same inactive ingredients at slightly different concentrations to account for the difference in concentration of zinc oxide. The results of this study were as follows:

TABLE 4.—SPF TEST DETERMINATIONS FOR TWO FORMULATIONS

Sunscreen	Anticipated SPF	Test SPF
5% Zinc oxide	SPF 5	SPF 5.01
10% Zinc oxide	SPF 10	SPF 9.10

Although the vehicle formulations without zinc oxide were not tested, the agency believes that these results and consistent with the effectiveness of zinc oxide as a sunscreen active ingredient.

2. One comment (Ref. 1) measured the UVA protection factor (PFA) for three formulations: (1) 4 percent zinc oxide, (2) 2 percent oxybenzone, and (3) a placebo. The vehicles consisted of commonly utilized oils and emulsifiers and varied only in the concentration of the active ingredients and the amount of purified water. The PFA values were determined using a modified test method similar to the Panel's proposed SPF test (43 FR 38206 at 38265 to 38266). For the PFA test method, the light source was modified to emit only UVA radiation (>99.2 percent). The biological endpoint used in this test method was a change in skin color, either erythema (redness) or tanning (browning) of the skin observed 16 to 24 hours after the UV exposure. The lowest dose of UVA radiation that caused a minimally perceptible response was defined as the minimal response dose (MRD), which was determined for unprotected skin (MRD_u) and for the sunscreen protected skin (MRD_p). The PFA was the ratio of (MRD_p) divided by the (MRD_u). The UVA determinations for the three formulations were as follows:

TABLE 5.—PFA TEST DETERMINATIONS FOR THREE FORMULATIONS

Sunscreen	Anticipated PFA	Test PFA
4% Zinc oxide	2.00	2.36
2% Oxybenzone	2.00	2.27
Placebo	1.25	1.11

Although the PFA value reported for the 4 percent zinc oxide formulation was low, these results indicate that zinc oxide blocks radiation (320 to 340 nm) in the UVA II range.

3. Several comments submitted results of in vitro testing data. One comment (Ref. 1) used a Cary 2300 Spectrophotometer to measure the spectral absorbance of three formulations: (1) 4 percent zinc oxide, (2) 25 percent zinc oxide, and (3) 2 percent oxybenzone. The vehicles consisted of commonly utilized oils and emulsifiers and varied only in the concentration of the active ingredients and the amount of purified water.

Albino hairless mouse stratum corneum/epidermis samples were prepared by mechanical removal of the dermis using a dulled razor blade. The samples were cut into 1-inch circles and maintained in a hydrated state by floating the samples (dermal side down) on a water bath. The absorbance of each skin sample was measured and recorded. Ten microliters (µL) of sunscreen were applied to the skin substrate, allowed to dry for 15 minutes, and the absorbance measured. The absorbance of each sunscreen treated sample was subtracted from the absorbance of the skin (without sunscreen) to yield the absorbance of the sunscreen. Five replicate measurements for each sunscreen formula were averaged and plotted with standard deviations at each 10 nm.

The spectral absorbance plots showed that zinc oxide has a relatively flat and broad absorbance curve from 250 nm through 370 nm with a sharp drop in absorbance beyond 370 nm and extending into the visible spectrum. Comparison of the measurements of the 4 percent zinc oxide with 25 percent zinc oxide showed that the magnitude of absorbance is related to the amount of zinc oxide in the formulation. The spectral absorbance plot of the 2 percent oxybenzone showed an absorbance peak at 250 nm, another at approximately 280 nm, followed by a gradual drop in absorbance throughout the UVA wavelengths (320 to 400 nm). These measurements adequately demonstrated that zinc oxide absorbs radiation between 290 and 380 nm and, thus, support effectiveness.

Another comment (Ref. 2) included the results of in vitro testing (''Diffey method'') of a formulation containing 15 percent zinc oxide in a stable emulsion. The transmittance data indicated UV radiation blockage from 290 to 380 nm and support the premise that zinc oxide can protect against UV radiation, including both UVB and UVA.

One comment (Ref. 3) included a spectral profile of attenuation for zinc oxide alone in a cosmetic formulation and from 1:1 and 3:1 combinations of zinc oxide and titanium dioxide. These spectral profiles of zinc oxide in various formulations demonstrated that zinc oxide as a single ingredient can provide protection in both the UVB and UVA spectral regions.

B. Photochemistry and Photobiology of Sunscreens

Recent scientific advances in understanding the photochemistry and photobiology of sunscreen drug products have raised many issues regarding sunscreen active ingredients, including zinc oxide and titanium dioxide. Because zinc oxide and titanium dioxide have many similar physical characteristics and may be used in combination in OTC sunscreen drug products, the following discussion addresses both ingredients.

There has been renewed interest in using physical sunscreens, i.e., zinc oxide and titanium dioxide, in sunscreen formulations because these ingredients may confer protection for a broad range of the UV radiation spectrum. Some manufacturers have developed ultra fine forms of these ingredients in the range of 0.02 to 0.10 microns that are transparent on the skin, may offer both UVA and UVB protection, and are esthetically pleasing (Refs. 5, 6, and 7).

Sunscreens have been generally classified as chemical (organic) or physical (inorganic) depending on whether they absorb specific UV radiation wavelengths or reflect and scatter UV radiation. Zinc oxide and titanium dioxide have been described as physical sunscreen ingredients that provide protection from UV radiation through reflection and scattering. However, new data and information indicate that they also absorb UV radiation as well as scatter visible light (Refs. 8 and 9). Various authors (Refs. 8 and 10 through 13) have shown that these ingredients exhibit a semiconductor optical absorption gap. They absorb most radiation at wavelengths shorter than the gap (approximately 380 nm) and scatter radiation at wavelengths longer than the gap. When zinc oxide and titanium dioxide are irradiated with light containing energy greater than the band gap (approximately 3 electron volts), an electron from the valence band can be excited to the conduction band, thus creating an electron-hole pair. Because of these semiconductor properties, zinc oxide and titanium dioxide have been used as photocatalysts to degrade organic substances and pesticides in the environment (Refs. 14 through 18). In addition, titanium dioxide is being currently developed as a photooxidative self-cleaning and/or biocidal coating for industrial surfaces (Ref. 19).

There are many formulation variables that may affect the photocatalytic capability of zinc oxide and titanium dioxide. Such variables include mineral components, particle size, surface area, crystalline structure, particle coatings, pH of the medium, differences in the refractive index of the medium, and other components in the formulation (Refs. 5 through 8 and 10 through 23). These formulation variables are not mentioned in the United States Pharmacopeia (USP) compendial monograph for zinc oxide. In fact, the USP treats zinc oxide as a pure compound, without consideration of trace ions that may affect the absorption band gap between the valence and conduction bands or electronic energy levels, i.e., the range of wavelengths that are absorbed.

On September 19 and 20, 1996, the agency held a public meeting on the photostability, photochemistry, and photobiology of sunscreens in order to gather more information related to the issues discussed previously (Ref. 24). As a result of this public meeting, in the **Federal Register** of August 15, 1996 (61 FR 42398), the administrative record for the rulemaking for OTC sunscreen drug products was reopened until December 6, 1996, to allow for additional data and comment. The agency is evaluating all data and information received as a result of the workshop and may discuss

these recent scientific advances in future issues of the **Federal Register**.

C. Conclusion

The agency believes that the results of the studies using the SPF test to demonstrate the effectiveness of zinc oxide adequately demonstrate that at a 2 to 25 percent concentration it provides protection against UVB radiation.

In the proposed rule for OTC sunscreen drug products, the agency stated that a sunscreen ingredient must have an absorption spectrum extending to 360 nm or above in order for a product containing that ingredient to display UVA radiation protection claims in its labeling (58 FR 28194 at 28233). The agency also stated that the product would have to demonstrate meaningful UVA radiation protection by satisfying ''yet to be established'' UVA radiation testing procedures that would be included in the monograph. The agency described suggested interim UVA radiation test procedures in the proposed rule (58 FR 28194 at 28248 to 28250) and in a notice of public meeting (59 FR 16042, April 5, 1994) to discuss such testing procedures.

Although the agency continues to evaluate data and information for the purpose of proposing a monograph method for determining UVA radiation protection, it nevertheless finds there is ample data demonstrating that zinc oxide provides protection against UVA radiation. The agency plans to propose a monograph method for determining UVA radiation protection (both without and following water immersion or perspiration) in a future issue of the **Federal Register**. Until the agency proposes a monograph UVA radiation testing method, the agency considers testing procedures similar to the UVA protection factor method described above (Ref. 1), and those methods described by R. W. Gange et al. (Ref. 25) and N. J. Lowe et al. (Ref. 26) as adequate for determining the UVA radiation protection potential of a finished OTC sunscreen drug product.

Based upon the Panel's evaluation of zinc oxide as a skin protectant and the long history of use of zinc oxide in various drug and cosmetic products, the agency continues to believe that there are no safety concerns regarding the use of zinc oxide as a sunscreen active ingredient in concentrations up to 25 percent. In addition, the agency believes at this time that zinc oxide can be combined with any one or more of the other Category I sunscreen ingredients in § 352.10 of the proposed rule with the exception of avobenzone. The agency is currently reviewing data and information in support of the use of zinc oxide and avobenzone in combination (Ref. 27) and will make a decision when its review is completed.

In the notice of proposed rulemaking for OTC sunscreen drug products, the agency discussed minimum concentration requirements for OTC sunscreen ingredients (58 FR 28194 at 28214). The agency concluded that effectiveness requirements (i.e., final product testing) make the use of minimum concentration requirements unnecessary for single ingredient products. However, because of its concern that each ingredient in a combination drug product contributes to the overall effectiveness of the product, the agency tentatively concluded that minimum concentration requirements are necessary for combination sunscreen drug products (i.e., until a method is developed that can demonstrate the contribution of each OTC sunscreen ingredient in a combination product). The agency received a number of comments on this position. The agency is currently evaluating these comments and will address them in the final monograph.

At this time, the agency considers the data submitted by the comments as supportive of the safety and effectiveness of up to 25 percent zinc oxide alone (if the finished product provides at least an SPF 2) and 2 to 25 percent zinc oxide in combination with any one or more of the other Category I sunscreen ingredients (except avobenzone) at the concentrations for permitted combinations of sunscreen active ingredients in proposed § 352.20 (58 FR 28194 at 28295). Accordingly, the agency is proposing to amend the proposed monograph for OTC sunscreen drug products to include zinc oxide in §§ 352.10 and 352.20.

D. Enforcement Status

The Panel did not consider zinc oxide as a sunscreen active ingredient alone or in combination products. The agency is not aware of any OTC sunscreen drug products currently marketed with zinc oxide as the sole sunscreen ingredient. The agency is aware that there are a number of combination sunscreen drug products that contain zinc oxide.

An FDA Compliance Policy Guide (CPG) (Ref. 28) addresses the marketing of OTC drug products containing combinations of ingredients. Under this guide, FDA's stated policy is that OTC drug combinations that were commercially marketed in the United States on or before May 11, 1972, and that are not subject to a final monograph, should not be considered for regulatory action on the basis of suspected labeling deficiencies unless the deficiency constitutes a potential hazard to health. For OTC combination drug products that were not marketed on or before May 11, 1972, and have not been considered by an OTC advisory review panel, the CPG states that the agency may propose to include the combination in a final monograph. However, marketing of such a product generally may not proceed until after the comment period has ended on the proposal and a subsequent notice is published in the **Federal Register** setting forth the agency's determination concerning interim marketing.

The agency is aware that a number of sunscreen combination drug products containing zinc oxide have entered the market place during the pendency of the rulemaking for OTC sunscreen drug products. Based upon the Panel's favorable evaluation of zinc oxide as a skin protectant and zinc oxide's long history of safe use at comparable levels in various drug and cosmetic products. Because these products are currently being marketed and provide a significant health benefit to consumers, the agency sees no reason to restrict other products from entering the marketplace until the agency publishes a subsequent **Federal Register** notice to permit interim marketing. Accordingly, the agency, by this notice, has determined that it is appropriate at this time to allow the interim marketing of the OTC zinc oxide-containing products identified in proposed §§ 352.10 and 352.20. The agency is considering amending the CPG (Ref. 28) in the future to address special situations such as this one.

Products containing zinc oxide require both UVA radiation protection testing (as discussed in section II. C. of this document) and SPF testing of the finished product, as proposed in subpart D of the proposed monograph for OTC sunscreen drug products (58 FR 28194 at 28298 to 28301). If the products contain UVA claims in their labeling, then they must be marketed with the labeling proposed in § 352.52 in this document. Products covered by this monograph amendment may be marketed pending issuance of the final monograph for this drug class, subject to the risk that the agency may adopt a different position in the final monograph that could require reformulation and/or relabeling, recall or other regulatory action. Marketing of such products with UVA labeling claims not in accord with the labeling proposed in this document may also result in regulatory action against the product, the marketer, or both. The final monograph for OTC sunscreen drug products will establish the final

formulation, labeling, and testing requirements for such products.

E. Labeling

In addition to applicable labeling proposed in §§ 352.50 through 352.60 (58 FR 28194 at 28296 to 28298), the agency is proposing that the labeling for sunscreen drug products containing zinc oxide may include under their ''Indications'' or ''Uses'' any of the following phrases: (1) ''Broad spectrum sunscreen,'' (2) ''Provides'' (select one of the following: ''UVB and UVA'' or ''broad spectrum'') ''protection,'' (3) ''Protects from UVB and UVA'' (select one of the following: ''rays'' or ''radiation''), (4) (Select one of the following: ''Absorbs,'' ''Protects,'' ''Screens,'' or ''Shields'') ''within the UVA spectrum,'' (5) ''Provides protection from the UVA rays that may contribute to skin damage and premature aging of the skin.''

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comments No. RPT5 and CR7, Docket No. 78N–0038, Dockets Management Branch.
2. Comments No. C131, C352, and SUP21, Docket No. 78N–0038, Dockets Management Branch.
3. Comments No. C140, C350, C513, and LET145, Docket No. 78N–0038, Dockets Management Branch.
4. Comment No. C351, Attachment III, Docket No. 78N–0038, Dockets Management Branch.
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6. Alexander, P., ''Ultrafine Titanium Dioxide Makes the Grade,'' *Manufacturing Chemist*, 62:21,23, 1991.
7. Brown, M. W., and E. Galley, ''Testing UVA and UVB Protection from Microfine Titanium Dioxide,'' *Cosmetics and Toiletries*, 105:69–73, 1990.
8. Sayre, R. et al., ''Physical Sunscreens,'' *Journal of the Society of Cosmetic Chemists*, 41:103–109, 1990.
9. Fox, M. A., ''Mechanistic Photocatalysis in Organic Synthesis,'' in *Photocatalysis: Fundamentals and Applications*, John Wiley & Sons, New York, pp. 421–455, 1989.
10. Russell, J. et al., ''The Assessment of the OH Scavenging Action of Therapeutic Agents,'' *Journal of Pharmaceutical and Biomedical Analysis*, 12:863–866, 1994.
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12. Rao, M. V. et al., ''Photosynthesis Production of H_2 and H_20_2 on Semiconducting Oxide Grains in Aqueous Solutions,'' *Journal of Physical Chemistry*, 84:1987–91, 1980.
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15. Minero, C. et al., ''Photocatalyzed Transformation of Nitrobenzene on $Ti0_2$ and Zn0,'' *Chemosphere*, 28:1229–1244, 1994.
16. Dieckmann, M. S., K. A. Gray, and P. V. Kamat, ''Photocatalyzed Degradation of Adsorbed Nitrophenolic Compounds on Semiconductor Surfaces,'' *Water Science Technology*, 25:277–279, 1992.
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18. Borello, R. et al., ''Photocatalytic Degradation of DDT Mediated in Aqueous Semiconductor Slurries by Simulated Sunlight,'' *Environmental Toxicology and Chemistry*, 8:997–1002, 1989.
19. Heller, A., ''Chemistry and Applications of Photocatalytic Oxidation of Thin Organic Films,'' *Accounts of Chemistry Research*, 28:503–508, 1995.
20. Anonymous, ''Formulators Fine-Tune $Ti0_2$-Based Screens,'' *Manufacturing Chemist*, 64:26–29, 1993.
21. Tichy, S., ''Transparent $Ti0_2$ for UV Protection,'' *Seifen Oele Fette Wachse*, 118:612–620, 1992.
22. Ortyl, T. T., and G. E. Peck, ''Surface Charge of Titanium Oxide and Its Effect on Dye Adsorption and Aqueous Suspension Stability,'' *Drug Development and Industrial Pharmacy*, 17:2245–2268, 1991.
23. Macleod, T. M., and W. Fran-Bell, ''Study of Physical Light Screening Agents,'' *British Journal of Dermatology*, 92:149–156, 1975.
24. Comment No. TR3, Docket No. 78N–0038, Dockets Management Branch.
25. Gange, R. W. et al., ''Efficacy of a Sunscreen Containing Butyl Methoxydibenzoylmethane Against Ultraviolet A Radiation in Photosensitized Subjects,'' *Journal of the American Academy of Dermatology*, 15:494–499, 1986.
26. Lowe, N. J. et al., ''Indoor and Outdoor Efficacy Testing of a Broad Spectrum Sunscreen Against Ultraviolet A Radiation in Psoralen-sensitized Subjects,'' *Journal of the American Academy of Dermatology*, 17:224–230, 1987.
27. Comment No. CP8, Docket No. 78N–0038, Dockets Management Branch.
28. ''Food and Drug Administration Compliance Policy Guide 7132b.16,'' in OTC Vol. 06ATFM, Docket No. 78N–0038, Dockets Management Branch.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and these two statutes. The purpose of this proposed rule is to add a new ingredient, combinations of ingredients, and labeling for OTC sunscreen drug products that contain zinc oxide and to allow manufacturers to market zinc oxide-containing sunscreen drug products under the OTC drug monograph system, which would be beneficial to small entities. The proposed rule would also have a positive impact on the availability and marketing of broad spectrum OTC sunscreen drug products by allowing additional products to be marketed.

Some manufacturers of currently marketed products may incur costs to relabel their products should they wish to include the new labeling information. Such information may increase product sales because of the broader uses information being allowed. The agency has been informed that relabeling costs of the type required by this proposed rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). The agency is aware of 16 manufacturers that together produce less than 100 SKU's of OTC sunscreen drug products containing zinc oxide. There may be a few additional small manufacturers or products in the marketplace that are not identified in the sources FDA reviewed. Manufacturers who wish to include the new labeling may elect to relabel their products at the next scheduled labeling printing. Assuming that there are about 100 affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $200,000 to $300,000 if all of the products were

relabeled. The agency believes the actual cost could be lower because some manufacturers may not elect to relabel their products at this time and some of the label changes will be made by private label manufacturers that tend to use simpler and less expensive labeling. In addition, there should be minimal waste of existing labeling for any manufacturer who elects to relabel at this next labeling printing. Manufacturers who wish to enter the marketplace with a new zinc oxide sunscreen combination product will incur the standard costs that all manufacturers have when introducing a new product.

The agency considered but rejected several alternatives: (1) A delayed marketing period, and (2) an exemption from coverage for small entities. The delayed marketing period was rejected because similar products currently exist in the marketplace. The agency does not consider an exemption for small entities appropriate because consumers who use these manufacturers' products would not have appropriate products for safe and effective use.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some entities could incur some impacts, especially private label manufacturers that provide labeling for a number of affected products. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Reform Act does not apply to the proposed rule because it would not result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed amendment to the tentative final monograph for OTC sunscreen drug products is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Public Comment

Interested persons may, on or before January 20, 1999, submit written comments to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before January 20, 1999. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 352

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 352 (proposed in the **Federal Register** of May 12, 1993 (58 FR 28194) and amended in the **Federal Register** of September 16, 1996 (61 FR 48645)) be amended as follows:

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

1. The authority citation for 21 CFR part 352 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 352.10 is amended by adding paragraph (v) to read as follows:

§ 352.10 Sunscreen active ingredients.

* * * * *

(v) Zinc oxide up to 25 percent.

3. Section 352.20 is amended by revising paragraphs (a)(1) and (a)(3)(xxi) to read as follows:

§ 352.20 Permitted combinations of active ingredients.

(a) * * *

(1) Two or more sunscreen active ingredients identified in § 352.10(a), and (c) through (v) may be combined when used in the concentrations established for each ingredient in paragraph (a)(3) of this section and the finished product has a minimum sun protection factor value of not less than 2 as measured by the testing procedures established in subpart D of this part.

* * * * *

(3) * * *

(xxi) Zinc oxide 2 to 25 percent.

* * * * *

4. Section 352.52 is amended by adding paragraph (b)(2)(vii) to read as follows:

§ 352.52 Labeling of sunscreen drug products.

* * * * *

(b) * * *

(2) * * *

(vii) For products containing the active ingredient identified in § 352.10(v), the following labeling statements may be used—(A) ''Broad spectrum sunscreen.''

(B) ''Provides'' (select one of the following: ''UVB and UVA'' or ''broad spectrum'') ''protection.''

(C) ''Protects from UVB and UVA'' (select one of the following: ''rays'' or ''radiation'').

(D) (Select one of the following: ''Absorbs,'' ''Protects,'' ''Screens,'' or ''Shields'') ''within the UVA spectrum.''

(E) ''Provides protection from the UVA rays that may contribute to skin damage and premature aging of the skin.''

Dated: October 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–28274 Filed 10–21–98; 8:45 am]

BILLING CODE 4160–01–F

PANAMA CANAL COMMISSION

35 CFR Part 117

RIN 3207–AA48

Marine Accidents: Investigations; Control; Responsibility

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Panama Canal Commission (Commission) proposes to amend its regulations to limit its liability in marine accidents. The new regulations will require potential claimants to carry insurance against marine accidents in an amount of $1 million to cover damages sustained by their vessels at the Canal when transiting the waterway or navigating in waters adjacent thereto.

DATES: The agency must receive written comments on or before November 30, 1998.

ADDRESSES: Address all comments concerning this proposed rule to Office of the Secretary, Panama Canal Commission, 1825 I Street, N.W., Suite 1050, Washington, D.C. 20006–5402; or Office of General Counsel, Panama Canal Commission, Balboa, Ancon, Republic of Panama.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Office of the Secretary, Panama Canal Commission, Telephone: (202) 634–6441, Facsimile: (202) 634–6439; Office of General Counsel, Telephone: 011 (507) 272–7511, Facsimile: 011 (507) 272–3748.

SUPPLEMENTARY INFORMATION: On October 17, 1998, the President signed into law a measure which allows the Commission to require potential claimants to carry insurance for damages sustained at the Panama Canal to their vessels, or to the cargo, crew and passengers of such vessels, which arise by reason of their passage through the locks or their presence in the Canal or adjacent waters. This proposed regulation would impose that requirement and would limit the liability of the Commission to only such damages as are in excess of $1 million.

The Commission is taking these measures in an effort to reduce costs of Canal operations.

This proposed rule involves public property, the Panama Canal, and therefore is excluded from coverage of the Administrative Procedures Act, 5 U.S.C. 553(a)(2). Nevertheless, the Commission has elected generally to follow the notice and comment procedures provided for rulemaking under section 553.

The Commission will consider all timely written comments before publishing the final rule in the **Federal Register**.

The final rule, as approved and published by the Commission, will be effective no earlier than 30 days after the date of its publication as final in the **Federal Register**.

The Commission is exempt from Executive Order 12866 and its provisions do not apply to this rule. Even if the Order were applicable, the rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The implementation of this rule will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Secretary of the Panama Canal Commission certifies these changes meet the applicable standards set out in sections 3(a) and 3(b)(2) of Executive Order 12998.

List of Subjects in 35 CFR Part 117

Panama Canal.

For the reasons stated in the preamble, the Panama Canal Commission proposes to amend 35 CFR part 117 as follows:

PART 117—MARINE ACCIDENTS: INVESTIGATIONS; CONTROL; RESPONSIBILITY

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

Authority: 22 U.S.C. 3777–3779, 93 Stat. 487; E.O. 12215, 45 FR 36043.

2. Add a new § 117.7 to part 117 to read as follows:

§ 117.7 Insurance; limitation of liability; subrogation.

(a) A claimant against the Commission under sections 1411 or 1412 of Title 22, United States Code must be covered by insurance in the amount of $1 million against the types of injuries described in those sections.

(b) The Commission's liability on any claim under sections 1411 or 1412 of Title 22, United States Code shall be limited to amounts in excess of $1 million.

(c) The Commission may not consider or pay claims presented by or on behalf of an insurer or subrogee of a claimant under section 1411 or 1412 of Title 22, United States Code.

Dated: October 19, 1998.

John A. Mills,

Secretary.

[FR Doc. 98–28402 Filed 10–21–98; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–065–9623b; FRL–6167–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida which revises the emissions budget for use in determination of Transportation Conformity in the Florida Southeast counties of Dade, Broward and Palm Beach. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without a prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by November 23, 1998.

ADDRESSES: Written comments should be addressed to: Kelly Sheckler at the Region 4, Environmental Protection Agency, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file number FL–065–9623. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida, 32399–2400.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at (404) 562–9042. Reference file FL–065–9623.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rule's section of this **Federal Register**.

Dated: September 3, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–28233 Filed 10–21–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1628

Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Corporation's rule on recipient fund balances to provide the Corporation with more discretion to determine whether to permit a recipient to maintain a fund balance up to 25% of its LSC support for a particular reporting period. It also adds additional requirements and limitations applicable to waiver requests and the use of fund balances. Finally, the rule is restructured for clarity and for consistency with other LSC regulations.

DATES: Comments should be received on or before December 21, 1998.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on September 11, 1998, in Chicago, Illinois, to consider proposed revisions to the Corporation's rule governing recipient fund balances, 45 CFR Part 1628. The Committee adopted this proposed rule for publication in the **Federal Register** for public comment.

There is no statutory provision that limits the amount of a fund balance an LSC recipient may carry over from one year to another. In 1980, the General Accounting Office (GAO) released a report finding that, because LSC grantees were not required to return funds not expended by the end of the year, some grantees had relatively large carryovers when compared to their total grants. The GAO report recommended that the Corporation ''should closely monitor the expenditure of funds by grantees to minimize year end fund carryovers and adjust subsequent year funding of grantees with excess fund balances.'' In response to the report, the Corporation took various actions to regulate recipient fund balances that culminated in the promulgation of the current rule. See LSC memoranda (December 18, 1980 & March 18, 1982), grant conditions, Instructions (Instruction 83–4, 48 FR 560), and 45 CFR Part 1628 (49 FR 21331, effective on June 20, 1984, and corrected at 49 FR 23056, June 4, 1984).

Generally, this proposed rule is intended to provide the Corporation with more discretion to determine whether to permit a recipient to maintain a fund balance up to 25% of its LSC support for a particular reporting period and sets forth the requirements and limitations applicable to waiver requests and the use of fund balances. Finally, the rule is restructured for clarity and consistency with other LSC regulations. A section-by-section analysis is provided below.

Section 1628.1 Purpose

This section is substantively revised. Provisions have been deleted or moved to other parts of the rule because they do not constitute statements of the purpose or function of the rule. The purpose of this rule is to delineate the Corporation's policies and procedures applicable to recipient fund balances. In addition, the rule's policies and requirements are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

Section 1628.2 Definitions

The proposed revisions to this section are intended to clarify or update the meaning of the terms or to make them consistent with other LSC regulations.

The term LSC Support is revised to clarify that it means the sum of the recipient's LSC carryover funds from the prior fiscal year, the amount of the recipient's LSC grant for the year in question, and any LSC derivative income earned by the recipient during the year in question. The reference to derivative income is revised to be consistent with the definition of the term in Part 1630.

The proposed definition of fund balance amount is intended to clarify that the term means the excess of LSC support over expenditures as determined by the recipient's annual audit. Additional language in the current definition is proposed to be deleted because it does not constitute a statement of the meaning of the term.

No revisions have been proposed for the definition of the term fund balance percentage.

The definition of recipient is proposed to be revised to reflect current law which limits grants for financial assistance to those authorized by Section 1006(a)(1)(A) of the LSC Act. The definition is consistent with the definition of the term in many of the rules promulgated by the Corporation since 1996.

Section 1628.3 Policy

This proposed section sets out the Corporation's policies governing recipient fund balances. Several provisions in this section are found in other sections of the current rule. They have been moved to this section because they are statements of policy and are more appropriately included here. In addition, procedural provisions in the current rule have been removed from this section and transferred to the section on procedures.

Paragraph (a) states that recipients may automatically retain a fund balance up to 10% of their LSC support. Paragraph (b) clarifies that recipients may request a waiver from the Corporation to maintain a fund balance up to 25% of their LSC support. Paragraph (c) states that the Corporation has discretion to grant a waiver under paragraph (b) and clarifies that the Corporation's decision to grant a waiver must be based on the criteria found in § 1628.4(e).

Public comments, citing the practice of nonprofit corporations to retain higher fund balances, urged raising the 10% and 25% caps or eliminating the 25% cap altogther. The LSC Inspector General, on the other hand, expressed concern that large fund balances create the risk of fraud or defalcation of funds. Another comment cautioned that appropriated funds should generally be expended within the appropriation period for the badly needed provision of legal assistance for eligible clients.

The Committee decided it needs more information before deciding this issue and seeks public comment on what the appropriate level of a permissible fund balance should be and what constitutes the normal operating practice of nonprofit and government entities with regard to fund balances.

Paragraph (d) requires that any fund balance in excess of what is permitted by this rule must be returned to the Corporation. The Corporation has discretion to determine, after consultation with the recipient, whether the repayment of an excess fund balance should be made in a lump sum or in pro rata deductions from the recipient's grant checks for a specified number of months.

Paragraph (e) clarifies that the recovery of an excess fund balance does not constitute a termination pursuant to Part 1606.

Paragraph (f) clarifies that funds from one-time or special purpose grants may not be carried over as part of a recipient's fund balance. Instead, any expended funds from such grants remaining after the termination date of

the grant must be returned to the Corporation.

Section 1628.4 Procedures

This section sets out the procedures applicable to recipient fund balances. It has been revised to provide the basis on which the Corporation will exercise its discretion to grant a waiver of an excess fund balance and sets forth requirements that are intended to ensure careful oversight by the Corporation of a recipient's fund balance. All procedural requirements in the current rule have been moved to this section.

Paragraph (a) sets out the obligation of a recipient whose fund balance is in excess of the 10% ceiling to request a waiver from the Corporation within 30 days of the issuance of the recipient's final audit. The current rule requires that the statement be provided to the Corporation within 120 days of the close of the recipient's fiscal year. This is changed to link the deadline for the waiver request to the audit submission date rather than the end of the recipient's fiscal year. This will allow for periodic changes in the required submission dates for audits without a need to revise this rule. This paragraph also clarifies that, unless the recipient seeks and is granted a waiver to maintain a fund balance over the 10%, the funds will be recovered by the Corporation.

Paragraph (b) clarifies that the Corporation will review recipients' final audits, fund balance statements and any requests for waivers and will provide written notice to any recipient whose fund balance amount is due and payable to the Corporation. The written notice will include the method of repayment of any funds to be recovered.

Paragraph (c) sets out the procedures for requesting a waiver of the 10% ceiling. Generally, a recipient must specify its fund balance amount, the reasons the fund balance has accrued, the recipient's plan for the use or reserve of the fund balance within the current grant year and the circumstances justifying the retention of the fund balance.

A new provision is proposed for this paragraph that would require a recipient who seeks a waiver to retain a cash reserve to replace or update the recipient's information technology systems pursuant to paragraph (e)(4) of this section to submit a Technology Investment Plan (TIP) that outlines how and when the funds would be used to improve the recipient's Information Technology resources. See discussion of paragraph (e)(4) below.

Paragraph (d) prohibits a recipient from expending an excess fund balance prior to receiving approval of its waiver request.

Paragraph (e) sets out the standards governing the Corporation's decision to grant a waiver. A proposed substantive revision to this paragraph establishes a different standard for determining whether to grant a recipient a waiver to retain a 25% fund balance. The new standard is intended to provide the Corporation with more flexibility and discretion to decide whether recipients may maintain a fund balance. Experience has shown that ''extraordinary circumstances'' is too high a standard. The underlying rationale for regulating fund balances is to ensure that recipients provide effective and economical legal assistance. While prohibiting recipients from carrying over too large a fund balance promotes this purpose, regulated use of carryover funds under certain circumstances also promotes the same purpose. Based on changing needs and the Corporation's experience with fund balances since 1984, this proposed paragraph is intended to reflect both generally and specifically the circumstances under which the Corporation may grant a fund balance waiver.

The overriding standard to be considered by the Corporation is whether the waiver would promote the statutory mandate that recipients provide high quality legal services in an effective and economical manner. In addition, the Corporation must consider 5 other factors. The first factor is consideration of any emergencies or unusual or unexpected occurrences or circumstances giving rise to the existence of the excess fund balance. The reference to ''extraordinary circumstances'' has been changed to ''circumstances'' to be consistent with the rule's other changes to the standards proposed for determining whether to grant a waiver. In addition, language providing examples of extraordinary circumstances has been deleted.

No revisions are proposed for factor two which requires consideration of any special needs of clients.

Factor three has been revised. The revision merges provisions in the current rule which deal with compensated private bar programs. See § 1628.3(d) and § 1628.4(d)(2). The current language is unclear and somewhat inconsistent. It appears to require the Corporation to grant a waiver for a cash reserve for compensated bar programs, while at the same time, it gives discretion to grant the waiver because it is granted only if there is a need for the cash reserve and after the recipient makes a timely request. This proposed rule gives the Corporation discretion to grant the waiver after consideration of whether there is a need for the cash reserve.

Factor four is new and would give the Corporation discretion to grant a waiver so that a recipient could retain a cash reserve to replace or update the recipient's information technology systems. To carry out its statutory responsibility to encourage the most efficient and productive delivery of legal services possible, the Corporation encourages programs to invest in technology such as computers, networking equipment and advanced telephone systems. Investments in such technology can significantly increase the capability of programs to serve their clients effectively and efficiently. Computer based systems can help recipients manage legal work more efficiently. Improved technology can increase the efficiency and effectiveness of intake and pro se and community legal education efforts to make legal services more accessible. Access to the Internet can increase the quality of legal work by facilitating coordination among advocates and increasing access to available legal information and other pertinent databases.

For programs to take advantage of such opportunities generally requires significant purchases of hardware and software. The Corporation believes that the best practice for management of information technology is to replace computer and information management technology on a regular, ongoing basis. Currently, however, significant new technological capacities are developing at an extremely rapid rate that suggest that radically transformative technology may emerge periodically during the coming years. The unexpected development and universal adoption of the world wide web as a principal instrument of business and government is an example of such a development. Most planners agree that for programs to keep up with these expanding possibilities, they should be prepared to replace computer equipment completely on a regular cycle, which may be as often as every three years. There may be occasions, therefore, when normal incremental upgrading of technological resources is not enough and a disproportionately significant investment is required because of the need to replace all the program's equipment and software.

Programs that plan to purchase large amounts of computer equipment are often faced with the barrier that they can only maintain a fund balance of 10% or less and cannot create a property replacement reserve, if the

resulting fund balance should exceed 10%. The Corporation proposes to amend Part 1628 to allow it to waive the 10% ceiling so that, with proper safeguards, recipients can maintain such a property reserve fund. The Corporation believes that such a waiver for recipients to update their equipment in an orderly and efficient manner will promote more effective planning and will encourage more effective and efficient delivery of services to clients.

The final factor considered by the Corporation is the recipient's financial managment record.

Paragraph (e) is new and provides tighter controls on the use of fund balances by recipients. It states that the Corporation's approval must require the recipient to use the funds within a specified time period and must use the funds for the purposes set out in the waiver request as revised by the Corporation's approval.

Paragraph (f) is a reporting requirement for any fund balance retained by a recipient pursuant to a waiver.

Section 1628.5 Fund Balance Deficits

Only technical changes have been made to this section either to update the information or to make it consistent with the rest of the rule. Generally, this section regulates recipient deficits. Deficits are discouraged and use of LSC funds to liquidate a deficit requires prior Corporation approval. Any LSC funds used to liquidate a deficit shall be identified as questioned costs unless prior approval for such use has been provided by the Corporation.

List of Subjects in 45 CFR Part 1628

Legal services, Fund balances.

For reasons set out in the preamble, LSC proposes to revise 45 CFR part 1628 to read as follows:

PART 1628—RECIPIENT FUND BALANCES

Sec.
1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedures.
§ 1628.5 Fund balance deficits.

Authority: Secs. 42 USC 2996e(b)(1)(A), 2996f(a)(3).

§ 1628.1 Purpose.

The purpose of this part is to set out the Corporation's policies and procedures applicable to recipient fund balances. The Corporation's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

§ 1628.2 Definitions.

(a) ''LSC support'' means the sum of:

(1) The carryover LSC fund balance from the prior fiscal year;

(2) The amount of financial assistance awarded by the Corporation to the recipient for the fiscal year in question; and

(3) Any LSC derivative income, as defined in § 1630.2(c), earned by the recipient for the grant year in question.

(b) The LSC ''fund balance amount'' is the excess of LSC support over expenditures as determined by the recipient's annual audit.

(c) The ''fund balance percentage'' shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

(d) ''Recipient'' as used in this part, means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

§ 1628.3 Policy.

(a) Recipients are permitted to retain from year-to-year fund balances up to 10% of their LSC support.

(b) Recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support.

(c) A waiver pursuant to paragraph (b) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(e).

(d) Any fund balance amount in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance amount in excess of the amount permitted to be retained shall be repaid to the Corporation. Repayment shall be in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(e) A recovery from LSC support to recover an excess fund balance pursuant to this part does not constitute a termination under 45 CFR part 1606. *See* § 1606.2(c)(2)(ii).

(f) All one-time or special purpose grants awarded by the Corporation shall have an effective date and a termination date. Such grants are not subject to this part's fund balance policy. Revenue and expenses relating to such grants must be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedures.

(a) Any recipient whose audited fund balance exceeds the 10% ceiling set forth in § 1628.3 shall submit to the Corporation, within 30 days of the issuance of the recipient's final audit, a statement of the fund balance which occurred according to the required annual audit. The funds will be recovered as set forth in § 1628.3(d) unless the recipient requests and is granted a waiver by the Corporation.

(b) After the Corporation's receipt and review of the recipient's annual audit, the recipient's fund balance statement pursuant to paragraph (a) of this section and any requests for a waiver, the Corporation shall provide written notice to the recipient of any fund balance amount due and payable to the Corporation as well as the method for repayment 30 days prior to the effective date for repayment either to occur or to commence in accordance with § 1628.3(d).

(c) The recipient may, within 30 days of the issuance of the recipient's annual audit, request a waiver of the 10% ceiling. Such request must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reason such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount within the current grant period. If a waiver is requested under § 1628.4(e)(4), for updating or replacing information technology systems, a Technology Investment Plan that outlines how and when the funds will be used to improve the recipient's Information Technology resources should be provided with the waiver request;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and

(5) The circumstances justifying the retention of the fund balance.

(d) Excess fund balance amounts shall not be expended by the recipient prior to approval of the waiver request by the Corporation.

(e) The decision of the Corporation regarding the granting of a waiver shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall consider the following factors.

(1) Emergencies or unusual or unexpected occurrences, or circumstances giving rise to the existence of a fund balance in excess of 10%;

(2) The special needs of clients;

(3) The need for a recipient that operates a compensated private bar program or component to retain a cash reserve up to 25% of the amount of direct payment to attorneys indicated in the recipient's last audit for direct payment to attorneys in the bar program;

(4) The need for the recipient to retain a cash reserve to replace or update the recipient's information technology systems; and

(5) The recipient's financial management record.

(f) The Corporation's written approval of a request for a waiver shall require that the recipient use the funds it is permitted to retain within the time period set out in the approval and for the purposes set out in the waiver request, as revised by the Corporation's approval.

(g) Excess fund balance amounts approved by the Corporation for expenditure by a recipient must be separately reported in the current fiscal year audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those set out in Chapter 3 of the Corporation's Accounting Guide for LSC Recipients should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period requires the prior written approval of the Corporation.

(b) The recipient may, within 30 days of the issuance of the recipient's annual audit, apply to the Corporation for approval of the costs associated with the liquidation of the deficit balances in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in § 1628.4(c) (1) and (2). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other circumstances giving rise to this situation.

Dated: October 16, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–28230 Filed 10–21–98; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporations.

ACTION: Proposed rules.

SUMMARY: This proposed rule would revise the Corporation's timekeeping rule to require full-time attorneys and paralegals to provide the date as well as the time spent on each case, matter or supporting activity. In addition, timekeeping records for full-time attorneys and paralegals would be required to be consistent with the recipient's time and attendance records.

Public comment is requested on two alternative proposed requirements that would ensure that a recipient's part-time attorneys and paralegals do not engage in restricted activities during the time periods they are being compensated by an LSC recipient. The first alternative would revise the Corporation's timekeeping rule to require part-time attorneys who work for organizations that do restricted work to include additional information in their timekeeping records. In addition, their timekeeping records would be required to be consistent with the recipient's time and attendance records. The second alternative would require part-time attorneys and paralegals to certify in writing that they have not engaged in any restricted activities during the time for which they are compensated by a recipient. Comments on these and other possible alternatives are requested.

DATES: Comments should be received on or before December 21, 1998.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: This proposed rule is a response to the Corporation's Office of Inspector General's (OIG) Summary Report on Audits of Selected Grantees for Compliance with Selected Regulations (February 1998). The report found that timekeeping records could not demonstrate that part-time employees of grantees do not work on restricted activities [1] during any time for which they are compensated with LSC funds for their services. In order to address this finding, the OIG recommended revising the Corporation's timekeeping rule to require that part-time attorneys and paralegals who work part-time for the recipient and part-time for an organization that engages in restricted activities (hereinafter referred to as ''part-time employees'') account for all hours worked for the recipient by date and time of day in their timekeeping records.

The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on September 11, 1998, in Chicago, Illinois, to consider proposed revisions to § 1635.3(b)(1) of the Corporation's timekeeping rule intended to provide records that more clearly demonstrate that part-time employees have not engaged in any restricted activities during the time for which they are compensated by the recipient. At the meeting, a certification requirement was suggested as an alternative to revising the timekeeping rule. The Committee decided to publish both the proposed timekeeping rule and the alternative certification requirement in this rule for public comment before making any decision on which is the better alternative. In addition, the Committee requests comments on any

[1] For the purposes of this requirement, the term restricted activities is an umbrella term that refers to the restrictions listed in the definitions of purpose prohibited by the LSC Act and activity prohibited by or inconsistent with section 504 in 45 CFR § 1610.2(a) & (b). A particular activity is restricted only to the extent it is limited pursuant to statutory or regulatory law. Nothing in this rule is intended to expand on the scope of any restriction or the type of recipient funds implicated by a particular restriction.

other alternatives that might better address the OIG's concerns. Comments should address the legal and practical implications of each alternative in this rule. They should also address whether a particular alternative would achieve the desired end, that is, would it provide sufficient information to demonstrate whether part-time employees have engaged in restricted activities during time for which they have been compensated by the recipient.

Generally, the revisions to the timekeeping rule would require part-time employees to include information in their timekeeping records that is not required for full-time employees. The certification requirement would require part-time employees to certify in writing that they have not engaged in any restricted activities during the time for which they have been compensated by a recipient. A more detailed analysis is provided below.

I. Timekeeping Rule

Three changes are proposed for § 1635.3(b)(1) of the timekeeping rule. One applies only to part-time employees, another applies only to full-time employees and the third applies to both.

Part-time employees: The proposed revision applicable only to part-time employees would require that their time records provide the date and exact time of day for time spent on each case, matter or supporting activity. This would provide sufficient information to check against other available documents to determine whether a part-time employee was compensated by the recipient during the time for which the employee engaged in restricted activities for another organization.

Full-time employees: The proposed revision applicable only to full-time employees would require that such employees provide the date for time spent on each case, matter or supporting activity. A total number of hours spent on a particular case, for example, has little significance unless put into the context of a particular time frame, such as a grant year, a month, a pay period or a work day. For the purposes of this rule, a work day is proposed as most useful in determining how time is spent by recipient employees.

Part-time and full-time employees: The proposed rule would also require that the time records for both full-time and part-time employees be consistent with the recipient's time and attendance records used for payroll purposes. This means that time spent by an employee must at least add up to the amount of time reflected in the attendance records. Records are not inconsistent if the timekeeping records reflect more time than the attendance records. For example, exempt employees' actual hours of work are often more than the amount of hours necessary to count as a workday for payroll purposes. Records would be inconsistent, however, if the timekeeping records reflect fewer hours on a particular day than the attendance records because the employee is being paid with program funds for hours not reflected in the timekeeping records and there would be no records for that day demonstrating how the time was spent.

This requirement does not mean that the timekeeping and attendance records must be mechanically integrated into the same recordkeeping system. It means that when compared, the timekeeping and attendance records will not be found to be inconsistent.

II. Certification

The certification alternative would require part-time employees to certify in writing that they have not engaged in any restricted activities during a time for which they have been compensated by a recipient. To certify means to ''authenticate or vouch for a thing in writing,'' to ''attest as being true or as represented,'' to ''testify in writing.'' See Blacks Law Dictionary 207 (Fifth Edition 1979); Random House Webster's College Dictionary 215, Second Edition (1997).[2]

A false certification, depending on the applicable law or circumstances, may constitute a violation of civil or criminal law. For LSC purposes, a false certification by a recipient employee could possibly implicate certain Federal laws related to the use of Federal funds that are currently applicable to LSC recipients pursuant to 45 CFR Part 1640. Violations of certain laws listed in Part 1640 carry severe sanctions for false statements or claims to the Federal government regarding the use of Federal funds. See for example, 18 U.S.C. 287, 371, 1001 and 31 U.S.C. 3729; *United States* v. *Columbia/HCA Healthcare Corporation*, 125 F.3d 899 (5th Cir. 1997)(''false certifications of compliance create liability under the [False Claims Act] when certification is a prerequisite to obtaining a government benefit.''); *United States* v. *Burns*, 104 F.3d 529 (2nd Cir. 1997)(falsified timesheets submitted for pay under government funded program found to be violation of 18 U.S.C. 1001).

Under Part 1640, whether or not a recipient or an employee of a recipient has violated any of the applicable Federal laws is determined by the Federal court having jurisdiction of the matter. The Corporation does not prosecute or make judgments under the applicable Federal laws but it has authority to terminate funding under the conditions set out in § 1640.4. Several of the laws included in Part 1640 prohibit making false claims to the government regarding the use of Federal funds. LSC funds are Federal funds for the purposes of the laws included in Part 1640. Thus, a false certification regarding activities for which the applicable employee is compensated with LSC funds, in certain circumstances, may put the employee at risk of prosecution for violation of such laws. Employees who sign such certifications should be fully informed of the implications and sign forms that, to the best of their knowledge, are true and accurate.

The only provision revised in the proposed timekeeping rule is § 1635.3(b)(1). However, the entire rule is published so that the proposed revisions may be considered in context.

List of Subjects in 45 CFR Part 1635

Legal services, Reporting and recordkeeping requirements.

For reasons set out in the preamble, LSC proposes to revise 45 CFR Part 1635 to read as follows:

PART 1635—TIMEKEEPING REQUIREMENT

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping requirement.
1635.4 Administrative provisions.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

§ 1635.1 Purpose.

This part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of Corporation funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to the Corporation for assuring recipient compliance with Federal law and corporation rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A case is a form of program service in which an attorney or paralegal of a

[2] To certify means to attest authoritatively, and any form which affirms the fact in writing is sufficient.'' *Doherty* v. *McDowell*, 276 F. 728, 730 (D.Me 1921).

recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A matter is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

(c) A supporting activity is any action that is not a case or matter, including management and general, and fundraising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Such time records for full-time attorneys and paralegals must also provide the date for time spent on each case, matter or supporting activity. Such time records for part-time attorneys and paralegals who also work for an organization that engages in restricted activities must also provide the date and exact time of day for time spent on each case, matter or supporting activity for the recipient. Finally, such time records must be consistent with the time and attendance records used for payroll purposes.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be implemented within 30 days of the effective date of this regulation or within 30 days of the effective date of a grant or contract, whichever is later.

(d) The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of the Corporation, and by any other person or entity statutorily entitled to access to such records. The Corporation shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

Dated: October 16, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–28229 Filed 10–21–98; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 921232–2332; I.D. 092192B]

Endangered and Threatened Species; Proposed Threatened Status for the Gulf of Maine Population of Harbor Porpoise

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: National Marine Fisheries Service (NMFS) is reopening the comment period on the proposed rule to list the Gulf of Maine/Bay of Fundy (GOM/BOF) harbor porpoise, (*Phocoena phocoena*), as a threatened species under the Endangered Species Act (ESA). Due to the passage of time since the close of the previous comment period, the availability of new/additional information and the desire to review the best scientific information available during the decision-making process, the comment period is being reopened.

DATES: Comments must be received by November 23, 1998.

ADDRESSES: Comments, requests for copies of this notice or a complete list of references should be addressed to the Chief, Marine Mammal Division (PR2), Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, F/PR2, NMFS, (301) 713–2322, Laurie Allen, Northeast Region, NMFS, (978) 281–9291, or Kathy Wang, Southeast Region, NMFS, at (727) 570–5312.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1993, NMFS published a proposed rule (with a 90-day comment period) to list the GOM population of harbor porpoise as threatened under the ESA (58 FR 3108). The listing was proposed in response to an ESA petition submitted by the Sierra Club Legal Defense Fund, on behalf of the International Wildlife Coalition and 12 other organizations (notice of receipt of petition to list published on December 13, 1991 (56 FR 65044). It was also based on NMFS' research findings at the time, which demonstrated that (a) the rate of bycatch of harbor porpoise in commercial gillnet fisheries (extending from the Bay of Fundy, Canada, south throughout the Gulf of Maine) might reduce this population to the point where it would become threatened throughout all or a portion of its range and that (b) there were no regulatory measures in place to reduce this bycatch.

Following publication of the proposed rule, NMFS received several comments requesting that public hearings be held throughout New England. In response to these requests, NMFS extended the comment period on the proposed rule until August 7, 1993 (58 FR 17569, April 5, 1993).

During the extended comment period, NMFS completed analyses of sighting data from the 1992 porpoise abundance surveys and analyses of the 1992 observer data used to determine total estimated bycatch in the GOM gillnet fishery. These data were presented and discussed at a meeting of the New England Fishery Management Council (NEFMC) Groundfish Committee, Harbor Porpoise Subgroup, on June 16, 1993. After the Harbor Porpoise Subgroup meeting, NEFMC forwarded comments to NMFS requesting a 6-month extension of the final decision-making period on the proposed rule to

list harbor porpoise. An extension was believed to be appropriate because, according to the NEFMC and others present at the June 16 meeting, the data presented by NMFS cast doubt on whether the GOM/BOF porpoise population was distinct and, thus, was a species under the ESA.

Under section 4 of the ESA, if there is a substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, NMFS may extend the 1-year period of determination. On November 8, 1993 (58 FR 59230),in accordance with this provision, the date for the final determination on the proposal was extended for 6 months to allow for further review of the bycatch trend, analysis of the 1993 bycatch data prior to final determination, and further consideration of all data, including the abundance survey data, relevant to the final determination. NMFS reopened the comment period for an additional 30 days following completion of these analyses (59 FR 36158, July 15, 1994) to close on August 11, 1994.

In the meantime, the New England Harbor Porpoise Working Group (HPWG) met on July 21, 1994, to discuss the 1992 bycatch data under consideration with regard to the ESA listing proposal. The HPWG, formed in 1990, was a group of fishermen, environmentalists, and scientists whose purpose was to define the extent of the harbor porpoise problem and to identify solutions to reduce the incidental take of harbor porpoise in gillnets while minimizing the impacts on the fishery. The HPWG recommended that the updated bycatch estimates should be more fully explained so that public review and comment could provide more meaningful input to NMFS prior to the final listing determination. NMFS prepared a document in August 1994 that addressed HPWG concerns. Given that the comment period on the proposed listing was scheduled to close on August 11, 1994, and that this would not allow enough time for public review of the NMFS document regarding HPWG concerns, the comment period on the proposed rule was further extended until September 11, 1994 (59 FR 41270). NMFS had not yet made a final determination when, in fiscal year 1996, Congress imposed a 1-year moratorium on listing species under the ESA.

The Agency has not yet issued a final determination. The final determination will need to consider new population abundance and bycatch data, NEFMC/NMFS' ongoing fishery management efforts to reduce harbor porpoise bycatch, and the progress expected through the Marine Mammal Protection Act (MMPA) Section 118 Take Reduction Team process. Since publication of the proposed rule, the following information has become available to supplement our understanding of the species' status and factors affecting the species.

Stock Definition and Geographic Range Data

Recent analyses involving mitochondrial DNA (Wang, 1996), organochlorine contaminants (Westgate, 1997), heavy metals (Johnston, 1995), and life history parameters (Read and Hohn, 1995) support the currently accepted hypothesis that there are four separate populations in the western North Atlantic: the Gulf of Maine/Bay of Fundy, Gulf of St. Lawrence, Newfoundland, and Greenland populations.

Abundance Data

Three abundance surveys were conducted during the summers of 1991, 1992, and 1995. The population estimates were 37,500 harbor porpoises in 1991 (coefficient of variation (CV) = 0.29, 95% confidence interval (CI) = 26,700–86,400) (Palka, 1995a), 67,500 harbor porpoises in 1992 (CV = .23, 95 percent CI = 32,900–104,600) (Palka, 1996), and 74,000 harbor porpoises in 1995 (CV = 0.20, 95 percent CI = 40,900–109,100) (Palka, 1996). The inverse variance weighted-average abundance estimate was 54,300 harbor porpoises (CV = 0.14, 95 percent CI = 41,300–71,400). Possible reasons for inter-annual differences in abundance and distribution include experimental error and inter-annual changes in water temperature and availability of primary prey species (Palka, 1995b).

Population Viability Analysis

Several recent analyses have concluded, using various measures, that the current level of mortality/bycatch of GOM/BOF harbor porpoise is too high. Current bycatch/mortality levels exceed the calculated PBR for the population, which is why the population has been designated as ''strategic'' under the MMPA. Additionally, a recent uncertainty analysis (Caswell *et al.*, In press) concluded that current rates of bycatch/mortality are a threat to the GOM/BOF harbor porpoise population. Neither of these analyses, however, directly calculates the risk of extinction to the population that is relevant for consideration of listing under the ESA. To directly examine the potential risk of extinction of GOM/BOF harbor porpoise, a population viability analysis (PVA) was recently prepared (Preliminary analyses, PR2 draft report). A PVA is used to estimate future trends of a population to estimate the probability of extinction of the population given certain assumptions. Using 1991, 1992, and 1995 abundance data and 1992–1996 bycatch data, stochastic population dynamics models of the GOM/BOF harbor porpoise population were developed to evaluate the probability of persistence of the population over the foreseeable future (the next 20 to 100 years). Each of the models predicted a very high probability of extinction within 100 years under the current levels of mortality/bycatch, whereas the probability of extinction within 20 years was estimated to be low. Reducing the current mortality/bycatch level by one-half would decrease, but not eliminate, the probability of extinction in 100 years, but was estimated to eliminate any probability of extinction within 20 years. Finally, reducing the current mortality/bycatch to one-quarter of the current level was estimated to make the risk of extinction within 100 years very low.

Supplemental Summary of ESA Factors Affecting the Species

Species may be determined to be threatened or endangered due to one or more of five factors described in section 4(a)(1) of the ESA. These factors are discussed here, as they apply to the GOM/BOF harbor porpoise in light of additional/new information that has become available since the species was originally proposed for listing. This information is intended to supplement the information on the status of the species contained in the proposed rule.

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Although the shoreline bordering the nearshore habitat of this species along the eastern U.S. coastline is developed in many areas and is potentially threatened with further destruction or physical modification, there is no new/additional evidence to indicate that such modification or destruction has contributed to a decline of this population or that the range of this species has changed significantly as a result of habitat loss. This factor was not a basis for the proposed listing.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

One of the principal factors for proposing to list the GOM/BOF population of harbor porpoise as

threatened under the ESA was the level of harbor porpoise bycatch in commercial fisheries in the GOM/Bay of Fundy/Mid-Atlantic. GOM/BOF harbor porpoise takes have been documented in the U.S. New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Atlantic pelagic drift gillnet fisheries, and in the Canadian Bay of Fundy sink gillnet fishery and herring weir fishery. The average annual mortality estimate from 1992 to 1996 for the above U.S. fisheries is 1,667 (CV = 0.09) harbor porpoise. The average annual mortality estimate in Canada from 1993 to 1996 is 162 harbor porpoise.

Recent data on incidental takes in U.S. fisheries are available from observer programs monitoring the New England multispecies sink gillnet fishery, U.S. Atlantic coastal gillnet fisheries, the Atlantic pelagic drift gillnet fishery, the North Atlantic bottom trawl fishery, Canada's Bay of Fundy sink gillnet fishery, and Canada's herring fishing weirs.

New England multispecies sink gillnet fishery: Most of the harbor porpoise takes in U.S. fisheries are from the New England multispecies sink gillnet fishery. In 1990, NMFS started an observer program to investigate marine mammal takes in this fishery. Between 1990 and 1996, 362 harbor porpoise mortalities related to this fishery were observed. In 1993, there were approximately 349 full and part-time vessels in the New England multispecies sink gillnet fishery, which covered the Gulf of Maine and southern New England. An additional 187 vessels were reported to occasionally fish in the Gulf of Maine with gillnets for bait or personal use; however, these vessels were not covered by the observer program (Walden, 1996) and their fishing effort was not used in estimating mortality. Observer coverage in terms of trips has been 1, 6, 7, 5, 7, 5, and 4 percent for years 1990 to 1996, respectively. Annual estimates of harbor porpoise by-catch in the New England multispecies sink gillnet fishery reflect seasonal distribution of the species and of fishing effort. By-catch estimates include a correction factor for the under-recorded number of by-caught animals that occurred during unobserved hauls on trips with observers on the boat, when applicable. Need for such a correction became evident following a 1994 re-analysis of data from the sea sampling program indicating that, for some years, by-catch rates from unobserved hauls were lower than for observed hauls (Palka, 1994; CUD, 1994; and Bravington and Bisack, 1996). These revised by-catch estimates replace those published earlier (Smith et al., 1993). These estimates remain negatively biased because they do not include harbor porpoises that may have fallen out of the net while still underwater. This bias cannot be quantified at this time. Estimated annual by-catch (CV in parentheses) from this fishery during 1990–1996 was 2,900 in 1990 (0.32), 2,000 in 1991 (0.35), 1,200 in 1992 (0.21), 1,400 in 1993 (0.18) (Bravington and Bisack 1996; CUD 1994), 2100 in 1994 (0.18), 1400 in 1995 (0.27) (Bisack, 1997a), and 1200 (0.23) in 1996. Average estimated harbor porpoise mortality and serious injury in the New England multispecies sink gillnet fishery during 1992–1996 was 1,460 (0.10).

Differential mortality by age or sex in animals collected before 1994 was not evident in U.S. or Canadian gillnet fisheries; no pattern/propensity could be discerned based on available data. In addition, substantial inter-annual variation in the age and sex composition of the by-catch existed (Read and Hohn, 1995). However, with a larger sample, from the harbor porpoises that were examined by necropsy or from tissues received from sea sampling observers (n=171 between 1989 and 1997), the sex ratio is now 0.34 females per male (A. Read, pers. comm.). Investigations are currently underway to determine spatial-temporal patterns in the sex ratio.

Two preliminary experiments, using acoustic alarms (pingers) attached to gillnets, that were conducted in the Gulf of Maine during 1992 and 1993 took 10 and 33 harbor porpoises, respectively. During fall 1994, a controlled scientific experiment was conducted in the southern Gulf of Maine where all nets with and without active pingers were observed (Kraus et al. 1997). In this experiment, 25 harbor porpoises were taken in 423 strings with non-active pingers (controls), and two harbor porpoises were taken in 421 strings with active pingers. In addition, 17 other harbor porpoises were taken in nets with pingers that were not in the experiment. During 1995 to 1996, experimental fisheries were conducted where all nets in a designated area used pingers and only a sample of the nets were observed. During November through December 1995, the experimental fishery was conducted in the southern Gulf of Maine (Jeffreys Ledge) region where no harbor porpoises were observed taken in 225 pingered nets. During April 1996, three other experimental fisheries occurred. In the Jeffreys Ledge area, in 88 observed hauls using pingered nets, nine harbor porpoises were taken. In the Massachusetts Bay region, in 171 observed hauls using pingered nets, two harbor porpoises were taken. And, in a region just south of Cape Cod, in 53 observed hauls using pingered nets, no harbor porpoises were taken. All takes from pingered nets were added directly to the estimated total bycatch for the rest of that year in the rest of the fishery. As a result of seeming inconsistency in spring results compared to fall results, the GOMTRT recommended an additional scientific experiment in the spring of 1997. Again, there were similar mean fish catch rates and similar numbers of seals caught between all treatments; zero harbor porpoise were caught in nets with active pingers, demonstrating that pingers reduced the incidental catch of harbor porpoise in sink gillnets during spring (Kraus et al., 1997).

U.S. Mid-Atlantic coastal gillnet fisheries: In July 1993, an observer program was initiated in the U.S. Atlantic coastal gillnet fishery by the Northeast Fisheries Science Center (NEFSC) Sea Sampling program. Twenty trips were observed during 1993. During 1994 and 1995, 221 and 382 trips were observed, respectively. This fishery, which extends from North Carolina to the New York/Connecticut/Rhode Island border, is actually a combination of small vessel fisheries that target a variety of fish species, some of which operate right off the beach. The number of vessels in this fishery is unknown because records which are held by both state and Federal agencies have not been centralized and standardized. Observer coverage, expressed as percent of tons of fish landed, was 5 percent and 4 percent for 1995 and 1996. During 1995 and 1996, respectively, 6 and 19 harbor porpoises were observed taken. During 1995 and 1996, observed fishing effort was concentrated off NJ and scattered between DE and NC from 1 to 50 miles (1500 meters) off the beach. All documented by-catches during 1995 and 1996 were from January to April. By-catch estimates were determined by using methods similar to that used for by-catch estimates in the New England multispecies gillnet fishery (Bravington and Bisack, 1996; Bisack, 1997a). Using the observed takes, the estimated annual mortality (CV in parentheses) attributed to this fishery was 103 (0.57) and 311 (0.31) for 1995 and 1996, respectively. Average annual estimated harbor porpoise mortality and serious injury from the Mid-Atlantic coastal gillnet fishery during 1995 and 1996 was 207 (CV=0.27).

Atlantic pelagic drift gillnet fishery: One harbor porpoise was observed taken from the 1991–1996 Atlantic pelagic

drift gillnet fishery. Although the estimated total number of hauls in this fishery increased from 714 in 1989 to 1,144 in 1990, effort was severely reduced, thereafter, with the introduction of quotas.

Observer coverage, expressed as percent of sets observed was 8 percent in 1989, 6 percent in 1990, 20 percent in 1991, 40 percent in 1992, 42 percent in 1993, 87 percent in 1994, 99 percent in 1995, and 64 percent in 1996. (The decline in observer coverage in 1996 is attributable to trips made by vessels that were deemed unsafe (size/condition) for observers.) Estimates of the total by-catch, for each year from 1989 to 1993, were obtained using the aggregated (pooled 1989–1993) catch rates, by strata (Northridge, 1996). Estimates of total annual by-catch for 1994, 1995, and 1996 were estimated from the sum of the observed caught and the product of the average by-catch per haul and the number of unobserved hauls as recorded in logbooks. Variances were estimated using bootstrap re-sampling techniques (Bisack, 1997b). Estimated annual fishery-related mortality (CV in parentheses) attributable to this fishery was 0.4 in 1992 (1.00), 1.5 in 1993 (0.34), 0 in 1994, and 0 in 1996. The average estimated harbor porpoise mortality and serious injury in the Atlantic pelagic drift gillnet fishery during 1992–1996 was 0.4 (0.34) (Waring et al., in review).

North Atlantic bottom trawl fishery: One harbor porpoise was observed incidentally captured in the North Atlantic bottom trawl fishery between 1989 and 1996. The animal was clearly dead prior to being taken by the trawl because it was severely decomposed and the tow duration of 3.3 hours was insufficient to allow extensive decomposition; therefore, there is no estimated by-catch for this fishery (Waring et al., in review).

Canadian Bay of Fundy sink gillnet fishery: During the 1980s, total harbor porpoise by-catch in the Canadian Bay of Fundy sink gillnet fishery was thought to be low, based on casual observations and discussions with fishermen. The estimated harbor porpoise by-catch in 1986 was 94 to 116, and, in 1989, it was 130 (Trippel et al., 1996). The Canadian gillnet fishery occurs mostly in the western portion of the Bay of Fundy during the summer and early autumn months when the density of harbor porpoises is the highest. Polacheck (1989) reported there were 19 gillnetters active in 1986; 28 active in 1987; and 21 in 1988.

More recently, an observer program implemented in the summer of 1993 provided a total by-catch estimates of 424 harbor porpoises. No measure of variability was estimated. The observer program was expanded in 1994, and the by-catch was estimated to be between 80 and 120 harbor porpoises where the fishing fleet consisted of 28 vessels (Trippel et al., 1996). During 1995, due to groundfish quotas being exceeded, the gillnet fishery was closed during July 21 to August 31, 1995. During the open fishing period of 1995, 89 percent of the fishing trips were observed, all in the Swallowtail region. Approximately 30 percent of these observed trips used pingered nets. The estimated by-catch was 87 harbor porpoises (Trippel et al., 1996). No confidence interval was able to be computed due to lack of coverage in the Wolves fishing grounds. During 1996, the Canadian gillnet fishery was closed from August 20 to September 30, 1996. Preliminary estimates of by-catch from 1996 were in the range of 20 to 50 harbor porpoises. By-catch estimates are currently not available for the 1997 observer program.

Canadian herring fishing weirs: Harbor porpoise takes have been observed in Canadian fishing weirs, though not in U.S. fishing weirs. However, no program has been set up to observe U.S. fishing weirs. In the Bay of Fundy, weirs are presently operating from May to September each year. Weirs are found along the southwestern shore of the Bay of Fundy and scattered along the western Nova Scotia and northern Maine coasts. There were 180 active weirs in the western Bay of Fundy and 56 active weirs in Maine in 1990 (Read, 1994). It is unknown how many herring weirs currently exist in U.S. and Canadian waters. Smith et al. (1983) estimated that approximately 70 harbor porpoises become trapped annually, an average of 27 die, and the rest are released alive. At least 43 harbor porpoises were trapped in Bay of Fundy weirs in 1990, but the number killed is unknown. In 1993, after a cooperative program between fishermen and Canadian biologistsbegan, over 100 harbor porpoises were released alive, and an unknown number died (Read, 1994).

C. Disease or Predation

There continues to be no indication, from stranding data or tissue analyses, that disease has had a measurable impact on GOM/BOF harbor porpoise. Likewise, there is no new evidence, since the proposed listing, to indicate that predation has contributed to the decline of GOM/BOF porpoise. This particular factor was not a basis for the proposed listing.

D. The Inadequacy of Existing Regulatory Mechanisms

This factor and Factor B formed the basis for the proposed listing. Discussed here in chronological order of implementation are the regulatory mechanisms that have gone into effect since publication of the proposed rule. In addition, those proposed regulations that may go into effect in the near future through the MMPA Section 118 Take Reduction Team process are described.

Management Actions Since the Proposed Listing

In 1994, as part of Amendment 5 to the Northeast Multispecies Fishery Management Plan (NE Multispecies FMP), the NEFMC proposed,under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) a 4-year program to reduce the harbor porpoise bycatch off New England to 2 percent of the estimated harbor porpoise population size per year. To achieve this goal, the NEFMC recommended phasing in time and area closures to sink gillnet gear, such that take levels would be reduced by 20 percent each year over the 4-year period. NMFS adopted and implemented NEFMC's first-year closure recommendations on May 25, 1994 (59 FR 26972).

In the fall of 1994, NMFS authorized and provided support for a cooperative experiment by New England gillnet fishermen and for scientists to develop methods to deter harbor porpoise away from fishing nets. Building on work in previous years, the experiment sought to evaluate the effectiveness of acoustic deterrent devices or ''pingers'' attached to gillnets to prevent entanglement of harbor porpoise. The experiment was conducted in the Mid-Coast Closed Area (closed under Amendment 5 to the NE Multispecies FMP) off the New Hampshire-Massachusetts border. The result of that experiment showed that pingers can reduce the bycatch of porpoise substantially during the fall in this area (Kraus et al., 1995).

Harbor porpoise bycatch rates increased in 1994 despite the new time-area gillnet fishing closures enacted by NMFS on May 25, 1994. The increased rate occurred before the fall area closure and occurred in waters that are adjacent to the closure area, in an area known as Jeffreys ledge. Based on this information, the NEFMC recommended expanding both the time and area of the fall closure around Jeffreys ledge. NMFS adopted a rule to do so on October 30, 1995 (60 FR 57207).

In November 1995, NMFS adopted NEFMC's recommendations to expand

the closures contained in Framework Adjustment 4 to the NE Multispecies FMP for sink gillnet gear by implementing Framework Adjustment 14 (60 FR 55207). Framework 14 enlarged and redefined the Mid-Coast Closure Area in both time and area during 1995 in an effort to achieve the necessary reductions in harbor porpoise bycatch. The Mid-Coast closure was closed to fishing with sink gillnets from March 25 through April 25. Framework Adjustment 14 also required closure of an area in southern New England, south of Cape Cod, from March 1 to 30.

Amendment 7 to the NE Multispecies FMP, implemented in July 1996, included a revised objective to address new provisions in the MMPA (61 FR 27709). With Amendment 7, NMFS adopted and implemented NEFMC's recommendations concerning marine mammal gillnet closures as additional groundfish conservation closures for all types of gear other than gillnets capable of catching multispecies, as part of an overall groundfish effort reduction program. In addition, the NEFMC recommended the use of pingers in several experimental fisheries to evaluate their use as bycatch reduction tools.

In February 1996, NMFS convened the Gulf of Maine Take Reduction Team (GOMTRT) to develop a plan to reduce the incidental take of harbor porpoise in sink gillnets (61 FR 5384). The 1994 amendments to the MMPA require the preparation and implementation of Take Reduction Plans (TRPs) for certain marine mammals stocks. The GOMTRT convened with the understanding that a separate take reduction team would meet to address the harbor porpoise bycatch problem in the Mid-Atlantic. The GOMTRT included representatives of the Northeast multispecies sink gillnet fishery, NMFS, state marine resource management agencies, NEFMC, environmental organizations, and academic and scientific organizations. The environmental organizations included the Center for Marine Conservation and the Humane Society of the United States. The GOMTRT met five times between February and July 1996 and submitted a consensus draft TRP to NMFS in August of 1996.

A proposed rule to implement the GOMTRP was published on August 13, 1997 (62 FR 43302). The proposed rule would outline a schedule of time/area closures and periods during which acoustic deterrents or ''pingers'' would be required for each of the established management areas.

NMFS convened the Mid-Atlantic Take Reduction Team (MATRT) on February 25, 1997, to address the interactions between strategic marine mammal stocks and the Mid-Atlantic coastal gillnet fisheries (62 FR 8428). The MATRT met five times between January 1997 and August 1997 and delivered a draft report to NMFS on August 23, 1997. The MATRT report consists of the take reduction measures, both regulatory and non-regulatory, which the MATRT agreed to by consensus, and a discussion of several non-consensus issues. Because the MATRT did not reach consensus on the use of a pinger experiment in the Mid-Atlantic, it was not able to deliver a consensus TRP to NMFS.

NMFS re-convened the GOMTRT in December 1997 to evaluate new bycatch data that had become available since the GOMTRP was proposed by NMFS (62 FR 65402). The new bycatch data suggested that the measures proposed under the August 13 GOMTRP proposed rule would not be sufficient to achieve potential biological removal (PBR) for harbor porpoise. NMFS reopened the public comment period on the proposed rule for 1-month during the deliberations of the GOMTRT. At the December meeting, the GOMTRT developed new recommendations and agreed on a number of additional measures for bycatch reduction that were presented to NMFS in the form of a report on January 14, 1998 (RESOLVE, 1998).

Framework 25 to the NE Multispecies FMP (63 FR 15326, March 31, 1998), was implemented on May 1, 1998. Framework 25 implements gillnet fishing closures throughout the GOM to conserve cod (*Gadus morhua*). Framework 25 implements management measures that include 1-month sequential closures for each of four Gulf of Maine inshore areas starting in Massachusetts Bay and extending to Penobscot Bay and for an offshore area comprising Cashes Ledge; a year-round closure encompassing parts of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll; and a reduction in the Gulf of Maine cod landing limit.

On September 11, 1998 (63 FR 48670), NMFS proposed a Harbor Porpoise Take Reduction Plan (HPTRP) to replace the GOMTRP proposed on August 13, 1997. The GOMTRP is proposed to be replaced due to three developments. First, new bycatch information became available which indicates that significant changes to the August 13 GOMTRP are needed to achieve the PBR level for harbor porpoise. Second, some of the cod fishery closures under Framework 25 are expected to indirectly provide harbor porpoise conservation. Third, the MATRT submitted its report to NMFS which presented new information on the level of harbor porpoise bycatch in the Mid-Atlantic region. The combination of these actions led NMFS to integrate the initially separate plans into one comprehensive TRP and to replace the GOMTRP proposed rule.

The proposed HPTRP would require a wide range of management measures to reduce the bycatch and mortality of harbor porpoise. In the Gulf of Maine, the proposed HPTRP included time and area closures and time/area periods during which pinger use would be required in the Northeast, Mid-coast, Massachusetts Bay, Cape Cod south and Offshore Closure Areas. In the Mid-Atlantic area, the proposed HPTRP included time/ area closures and modifications to gear characteristics. NMFS expects that the proposed HPTRP will reduce bycatch to the PBR level.

NMFS intends to issue a final rule to implement the HPTRP on or about December 1, 1998.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Sixty-four harbor porpoise strandings were reported from Maine to North Carolina between January and June 1993. Fifty of those harbor porpoise were reported stranded in the U.S. Atlantic region from New York to North Carolina between February and May. Many of the carcasses recovered in this area during this time period had cuts and body damage suggestive of net marking (Haley and Read, 1993). Five out of eight carcasses and fifteen heads from the strandings that were examined showed signs of human interactions (net markings on skin and missing flippers or flukes). Decomposition of the remaining animals prevented determination of the cause of death. Earlier reports of harbor porpoise entangled in gillnets in the Chesapeake Bay and along the New Jersey coast and reports of apparent mutilation of harbor porpoise carcasses raised concern that the 1993 strandings were related to a coastal net fishery, such as the American shad coastal gillnet fishery (Haley and Read, 1993).

Between 1994 and 1996, 107 harbor porpoise carcasses were recovered from beaches in Maryland, Virginia, and North Carolina. Only juvenile harbor porpoises were present in this sample. Of the 40 harbor porpoises for which cause of death could be established, 25 displayed definitive evidence of entanglement in fishing gear. In four cases, it was possible to determine that the animal was entangled in monofilament nets (Cox et al., in press).

Stranding data may be misleading, however, because not all of the marine

mammals that die or are seriously injured may wash ashore, nor will all of those that do wash ashore necessarily show clear signs of the cause of death. Finally, the level of technical expertise among stranding network personnel varies widely as does the ability to recognize signs that indicate the cause of death.

Other potentially human-induced factors that may be affecting this harbor porpoise population include high levels of contaminants in their tissues. Concentrations of organochlorine contaminants from 110 GOM/BOF harbor porpoises were recently measured (Westgate, 1995). Polychlorinated biphenyl (PCB) levels, the most prominent contaminant, and dichloro-diphenyl trichloroethane (DDT) levels were both higher in the Gulf of Maine/Bay of Fundy harbor porpoises than in the Gulf of St. Lawrence and Newfoundland harbor porpoises, although they are now much lower than that found in animals 10 years ago, as reported in Gaskin et al. (1983). Trace metal contaminants were also measured, and it was found that mean concentrations of copper, zinc, and mercury were similar to values previously reported for harbor porpoises in other regions of the world (Johnston, 1995). No obvious pathology has been noted in more than 300 necropsies of harbor porpoises incidentally captured in gillnets in the Bay of Fundy (A.J. Read, unpublished data). Although it is not known whether these contaminants have other effects, the presence of these contaminants in harbor porpoise tissues does not appear to pose a serious threat to this population.

Critical Habitat

NMFS has not completed the analysis necessary for the designation of critical habitat. A decision regarding critical habitat will be made in a separate rulemaking, as warranted, in accordance with the final listing determination.

Public Comments Solicited

Due to the availability of new/additional information, the passage of time since the close of the previous comment period, and the desire to review the best scientific information available during the decision-making process, the public comment period for the proposed ESA listing of GOM/BOF harbor porpoise as a threatened species is being reopened. All comments will be considered in NMFS' final determination (see **DATES**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 15, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–28269 Filed 10–16–98; 4:35 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 100698A]

RIN 0648–AL40

Fisheries of the Exclusive Economic Zone off Alaska; Description and Identification of Essential Fish Habitat

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 55 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area;

Amendment 55 to the FMP for Groundfish of the Gulf of Alaska; Amendment 8 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs; Amendment 5 to the FMP for Scallop Fisheries off Alaska; and Amendment 5 to the FMP for the Salmon Fisheries in the EEZ off the Coast of Alaska. These amendments would describe and identify essential fish habitat in Alaska, and risks to that habitat, for groundfish, scallops, salmon, and king and Tanner crabs. This action is intended to strengthen the ability of the Council to protect and conserve habitat used by these species at crucial stages of their life cycles.

DATES: Comments on Amendments 55/55/8/5/5 must be submitted by December 21, 1998.

ADDRESSES: Comments on the FMP amendments should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 55/55/8/5/5 and the Environmental Assessment prepared for the amendments are available from the Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809. The following reports, which are referenced in the amendments, are also available from the Council:

1. Essential Fish Habitat Report for the Groundfish Resources of the Bering Sea and Aleutian Islands, April 1, 1998.
2. Essential Fish Habitat Report for the Groundfish Resources of the Gulf of Alaska Region, April 1, 1998.
3. Essential Fish Habitat Report for the Bering Sea and Aleutian Islands King and Tanner Crabs, March 31, 1998.
4. Essential Fish Habitat Report for the Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska, March 31, 1998.
5. Essential Fish Habitat Report for the Scallop Fisheries off the Coast of Alaska, March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, 907–586–7312 cindy.hartmann@noaa.gov; or Nina Mollett, 907–586–7492, nina.mollett@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment. Therefore, NMFS solicits comments on the approval, disapproval, or partial approval of these amendments.

The Magnuson-Stevens Act emphasizes the need for increased attention to habitat considerations in conserving and managing the Nation's fisheries. Regional Fishery Management Councils are directed to amend their FMPs with information on EFH, which is defined as ''those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'' Councils must also identify potential adverse impacts on essential fish habitat (EFH) and make suggestions for minimizing those impacts and for conserving and enhancing EFH.

Background

The NMFS Alaska Region established a Core Team composed of NMFS employees and one person from the Council, which in turn established four Technical Teams (one each for salmon, crab, scallop and groundfish), comprised of Federal and state biologists. These teams developed habitat assessment reports for each FMP, that were distributed for public

comment in December 1997, and made available in updated versions on March 31, 1998.

In accordance with NMFS EFH guidelines at 50 CFR 600.815, NMFS submitted draft EFH recommendations to the Council on April 3, 1998. The public reviewed these recommendations during a special evening meeting. The full Council and its advisory bodies also reviewed them. NMFS accepted written comments through April 27, 1998, and submitted final EFH recommendations to the Council in May 1998 for the Council's consideration at its June 1998 meeting. After reviewing the NMFS recommendations, the Council adopted Amendments 55/55/8/5/5.

The proposed amendments identify and describe EFH for each species or species group managed under the five FMPs. The proposed amendments classify each species at each life stage according to how much data are available and summarize all available information with texts and tables. The proposed amendments also describe adverse impacts to the habitat from fishing and non-fishing activities, and make suggestions for conservation and enhancement of the habitat, and identify research needs and habitat areas of particular concern.

Definition of EFH

Habitat descriptions and life history information were reviewed and the levels of information available for each life history stage were determined. The approach set forth in regulations at 50 CFR 600.815(a)(2) for gathering and organizing the data necessary to identify EFH was applied.

Under the proposed amendments, EFH would represent all habitat within a general distribution for a species life stage, for all information levels and under all stock conditions. For any species listed under the Endangered Species Act, EFH would include all areas identified as critical habitat.

If approved, these amendments would enable NMFS and the Council to more actively protect habitat important to fish at different stages of their life cycles. Coordination among NMFS, the Council, and other Federal and state agencies engaging in activities that may adversely affect EFH would be improved. The Council and NMFS would be in a better position to make suggestions on how to mitigate potential habitat damage.

NMFS will consider all public comments received during the comment period in determining whether to approve Amendments 55/55/8/5/5. To be considered, comments must be received before close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Dated: October 15, 1998.

Gary C. Matlock,

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

[FR Doc. 98–28278 Filed 10–21–98; 8:45 am]

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Notices

Federal Register
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Thursday, October 22, 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

Animal and Plant Health Inspection Service

[Docket No. 98–100–1]

AgrEvo USA Co.; Extension of Determination of Nonregulated Status for Soybean Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional soybean line our determination that certain soybean lines developed by AgrEvo USA Company, which have been genetically engineered for glufosinate herbicide tolerance, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by AgrEvo USA Company in its request for an extension of a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of an environmental assessment and finding of no significant impact.

EFFECTIVE DATE: November 23, 1998.

ADDRESSES: The extension request and an environmental assessment and finding of no significant impact may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4882. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request shall include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On August 26, 1998, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 98–238–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, for a soybean line designated as transformation event GU262 (event GU262), which has been genetically engineered for resistance, or tolerance, to the herbicide glufosinate. The AgrEvo request seeks an extension of a determination of nonregulated status issued for certain lines of glufosinate tolerant soybean (antecedent organisms) in response to APHIS petition number 96–068–01p (61 FR 42581–42582, August 16, 1996, Docket No. 96–019–2). Based on the similarity of event GU262 soybean to the antecedent organisms, AgrEvo requests a determination that glufosinate tolerant soybean event GU262 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

Analysis

Event GU262 soybean contains a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes*. The *pat* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme which confers tolerance to glufosinate. Expression of the synthetic *pat* gene is controlled by a 35S promoter and terminator derived from the plant pathogen cauliflower mosaic virus. While the subject soybean line contains fragments of the *bla* marker gene, tests indicate this gene is not expressed in the plant. The particle acceleration method was used to transfer the added genes into the parental *Glycine max* PH12 cultivar. Event GU262 soybean was transformed with the same plasmid vector and in the same manner as certain antecedent organisms described in APHIS petition number 96–068–01p, and differs from them only in the copy number and extent of integrated DNA. Accordingly, we have determined that the event GU262 soybean line is similar to the antecedent organisms in petition 96–068–01p and therefore does not need to be regulated.

The subject soybean line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from a plant pathogen. However, evaluation of field data reports from field tests of this soybean line conducted under APHIS notifications since 1996 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of its environmental release.

Determination

Based on an analysis of the data submitted by AgrEvo and a review of other scientific data and field tests of the subject soybean line, APHIS has determined that event GU262 soybean: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than soybean lines developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm

threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject soybean line and any progeny derived from crosses with other soybean varieties will be as safe to grow as soybeans that are not subject to regulation under 7 CFR part 340.

Since APHIS has determined that event GU262 soybean does not pose a plant pest risk and is similar to the antecedent organisms, AgrEvo's event GU262 soybean is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject soybean line or its progeny. However, importation of the subject soybean line or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that AgrEvo's event GU262 soybean and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 16th day of October 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–28283 Filed 10–21–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madan Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Stikine Area timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest up to an estimated 20–25 million board feet (mmbf) of timber on an estimated 1,600–2,500 acres in one or more timber sales. A range of alternatives responsive to significant issues will be developed and will include a no-action alternative. The proposed timber harvest is located within the Tongass Forest Plan Value Comparison Units 502 and 504 on the Southeast Alaska mainland, Wrangell Ranger District, Stikine Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by November 20, 1998.

ADDRESSES: Please send written comments to Wrangell Ranger District; Attn: Madan EIS: P.O. Box 51, Wrangell, AK 99929.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Steve Brady, District Ranger, or Dick Cozby, TMA, Wrangell Ranger District, Tongass National Forest, P.O. Box 51, Wrangell, AK 99929, telephone (907) 874–2323.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by November 20, 1998. Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife species, timber supply and sale economics, scenery, road construction/access management, and karst topography.

Based on results of scoping and the resource capabilities within the project area, alternatives including a ''no action'' alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in April 1999. The final EIS is anticipated by December 1999.

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

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the

alternatives formulated and discussed in the statement. 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. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation include the following:

1. U.S. Army Corp of Engineers

—Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency

—National Pollutant Discharge Elimination system (402) Permit;
—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources

—Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation

—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsibile Official: Carol J. Jorgensen, Assistant Forest Supervisor, Stikine Area, Tongass National Forest, P.O. box 309. Petersburg, Alaska 99833, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: October 10, 1998.

Carol J. Jorgensen,

Assistant Forest Supervisor.

[FR Doc. 98–28292 Filed 10–21–98; 8:45 am]

BILLING CODE 3410–11–M

U.S. ARCTIC RESEARCH COMMISSION

U.S. Arctic Research Commission

October 15, 1998.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 52nd Meeting in Fairbanks, AK on October 29, and 30, 1998.

The Meeting will be held in the Globe Room of the University of Alaska and will convene at 8:45 AM on Thursday the 29th and 8:30 AM on Friday the 30th. Parking on the University Campus is restricted.

Topics for the meeting include Federal and State Agency reports, Congressional liaison reports and a series of briefings on various aspects of research in Alaska.

Any person planning to attend the Tuesday meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 98–28293 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

September 1998 Sunset Reviews: Final Results and Revocations

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

ACTION: Notice of Final Results of Sunset Reviews and Revocation of Antidumping Findings and Countervailing Duty Orders:

Cotton Yarn from Brazil (C–351–037)
Animal Glue from Germany (A–428–062)
Railway Track Equipment from Austria (A–433–064)
Impression Fabric from Japan (A–588–066)
Rayon Staple Fiber from Finland (A–405–071)
Rayon Staple Fiber from Sweden (C–401–056)

SUMMARY: On September 1, 1998, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping findings of animal glue from Germany, railway track equipment from Austria, impression fabric from Japan, and rayon staple fiber from Finland. On this date, the Department also initiated sunset reviews of the countervailing duty orders on cotton yarn from Brazil and rayon staple fiber from Sweden. Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these findings and orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Scott E. Smith, or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–3207, (202) 482–6397, or (202) 482–1560 respectively.

SUPPLEMENTARY INFORMATION:

Background

The Treasury Department issued antidumping findings on animal glue from Germany (42 FR 64116, December 22, 1977), railway track equipment from Austria (43 FR 6937, February 17, 1978), impression fabric from Japan (43 FR 22344, May 25, 1978), and rayon staple fiber from Finland (44 FR 17156, March 21, 1979). In addition, the Treasury Department issued countervailing duty orders on cotton yarn from Brazil (42 FR 14089, March 15, 1977) and rayon staple fiber from Sweden (44 FR 28319, May 15, 1979). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated sunset reviews of these findings and orders by publishing notice of the initiation in the **Federal Register** (63 FR 46410, September 1, 1998). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these findings and orders.

No domestic interested parties in any of the sunset reviews of these findings

and orders responded to the notice of initiation by the September 16, 1998, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13520 (March 20, 1998) (''*Sunset Regulations*'')).

Determination To Revoke

Pursuant to section 752(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations,* if no interest party responds to the notice of initiation, the Department of Commerce shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order of terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, September 16, 1998 *see* section 351.218(d)(1)(i) of the *Sunset Regulations*), we are revoking these antidumping findings and countervailing duty orders.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these findings and orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and duty deposit requirements. The Department will complete any pending administrative reviews of these findings and orders and will conduct administrative reviews of all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: October 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–28394 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–DS–P–M

DEPARTMENT OF COMMERCE

International Trade Administration

August 1998 Sunset Reviews: Final Results and Revocations

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

ACTION: Notice of Final Results of Sunset Reviews and Revocation of Antidumping Duty Findings for: Racing Plates from Canada (A–122–050), Acrylic Sheet from Japan (A–588–055).

SUMMARY: On August 3, 1998, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping findings on racing plates from Canada and acrylic sheet from Japan. Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these findings.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Scott E. Smith, or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–3207, (202) 482–6397, or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Treasury Department issued antidumping findings on racing plates from Canada (37 FR 11772, June 14, 1972), and acrylic sheet from Japan (37 FR 11772, June 14, 1972). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated sunset reviews of these findings by publishing notice of the initiation in the **Federal Register** (63 FR 41227). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these findings.

No domestic interested parties in any of these sunset reviews of these findings responded to the notice of initiation by the August 18, 1998, deadline (*see* section 351.218 (d)(1)(i) of *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13520 (March 20, 1998) (''*Sunset Regulations*'')).

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations,* if no interested party responds to the notice of initiation, the Department of Commerce shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline of August 18, 1998 (*see* section 351.218(d)(1)(i) of the *Sunset Regulations*), we are revoking these antidumping findings.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these findings entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and duty deposit requirements. The Department will complete any pending administrative reviews of these findings and will conduct administrative reviews on all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: October 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–28397 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China; Notice of Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On April 24, 1998, in response to a request by an exporter and a producer, the Department of Commerce initiated the first administrative review of the antidumping duty order on glycine from the People's Republic of China. The period of review was March 1, 1997, through February 28, 1998. The request was made by one exporter of subject merchandise, Sinochem Tianjin Chemicals Import and Export Corporation, and one producer of subject merchandise, Yotech Chemical Industrial Co. Ltd. This review has now been rescinded as a result of the withdrawal of the request for administrative review by the exporter and the producer, as no other interested party requested the review.

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Nulman or Rick Johnson, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0374 and (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1995, the Department of Commerce (the Department) published an antidumping duty order on glycine from the People's Republic of China (60 FR 5620). On March 11, 1998, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on glycine from the People's Republic of China (63 FR 11868).

On March 18, 1998, an exporter, Sinochem Tianjin Chemicals Import and Export Corporation, and a producer, Yotech Chemical Industrial Co., Ltd., requested an administrative review of the antidumping order on glycine from the People's Republic of China. In accordance with 19 CFR 351.221(b), we initiated the review on April 24, 1998 (63 FR 20378) covering the period of March 1, 1997, through February 28, 1998. On September 17, 1998, the exporter withdrew its request for administrative review.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (62 FR 27296 (May 19, 1997)).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will allow a party that requests an administrative review to withdraw such request within 90 days of the date of publication of the notice of initiation of the administrative review. Furthermore, the Department may extend this time limit if the Secretary decides it is reasonable to do so, per 19 CFR 351.213(d)(1).

This request for withdrawal was made early in the review process and there were no requests for review from other interested parties. Additionally, the Petitioners have submitted comments on the record supporting rescission. Therefore, the Department is rescinding this review. This rescission of administrative review and notice are in accordance with section 751(a)(1) of the Act 19 CFR 351.213(d).

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 14, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–28395 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828, A–588–846, and A–821–809]

Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation

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

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Johnson (Russian Federation) at (202) 482-3818; Linda Ludwig (Brazil), at (202) 482–3833; and Steven Presing (Japan) at (202) 482–0194, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On September 30, 1998, the Department of Commerce (''the Department'') received petitions filed in proper form by Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Ispat Inland Steel, LTV Steel Company, National Steel Company,[1] California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel, IPSCO Steel, Steel Dynamics, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (collectively petitioners). The Department received supplemental information to the petitions on October 9, 1998.

In accordance with section 732(b) of the Act, petitioners allege that imports of certain hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from Japan, Brazil, and the Russian Federation (''Russia'') are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations they are requesting the Department to initiate (*see Determination of Industry Support for the Petition* below).

Scope of Investigations

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized

[1] National Steel is not a petitioner in the Japan case.

(commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: 1) iron predominates, by weight, over each of the other contained elements, 2) the carbon content is 2 percent or less, by weight, and 3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the levels listed above, are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded by example from the scope, and the physical and chemical description of the product coverage. The Department encourages all parties to submit such comments by November 4, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, petitioners do not offer a definition of domestic like product

[2] *See Algoma Steel Corp. Ltd., v. United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376. 32380–81 (July 16, 1991).

distinct from the scope of the investigation.

In this case, ''the article subject to investigation'' includes certain products which have not previously been included within the scope of investigations involving hot-rolled carbon steel products. To this end, the Department has reviewed reasonably available information to determine whether the products within the scope of the investigation constitute one or more than one domestic like product(s).

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel,* a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA, IF, and motor lamination steels as falling within categories of plain carbon sheet steels (*see* chapters 44, 45 and 52). Also, *Carbon and Alloy Steels,* published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). *Carbon and Alloy Steels* also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.,* pages 159 and 161).

We discussed these issues with representatives of the International Trade Commission (''ITC'') and the ITA's Office of Trade Development. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the agency representatives cited reasons why the products in question might be treated as distinct from hot-rolled carbon steels. Regarding the AISI classification, the ITC representatives noted that their initial research indicates that various companies, in reporting shipment data by chemical category (*e.g.,* carbon or alloy) to the AISI, categorized steels such as those in question as carbon steels even if they fit the AISI (and HTSUS) definition of alloy steel. *See Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998.*

Thyssen Inc., an importer and interested party in this proceeding, filed comments with the Department on October 8, 1998, and on October 13, 1998, alleging that deficiencies in petitioners' domestic like product analysis undermine petitioners' allegation of industry support. First, Thyssen argues that petitioners have not clearly defined the scope, specifically with regard to the inclusion of certain alloy steel within the product description, and, that as a result, petitioners' claims regarding industry support are called into question. The Department has clarified the language used in the ''Scope of Investigation'' section above. In addition to the research discussed above, the Department has determined that, with respect to certain steel products, such as high-strength low-alloy steel, industry sources indicate that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications. *See* the *Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998.* For these reasons, the Department determines that for purposes of these investigations, the domestic like product definition is the single domestic like product defined in the ''Scope of the Investigation'' section above.

Thyssen also argues that including cut-to-length sheet and strip products in the scope calls into question petitioners' industry support allegations. Thyssen asserts that petitioners do not produce cut-to-length sheet and strip in any significant quantities, and that, in ongoing investigations of stainless steel sheet and strip, petitioners (including certain of the same petitioning domestic producers as in these carbon hot-rolled investigations) have argued that cut-to-length sheet and strip is a downstream product, and therefore not encompassed within the same domestic like product as sheet and strip in coils. However, in recent cases the Department has not treated cut-to-length carbon sheet and strip as a separate like product from other carbon hot-rolled merchandise (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products from Argentina,* 58 FR 7066 (February 4, 1993) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37063 (July 9, 1993) (collectively, ''*Flat Products from Argentina*''). Furthermore, the classification of cut-to-length sheet and strip as a ''downstream'' product, relative to coiled sheet and strip, is not itself an indication that the latter should be considered a different like product from the former. It has not been established that the additional processing stage (cutting to length) has an effect upon the typical ultimate uses, costs, prices, or marketing associated with these products which is significant enough to result in their classification as a separate like product. The earlier investigations involving *Flat Products from Argentina,* the Department considered the cut-to-length versus coiled distinction as relatively unimportant in its product matching hierarchy, and there is no evidence suggesting that such treatment would no longer be appropriate.

Thyssen also argues that including pickled and oiled coiled sheet in the scope calls into question petitioners' industry support allegations. Thyssen asserts that petitioners internally consume coils that they have pickled and oiled, and that this should be taken into account in the Department's determination of the level of industry support accounted for by petitioners. However, Thyssen has presented no legal argument for distinguishing, in the context of an industry support determination, between internally and externally consumed products, and we find no basis here for such a distinction. For a further description of this methodology, *see Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998.* Furthermore, as in the case of cut-to-length sheet and strip, the Department, in recent cases, has not treated pickled and oiled carbon steel coils as separate like products from other carbon hot-rolled merchandise (*see, e.g., Flat Products from Argentina*). Thyssen has provided no evidence that the additional processing stage (pickling and oiling) has an effect upon the typical ultimate uses, costs, prices, or marketing associated with these products significant enough to result in their classification as a separate like product. In the earlier investigations involving *Flat Products from Argentina,* the Department considered the pickled versus not pickled distinction as relatively unimportant in its product matching hierarchy, and there is no evidence suggesting that such treatment would no longer be appropriate.

Thyssen also argues that the inclusion in the scope of hot-rolled sheet and strip in widths less than 600 mm calls into question petitioners' industry support allegations. Thyssen asserts that petitioners do not produce these narrow products domestically. As in the case of cut-to-length sheet and strip, the Department has not in recent cases treated such narrower products as separate like products from other carbon hot-rolled merchandise (*see, e.g., Flat Products from Argentina*). Furthermore,

Thyssen has provided no evidence or information that the variation in processing (whether it is slitting wider coils, or rolling more narrow coils) has an effect upon the typical ultimate uses, costs, prices, or marketing associated with these products significant enough to result in their classification as a separate like product. In the earlier investigations involving *Flat Products from Argentina,* the Department considered the width of products as unimportant in its product matching hierarchy, and there is no evidence suggesting that such treatment would no longer be appropriate.

Based on our analysis of the information and arguments presented to the Department and the information independently obtained and reviewed by the Department, we have determined that there is a single domestic like product which is defined as stated in the ''Scope of Investigation'' section above. Moreover, the Department has determined that the petitions (and subsequent amendments) and supplemental information obtained through Department research contain adequate evidence of industry support and, therefore, polling is unnecessary (*see Attachment to the Initiation Checklist, Re: Industry Support,* October 15, 1998). For Japan, Brazil, and Russia, petitioners established industry support representing over 50 percent of total production of the domestic like product.

Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Japan

The petitioners identified Nippon Steel Corporation, NKK Corporation, Kawasaki Steel Corporation, Kobe Steel, Ltd., Sumitomo Metal Industries, Ltd., and Nisshin Steel Co., Ltd. as possible exporters of hot-rolled steel from Japan. The petitioners further identified these exporters as the primary producers of subject merchandise in Japan. The petitioners based export price (EP) for Nippon and NKK on a U.S. price offering for the first sales to unaffiliated purchasers in August 1998. According to petitioners, these two producers account for approximately 60 percent of exports to the United States during the July 1997 to June 1998 time period. Because the terms of Nippon and NKK's U.S. sales were delivered to the U.S. customer, the petitioners calculated a net U.S. price by subtracting estimated costs for shipment from the factory in Japan to the port of export (from foreign market research). In addition, the petitioners subtracted ocean freight and insurance, unloading charges, and wharfage (from official U.S. tariff rates and official U.S. import statistics), U.S. trading company mark-ups (from an industry expert's affidavit), Japanese trading company mark-ups (from foreign market research), and estimated costs for U.S. import duties and fees (both from the 1997 HTSUS schedule).

With respect to normal value (''NV''), petitioners stated that the volume of Japanese home market sales was sufficient to form a basis for normal value, pursuant to section 773(a)(1)(C)(ii) of the Act. Petitioners obtained gross unit prices (from foreign market research) for the products offered for sale to customers in Japan which are either identical or similar to those sold to the United States. Petitioners adjusted these prices by subtracting estimated average delivery costs, packaging expenses, and credit expenses (from foreign market research). Petitioners provided information in the petition demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the cost of production (''COP''), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Because the home market sales prices used in the petition were below the calculated COP, pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners based NV for these sales in Japan on constructed value (''CV'').

Pursuant to section 773(e) of the Act, CV consists of the cost of materials, fabrication, other processing (*i.e.,* cost of manufacturing (''COM'')) and selling, general, and administrative expenses (''SG&A'') and profit. To calculate COM and SG&A, the petitioners relied on market research data, Nippon and NKK's 1997/1998 financial statements, and their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and in the foreign market. The petitioners added to CV an amount for profit obtained from Nippon and NKK's 1997/1998 financial statements. We relied on the cost data contained in the petition.

The estimated dumping margins in the petition, based on a comparison between Nippon and NKK's U.S. prices and CV, are 56.09 percent and 64.11 percent, respectively. Although petitioners found that the home market sales prices used in the petition were below the calculated COP, petitioners also compared Nippon and NKK's U.S. prices to these same home market prices, and on that basis calculated estimated dumping margins of 27.20 percent and 28.25 percent, respectively.

Brazil

The petitioners identified Cia Acos Especiais Itabira (''Acesita''), Cia Siderurgica Paulista, (''Cosipa''), Cia Siderurgica Nacional (''CSN''), and Usinas Siderurgica de Minais Gerais, S.A. (''Usiminas'') as possible exporters of hot-rolled carbon steel from Brazil. The petitioners further identified these exporters as the primary producers of subject merchandise in Brazil. The petitioners based EP on a U.S. price offer from one Brazilian producer for a sale to an unaffiliated U.S. purchaser in July 1998. Two other price quotes for February 1998 and March 1998 were obtained by petitioners' sales personnel in the course of sales calls to customers and recorded contemporaneously as part of their respective sales reports. Both parties provided affidavits attesting to the validity of the two quotes. The terms for all three prices were FOB U.S. dock. For the July 1998 price, the petitioners believe that the quoted price includes barge freight, loading and handling charges from the boat to the barge, port charges (based on the commercial experience of a domestic producer), import duties, and CIF charges. Import duties and CIF charges for all three prices were taken directly from the Commerce Department IM–145 import statistics (''IM–145 reports'') for entries during the first six months of 1998 (the most recent period for which data was available). For the price quote obtained in February 1998, the petitioners also deducted truck freight (the ultimate destination was inland), barge freight, and port and handling costs (based on the commercial experience of a domestic producer). For the price quote obtained in March 1998 petitioners also deducted port and unloading charges, and foreign inland freight. The adjustments to EP for these March 1998 sale items were calculated in the same way as the other two U.S. prices, with the exception of port charges, which were based on the most current port tariffs at the quoted

port of entry, rather than the experience of a domestic producer.

In addition, petitioners chose as the basis of EP the average customs value for each of the HTSUS categories containing imports of subject hot-rolled steel from Brazil that matched the characteristics of the products for which NVs were obtained. Petitioners maintain that since both importers and exporters are required to report accurately the customs values reported in the IM–145 (*see* 19 U.S.C. 1401 and 19 CFR 152.101), the values for hot-rolled steel in the IM–145 approximate the FOB price of the merchandise, packaged and ready for delivery at the foreign port.

With respect to NV, the petitioners used home market prices for hot-rolled steel obtained from foreign market research consultants. The prices used in the calculation of NV were ex-factory prices, for cash, exclusive of taxes. The foreign market research consultants provided petitioners with a range of price quotes for the subject merchandise from service centers and stockholders. Since the Department must use specific prices in its calculations, we used the highest price quote within the range provided by the market research consultants (see Memorandum to the File, October 15, 1998). Because the entire range of these quotes is below cost, this was the conservative path. No other adjustments were required. For the calculation of dumping margins, petitioners identified the matching HTSUS item for each home market product. Petitioners provided information in the petition demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation.

In those instances in which home market prices in the petition were below the producer's COP, petitioners based NV on CV, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the cost of materials, fabrication, other processing (*i.e.*, COM), SG&A, and profit. To calculate COM, petitioners relied on one U.S. producer's COM of hot-rolled steel during the first half of 1998. The sole exception was for the costs associated with the electric arc furnace (''EAF'') production of liquid steel, which were based on the costs of a different U.S. plant because the producer's plant does not have an EAF. Because we could find no indication that the Brazilian producer used an EAF, nor any other steel production process other than basic oxygen furnaces (BOF), we adjusted the petitioner's computed COMs to reflect the costs of only the BOF production methodology. Where appropriate, the U.S. producer's costs were adjusted for known differences between manufacturing costs in the U.S. and Brazil. Petitioners valued the major inputs in hot-rolled steel production based on the per unit values reported in foreign market research material. Material and labor usage factors were based on the experience of the two aforementioned U.S. production plants. Petitioners calculated company-specific SG&A and financial cost ratios based on the ratios of SG&A and financial expenses to COGS, as reported in one of the Brazilian company's 1997 financial statement. Petitioners derived a company-specific profit ratio from the same company based on the ratio of profit to fully-loaded COP, as reported in the company's 1997 financial statement.

The petitioners calculated estimated dumping margins for price-to-price comparisons ranging from 30.11 percent to 85.71 percent. The estimated dumping margins based on comparison of CV to U.S. prices is 41.56 percent to 67.04 percent.

Russia

The petitioners identified AmurSteel, Chusovskoy Iron and Steel Works, Gorkovsky Metallurgichesky Zavod, Magnitogorskiy Metallurgischeskiy Kombinat (''Magnitogorskiy''), Mechel, Nosta, Novosibprokat Joint-Stock Co., JSC Severstal (''Severstal''), Kuznetskiy Met Kombinat (''Kuznetsk''), Lysva Metallurgical Plant, Novo Lipetsk Met Kombinat (''Novolipetsk''), Shchelkovsky Sheet Rolling Mill, Taganrog Iron and Steel Works, Tulachermet, Volgograd Steel Works (''Red October''), and Zapsib Met Kombinat (''West Siberian'') as possible exporters of hot-rolled steel from Russia. The petitioners further identified three of these producers (Novolipetsk, Severstal, and Magnitogorskiy) as the primary producers of subject merchandise in Russia.

The petitioners based EP for these three companies on two methods: (1) Import values declared to the U.S. Customs Service; and (2) actual U.S. selling prices known to petitioners based on affidavits provided by U.S. importers. In calculating import values declared to the U.S. Customs Service, petitioners used the HTSUS categories which represent the import categories with the largest volumes of imports from Russia and which contained only subject merchandise (*e.g.*, 7208.37.0060, 7208.38.0030, 7208.38.0090, 7208.39.0030, and 7208.39.0090). Petitioners deducted foreign inland freight from the customs values in order to obtain ex-factory prices. In order to calculate foreign inland freight, petitioners used Indian barge rates and Brazilian rail rates because they were the only appropriate public figures reasonably available to the petitioners. Petitioners used the Indian barge rate because the per-capita GNP of India is much closer to Russia's GNP than U.S. GNP is and because they found barge rates for India that revealed the information needed to permit calculation of a rate in dollars-per-ton. Further, petitioners stated that only for Brazil could they find data on rail rates which would permit the calculation of rail freight costs in dollars-per-ton. Based on the information presented by petitioners, we believe that the use of Indian barge and Brazilian rail rates represents information reasonably available to petitioners and is acceptable for purposes of initiation of this investigation.

In order to calculate actual U.S. selling prices known to petitioners, petitioners relied on 11 U.S. sales offerings to unaffiliated purchasers. A net U.S. price was derived by subtracting amounts attributed to foreign inland freight (*see* paragraph above for a description of the methodology), U.S. delivery, where appropriate (from an industry expert's affidavit), CIF charges (from official U.S. import statistics), and duties, where appropriate (from official U.S. import statistics).

Petitioners asserted that Russia is a non-market economy country (''NME'') to the extent that sales or offers for sale of such or similar merchandise in Russia or to third countries do not permit calculation of normal value under 19 CFR 351.404. Petitioners, therefore, constructed a normal value based on the factors of production methodology pursuant to section 773(c) of the Act. In previous investigations, the Department has determined that Russia is an NME. *See, e.g., Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61780 (November 19, 1997) (''*Russian CTL Plate*''). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for Russia has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on factors of

production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Russia's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC,* 59 FR 22585 (May 2, 1994).

For the normal value calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy and capital cost), for hot-rolled steel on the quantities of inputs used by petitioners, adjusted for known differences in production efficiencies on the basis of available information. Petitioners asserted that detailed information is not available regarding the quantities of inputs used by hot-rolled steel producers in Russia. Thus, they have assumed, for purposes of the petition, that producers in Russia use the same inputs in the same quantities as petitioners, except where a variance from petitioners' cost model can be justified on the basis of available information. Petitioners argued that the use of petitioners' factors is conservative because the U.S. steel industry is more efficient than the Russian steel industry. Based on the information provided by petitioners, we believe that petitioners' use of their own adjusted factors of production represents information reasonable available to petitioners and is appropriate for purposes of initiation of this investigation.

Petitioners selected Turkey as their primary surrogate. Petitioners stated that the per-capita GNP of Turkey differs only slightly from that of Russia and, thus, they maintain that Turkey is the most suitable surrogate among the potential surrogates, because it is at a comparable level of economic development and is a significant producer of comparable merchandise (in accordance with section 773(c)(4) of the Act). Based on the information provided by petitioners, we believe that petitioners' use of Turkey as a surrogate country is appropriate for purposes of initiation of this investigation.

In accordance with section 773(c)(4) of the Act, petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. Materials were valued based on Turkish import values reported in USD, as published in the 1995 UN Trade Commodity Statistics, and inflated based on U.S. inflation rates. Labor was valued using the regression-based wage rate for Russia provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate for Turkey published in a quarterly report of the OECD's International Energy Agency from the fourth quarter of 1997. For overhead (exclusive of depreciation), depreciation, SG&A and profit, the petitioners applied rates derived from the 1997 public annual report of a Turkish producer of subject merchandise, Erdemir. We revised the SG&A ratio to exclude any non-interest generating assets in estimating short term interest income (*see* the *Russia: Normal Value portion of the Initiation Checklist*) and recalculated NV and the margins based on this revision. Based on the information provided by petitioners, we believe that their surrogate values represent information reasonably available to petitioners and are acceptable for purposes of initiation of this investigation.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the calculated dumping margins for hot-rolled steel from Russia range from 100.28 to 189.58 percent.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Japan and Brazil were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigations in Brazil and Japan. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316 at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' . . . exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products in both Japan and Brazil were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations (*see* country-specific sections above).

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of hot-rolled steel from Japan, Brazil, and Russia are being, or are likely to be, sold at less than fair value.

Critical Circumstances

The petitioners have alleged that critical circumstances exist. Petitioners have supported their allegations with the following information. For Russia, petitioners state that there is a history of injurious dumping because Chile, Indonesia, and Mexico have imposed antidumping measures on hot-rolled steel in coils from Russia. For Brazil, petitioners claim that there is a history of injurious dumping because Mexico has imposed antidumping measures against hot-rolled sheet from Brazil.

Petitioners also have made alternative claims that the importers knew or should have known that the hot-rolled steel was being sold at less than normal value and that there was likely to be material injury be reason of such sales. Specifically, for Japan, petitioners allege that the margins calculated in the petition exceed the 25 percent threshold used by the Department to impute importer knowledge of dumping and the likelihood of material injury due to that dumping.

Petitioners also have alleged that imports from Japan, Brazil, and Russia have been massive over a relatively short period. Petitioners allege that there was sufficient pre-filing notice of these antidumping petitions and that the Department should compare imports during February-April 1998 to imports during May-July 1998 for purposes of this determination. According to the import statistics contained in the petition, for the periods February-April 1998 and May-July 1998, imports of hot-rolled steel from Russia increased by 36 percent, imports from Japan increased by 74 percent, and imports from Brazil increased by 47 percent. Taking into

consideration the foregoing, we find that petitioners have alleged the elements of critical circumstances and supported them with information reasonably available. For these reasons, we will investigate this matter further and will make a preliminary determination as soon as practicable.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury,* October 15, 1998).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on hot-rolled steel and petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our discussion with the authors of the foreign market research reports supporting the petition on Brazil and other measures to confirm the information contained in these reports (*see* memorandum to the file, dated October 14, 1998), we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain hot-rolled flat-rolled carbon-quality steel products from Japan, Brazil, and Russia are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of Japan, Brazil, and Russia. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by November 16, 1998, whether there is a reasonable indication that imports of hot-rolled steel from Japan, Brazil, and Russia are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: October 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile

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

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4136 or (202) 482–4929, respectively.

The Applicable Statute:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296, May 19, 1997.

Final Determination:

We determine that certain preserved mushrooms (''mushrooms'') from Chile are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 41786, August 5, 1998), the following events have occurred:

The respondent, Nature's Farm Products (NFP) submitted revisions and corrections to its questionnaire responses during July and August 1998.

During August 1998, we conducted verification of NFP's responses to the antidumping questionnaire. Following verification, we requested NFP to submit revised sales and cost of production data bases, which NFP submitted on September 2, 1998. On September 1, 1998, we issued our verification report (*see* Memorandum for the File dated September 1, 1998 (''Verification Report'')).

The petitioners and NFP submitted case briefs on September 9, 1998. On September 10, 1998, the petitioners withdrew their request for a public hearing. Both parties submitted rebuttal briefs on September 15, 1998.

Scope of Investigation

For purposes of this investigation, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this investigation are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including

''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.27, 2003.10.31, 2003.10.37, 2003.10.43, 2003.10.47, 2003.10.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by NFP covered by the description in the ''Scope of Investigation'' section, above, and sold to Brazil during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As discussed below, we determined that there were no comparable third country sales in the ordinary course of trade during the POI. Therefore, we compared U.S. sales to constructed value (''CV''), as described below.

Fair Value Comparisons

To determine whether sales of mushrooms from Chile to the United States were made at less than fair value, we compared constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Level of Trade

In the preliminary determination, we compared all U.S. sales to CV. Because we were unable to determine whether there is a difference in level of trade between any U.S. sales and CV, we did not apply a LOT adjustment or CEP offset to NV. No party to this investigation commented on this determination, and we have continued to compare all U.S. sales to CV for this final determination. Therefore, we have not made a LOT adjustment or CEP offset in this final determination.

Constructed Export Price

We calculated CEP, in accordance with subsection 772(b) of the Act, because sales to the first unaffiliated purchaser took place after importation into the United States.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

Based on information discovered at verification, we made additions to CEP for repacking charges billed to customers on certain sales, and deductions to CEP for unreported repacking expenses, bank fees, and additional discounts (*see* Comment 8).

We revised the calculation of indirect selling expenses incurred by NFP/USA in the United States to reclassify a portion of these expenses, incurred in support of NFP's production activities in Chile, to COP and CV general and administrative expenses (*see* Cost Calculation Memorandum to Neal Halper from Michael Martin dated October 13, 1998 (''Cost Calculation Memo'')).

We made corrections to specific transactions examined at verification to revise warehouse-to-customer freight expense to reflect an actual expense of zero on one sale, and to reallocate the expense on a mixed shipment of subject and nonsubject merchandise in the shipment on another sale. We also eliminated the double-counting of U.S. warehousing expenses on one U.S. sale.

Normal Value

After testing (1) home market and third country viability as discussed below, and (2) whether third country sales were at below-cost prices, we calculated NV as noted in the ''Price-to-CV Comparisons'' section of this notice.

1. Home and Third Country Market Viability

As discussed in the preliminary determination, we examined whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, in accordance with section 773(a)(1)(C) of the Act. We verified that NFP's aggregate volume of POI home market sales of the foreign like product was less than five percent of its aggregate volume for POI U.S. sales for the subject merchandise; and therefore, the home market was not viable for NFP. We also verified that Brazil, NFP's largest third country market, was viable in accordance with section 773(a)(1)(B)(ii) of the Act (*see* Comment 12). Therefore, in accordance with section 773(a)(1)(C) of the Act, we determined that Brazil is the appropriate third country market for calculating NV.

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether NFP made sales of the foreign like product in the third country during the POI at prices below their cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated the weighted average COP, by model, based on the sum of NFP's cost of materials, fabrication, and general expenses. We relied on the submitted COPs except in the following specific instances where the submitted costs were not appropriately quantified or valued. For a more complete discussion, *see* Cost Calculation Memo. The following is a summary of the adjustments made to NFP's reported costs:

Financial Statement Disclosures

To account for each discrepancy between an account balance and the underlying asset or liability, we applied non-adverse facts available. In identifying the appropriate facts available on the record from which to make our adjustments, we used data reported in NFP's 1996 and 1997 financial statements (*see* Comment 2, Comment 6, and Comment 10).

Monetary Correction

We included a portion of the monetary correction amounts reflected in NFP's 1997 financial statements. Specifically, we (1) included depreciation expense calculated on revalued asset values; (2) included exchange gains and losses on current assets and liabilities; (3) included a portion of the exchange gains and losses on long-term debt; and (4) excluded gains and losses on non-monetary assets and liabilities. Chilean Generally Accepted Accounting Principles (''GAAP'') appears to treat each of these items as part of the overall monetary correction adjustment (*see* Comment 9).

Allocation of Costs

Consistent with the preliminary determination, we continued to allocate mushroom growing costs between fresh and preserved mushrooms based on the weight, in kilograms, of fresh mushrooms initially picked for either fresh or preserved mushrooms. Additionally, we continued to allocate mushroom costs entering the cannery (growing costs and harvest costs for preserved mushrooms, except for mushroom picking labor) between individual products based on the

weight, in kilograms, of output (*see* Comment 5).

General and Administrative Expense (''G&A'')

We calculated a company-wide G&A rate by dividing the total G&A expense (inclusive of expenses paid for by NFP/USA, as noted above) by the total manufacturing cost.

Interest Expense

We calculated a net financial expense amount and divided it by the total manufacturing costs. In calculating the net financial expense, we excluded from the interest expense several financial income and expense items that related to prior periods (*see* Cost Calculation Memo).

3. Test of Third Country Sales Prices

As in our preliminary determination, we compared the weighted-average COP for NFP, adjusted where appropriate, to third country sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard third country market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the third country market prices, less any applicable movement charges, and direct and indirect selling expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that all of NFP's Brazilian sales were at prices below the COP. Thus, in the absence of any above-cost Brazilian sales, we compared CEP to CV in accordance with section 773(a)(4) of the Act.

Calculation of CV

As in our preliminary determination, we calculated CV based on the sum of NFP's cost of materials, fabrication, selling, general, and administrative (''SG&A'') expenses, interest, U.S. packing costs, and profit, in accordance with section 773(e) of the Act. We made the same adjustments to NFP's reported costs for the CV calculation as discussed above for the COP calculation.

Because there were no above-cost Brazilian sales and hence no actual company-specific SG&A expenses and profit data available for NFP's sales of the foreign like product to Brazil, we calculated these amounts in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action Accompanying the URAA, H.R. Doc. 316, 103d Cong., 2d Sess. (1994) (''SAA''). Section 773(e)(2)(B)(iii) of the Act authorizes the Department to determine these amounts using any other reasonable method with the appropriate ''profit cap.'' In the preliminary determination, we used NFP's actual selling expenses incurred in Chile on Brazilian sales. No party to this investigation has commented on this determination. Therefore, we have continued to use these selling expense amounts in this final determination.

As in our preliminary determination, we were unable to determine a ''profit cap'' under alternative (iii) of section 773(e)(2)(B) of the Act, because we do not have actual amounts incurred by NFP on sales of merchandise in the same general category as the subject merchandise and because NFP is the only producer subject to this investigation. Accordingly, we again applied the1996 profit margin for Ianasafrut S.A., a leading Chilean fruit and vegetable producer as facts available under section 773(e)(2)(B)(iii) of the Act, for NFP's CV profit (*see* Comment 11).

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the amount of indirect selling expenses capped by the amount of the U.S. commissions.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: Inclusion of Fresh Mushrooms in Scope

NFP argues that the scope of investigation should include fresh mushrooms, frozen mushrooms, dried, marinated, acidified and pickled mushrooms, as well as preserved mushrooms. NFP claims that, based on the criteria set forth in *Diversified Products* v. *United States,* 572 F. Supp. 883, 889 (CIT 1993) (''*Diversified Products*''), *i.e.,* 1) the general characteristics of the merchandise; 2) the expectations of the ultimate purchaser; 3) the channel of trade in which the products are sold; and 4) the ultimate use of the merchandise, there is a significant overlap among the types of mushrooms such that they all should be considered a single class or kind. Based on this proposed scope of the investigation, NFP claims that the petitioners should be found to lack standing under section 773a(b)(4) of the Act because they do not represent the U.S. industry.

In support of its scope claim, NFP argues that fresh and preserved *agaricus bisporus* and *agaricus bitorquis* mushrooms are essentially the same but for preservation. NFP contends that fresh and preserved mushrooms are interchangeable and compete directly with each other. NFP adds that most producers of preserved mushrooms are also producers of fresh mushrooms. Moreover, NFP states, fresh and preserved mushrooms share the same channels of distribution since its pizza chain, food processor, and institutional customers purchase both fresh and preserved mushrooms. NFP cites *Initiation of Antidumping Duty Investigation: Fresh Garlic from the People's Republic of China,* 59 FR 9470, February 28, 1994 (''*Garlic*''), and *Initiation of Antidumping Investigation: Freshwater Crawfish Tail Meat from the People's Republic of China,* 61 FR 54154, October 17, 1996, (''*Crawfish*'') as analogous cases where the scope of

the investigation included both preserved and fresh products.

The petitioners respond that it is established Department practice that the petition defines the scope of an investigation. Citing *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434, July 29, 1998 (''*SSWR from Japan*''), the petitioners state that the Department's authority and role in determining whether a product is covered is based on an analysis of the express language and intent of the petition. The petitioners continue that, in this instance, the petition makes clear that the petitioners intended only to include ''preserved'' mushrooms and not fresh mushrooms in this investigation. The petitioners also contend that NFP's argument based on the *Diversified Products* criteria is misplaced, citing the decision in *Minebea Co. Ltd.* v. *United States,* F. Supp. 117 (CIT 1992) that the *Diversified Products* analysis is only necessary if the petition is ambiguous, which it is not in this case.

DOC Position

We disagree with NFP that the scope of this investigation should be expanded to include fresh and other varieties of mushrooms. As we stated in *SSWR from Japan,* the scope of an investigation is determined, in general, by the petition. The petition in this investigation expressly excluded:

(1) all other species of mushrooms [other than preserved mushrooms of the *Agaricus bisporus* and *Agaricus bitorquis* species] including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. (*See* January 6, 1998, petition at page 13.)

Because the scope language in the petition unambiguously excluded fresh, frozen, dried, marinated, acidified, and pickled mushrooms, a *Diversified Products* analysis is not warranted. *See Minebea Co., Ltd.* v. *United States,* 782 F. Supp. 117, 120 (CIT 1992), *aff'd on other grounds* 984 F.2d 1178 (Fed. Cir. 1993); and *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6980, February 6, 1995 (''*Roses from Colombia*''). Therefore, in this case, we have followed our general practice and defined the scope of the investigation consistent with the intent of the petition. *See Mitsubishi Heavy Indus., Ltd.* v. *United States,* 986 F. Supp. 1428, 1432–33 (CIT 1997) (upholding the Department's authority to define or clarify the scope of the investigation to reflect the intent of the petition). Our scope definitions in the *Garlic* and *Crawfish* investigations are distinguishable from this investigation because the petitions in those cases expressly defined the scope to include both fresh and other varieties of the same agricultural product.

Moreover, because we have properly defined the scope of this investigation consistent with the intent of the petition, we need not revisit the issue of industry support. The Department has already made its determination regarding industry support for the merchandise under investigation, *i.e.,* certain preserved mushrooms, as specified by the petitioners, in its initiation determination (*Initiation of Antidumping Investigations: Certain Preserved Mushrooms From Chile, India, Indonesia, and the People's Republic of China,* 63 FR 5360, February 2, 1998). As clearly expressed in section 732(c)(4)(E) of the Act, after the administering authority determines that it is appropriate to initiate an investigation, the determination regarding industry support shall not be reconsidered. *See also Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, June 9, 1998 (''*Salmon from Chile*'').

Comment 2: Use of Facts Available in Lieu of the Questionnaire Response

The petitioners argue that NFP's questionnaire responses are seriously deficient and unreliable, and, therefore, the Department must base the final determination on the facts otherwise available, in accordance with section 776(a) of the Act, using the corroborated margin in the petition. Specifically, the petitioners cite instances at verification where NFP did not provide requested information, or where the Department discovered relevant information that was not included in NFP's questionnaire responses. The petitioners also point to the results of the independent audit of NFP's financial statements for 1996 and 1997, where the auditors were unable to reconcile NFP's books and records with the financial statements and otherwise unable to account for significant assets and liabilities. The petitioners assert that the verification and audit problems compromise the integrity of the sales and COP data bases reported to the Department, warranting the use of facts available. Further, the petitioners contend, the use of adverse facts available is appropriate because NFP did not act to the best of its ability in providing information to the Department, and the information on the record cannot be used without undue difficulties.

NFP responds that the application of total adverse facts available is not warranted because NFP has complied fully with the Department's requests, its information was verified, its responses are sufficiently complete and can be used without undue difficulty, and that NFP has acted to the best of its ability to provide the requested information. While NFP concedes that it made some errors and inadvertent omissions of information, which may require the use of facts available for certain specific expense items, NFP states that, in the context of the vast amount of data submitted, the errors made were minor and immaterial and do not prevent their use for the final determination. NFP notes that the verification report indicates that the vast majority of information submitted by NFP was accurate and verifiable. With regard to the audit of financial statements, NFP states that, as a private company, NFP is not obligated to have audited financial statements, and that the absence of an audited financial statement does not prevent an adequate verification.

DOC Position

Section 776(a) of the Act authorizes the resort to facts available only where necessary information is not available on the record or an interested party withholds information, fails to comply with the Department's reporting requirements, significantly impedes the proceeding, or submits unverifiable information. We have examined NFP's submitted information in light of these factors and determined that resorting to total facts available is not warranted in this investigation. Although we agree with petitioners that NFP's responses contain certain deficiencies, as discussed below in various comments, we have applied partial facts available, using adverse inferences where appropriate, for certain unreported items in its sales data base. This application of facts available is consistent with the SAA at 869, which authorizes the use of facts available to fill gaps in the record due to deficient responses.

With respect to NFP's submitted cost information, NFP's auditors identified three discrepancies in the 1997 draft audit report that raise questions as to the proper valuation of certain accounts. However, because these discrepancies were specific and quantifiable through information in NFP's 1996 and 1997 financial statements, we were able to

make adjustments to the reported costs for the discrepancies. Given the proprietary nature of this information, these adjustments are detailed in the Cost Calculation Memo. We were also able to reconcile NFP's reported costs to its 1997 financial statements (*see* Verification Report at pages 8 through 10). Because we were able to make these necessary adjustments to NFP's submitted costs and reconcile NFP's reported costs to its financial statements, we do not consider this information to be unreliable for use in the final determination.

Section 782(e) of the Act establishes five conditions that must be met before the Department rejects deficient information submitted by a respondent. NFP submitted requested information within the established deadlines, and substantially cooperated with the Department's information requests. We successfully verified most of the information in NFP's questionnaire responses, as NFP noted in its rebuttal brief. For example, we verified the completeness of NFP's reported U.S. and Brazilian sales transactions, as well as the reliability of the cost of manufacture, sales price data (except for the items discussed below at Comment 8), and SG&A expenses (*see* Verification Report). For those areas where verification of the data was incomplete, or where relevant information was discovered at verification, we were able to rely upon information obtained in the course of verification, or facts available, to make appropriate adjustments to the submitted data. We were able to make appropriate adjustments for the identified deficiencies and we were able to use the submitted information without undue difficulties. For these reasons, we find that NFP's submissions are complete to the extent that the data can serve as a reliable basis for reaching our final determination. Finally, we are satisfied that, except for certain items, NFP has demonstrated that it acted to the best of its ability in this investigation and has not otherwise significantly impeded this investigation. Therefore, rejection of its responses in their entirety is inappropriate based on the facts of this proceeding.

Comment 3: Start-Up Cost Adjustment Claim

NFP claims that an adjustment should be made to its CV and COP for the final determination to account for its use of new production facilities and the technical problems associated with the initial phase of commercial production, in accordance with section 773(f)(1)(C) of the Act. NFP argues that it meets the first condition for the startup adjustment, *i.e.,* use of new production facilities or a new product that requires substantial additional investment, because its production facility, built in 1994, is new, and that the product is new to Chile. NFP also claims that it meets the second criterion for the startup adjustment, *i.e.,* production levels are limited by technical problems associated with the initial phase of commercial production, because it encountered technical problems related to three key raw materials which has prevented it from reaching commercial production levels as of the end of the POI. As part of this claim, NFP asserts that the Department should differentiate its startup adjustment analysis between industrial and agricultural products. NFP contends that the analysis utilized in past cases dealt exclusively with industrial products, while a different set of standards must be applied to agricultural products, where the time period needed to resolve technical problems is significantly longer due to the length of production (*i.e.,* growing) cycles.

The petitioners contend that the Department properly rejected NFP's startup adjustment claim in the preliminary determination, based on NFP's inability to meet the statutory requirements for this adjustment. The petitioners dispute NFP's argument that the adjustment should account for the technical problems associated with its operations. The petitioners cite the SAA in noting that a company must demonstrate that the costs incurred are associated with the initial phase of commercial production and not with chronic production problems. According to the petitioners, NFP's technical problems and associated costs are not a result of the initial costs of purchasing and operating new capital equipment and thus there is no basis to allow a startup adjustment.

DOC Position

We disagree with NFP that a startup adjustment is warranted in this case. Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for start-up operations ''only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of production'' during the POI. Based on our analysis of the information NFP submitted to support its claim, we determine that NFP's production operations do not satisfy these criteria.

In making this determination, we have not constructed a different analytical framework for agricultural products, as NFP advocates, because the startup analysis necessarily entails examining industry-specific factors in determining whether the two criteria are satisfied. The SAA at 837 states that the analysis will vary from industry to industry and product to product, requiring a fact-intensive inquiry. Furthermore, the Preamble to the Proposed Regulations states that the start-up ''conditions are somewhat generalized because they must allow for any number of startup operation scenarios'' (61 FR 7339, February 27, 1996). Moreover, the production process for preserved mushrooms is more a manufacturing process than an agricultural one. Most of the mushroom growing phase entails the production of compost, while the canning phase is purely a manufacturing operation. Therefore, given the inherent fact-intensive nature of the startup analysis and the production process for preserved mushrooms, a different analytical framework is unnecessary in this case.

First, we do not consider NFP's facilities to be ''new'' during the POI within the meaning of section 773(f)(1)(C)(ii)(I) of the Act. Although the statute does not define ''new production facilities,'' the SAA indicates that the startup period must occur during the period of investigation or review. The SAA at 836 states that ''[m]ere improvements to existing products or ongoing improvements to *existing* facilities will not qualify for a startup adjustment'' (emphasis added). NFP's production facilities were three years old at the start of the POI. That is, the POI began in NFP's fourteenth growing ''season.'' On this basis, we disagree with NFP's assertions that its production facilities were new during the POI.

The SAA and the Department's regulations define new production facilities as including ''the substantially complete retooling of an existing plant'' during the period of investigation or review (SAA at 836; 19 CFR 351.407(d)(1)(i)). This substantial retooling must involve the replacement of nearly all production equipment and a complete revamping of existing machinery (SAA at 836). NFP has not identified any additional costs associated with ''substantially retooling'' its production facilities.

Moreover, the record does not support NFP's claim that it was producing a new product during the POI. NFP produced and exported preserved mushrooms to the United States for several years prior to the POI. Although NFP switched its methods for producing preserved

mushrooms in 1991, this second process commenced in 1994 and was well established by the start of the POI. Additionally, this second process did not result in a different type of preserved mushroom. As NFP acknowledged, this change merely improved the quality of mushrooms sold under its name. Such improvements, implemented two years prior to the POI, do not qualify as ''new products'' for purposes of a startup adjustment. *See* SAA at 836 and *Final Results of Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 63 FR 13170, 13200, March 18, 1998. Nor do we consider NFP's expansion into the Chilean or Brazilian markets to constitute the production of a new product, but rather a development of new markets. Given the limited purpose of a startup adjustment, there is no basis in the statute or regulations to broaden its application to expansion of a mature product into new markets.

This finding that NFP did not use new production facilities or produce a new product during the POI is sufficient to deny NFP's claim. *See Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails from Korea*, 62 FR 51420, 51426, October 1, 1997. However, we note that NFP also has failed to establish that its production levels during the POI were limited by technical factors associated with the initial phase of production in accordance with section 773(f)(1)(C)(ii)(II) of the Act. Specifically, NFP has provided insufficient evidence to support a claim that production levels were limited for any reason, whether related to technical factors or not. The only information provided by NFP to support its claim that POI production levels were limited is a comparison of its production yields to yields of U.S. producers, which NFP identifies as efficient operations producing high quality mushrooms.

The SAA, however, does not refer to quality of merchandise produced or the efficiency of production operations as a criterion for measuring production levels. The SAA at 836 directs the Department to examine the number of units processed as a primary indicator of production levels in determining the end of the start-up period. *See also Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8930, February 23, 1998. In other words, the Department must look at processed units, not output yields. NFP provided no information, for example, on historical production or capacity usage related to its operations from 1994, the year its production facility was put into operation, through 1997, the end of the POI, to serve as a benchmark for measuring commercial production levels during the POI. The only evidence NFP submitted was a comparison of its production to that of U.S. producers, asserting that such levels are indicative of industry standards. However, we do not consider U.S. producers' production levels as an appropriate standard for the Chilean industry. We note that U.S. producers are subject to different climate conditions and availability of raw materials, thus making comparisons unreliable. Moreover, under a comparative yield approach, a respondent may never leave start-up because it may never reach comparable yields of U.S. producers.

As further evidence that NFP was not in a startup period experiencing technical factors that limited production, we note that, in 1996, the year before the POI, NFP posted a provision for non-performing fixed assets because the expected revenue stream did not justify the capitalized values. In other words, in 1996, NFP determined that its production problems were not temporary but chronic. The SAA at 838 states that a company ''must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as. * * * chronic production problems.''

Section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the test must be met before a startup adjustment is warranted. In this case, we find that NFP has failed both prongs of the test and, accordingly, we deny NFP's claim for a start-up adjustment.

Comment 4: Treatment of Raw Materials for Mushroom Growing as Fixed Costs

NFP contends that the raw materials used in the growing process should be classified as fixed overhead expenses because these costs are fixed per crop, regardless of the crop's yield of the particular product. NFP also states that these raw material expenses are not a part of the final product since the growing medium (*i.e.*, compost) is sold as scrap at the end of the growing cycle.

The petitioners state that these costs are properly classified as direct raw materials because they meet the textbook definition of materials that are physically observable as being identified with the finished good and that may be traced to the finished good in an economically feasible manner. The petitioners compare the materials identified by NFP—compost, straw, manure, spawn, etc.—to salmon feed in salmon production, which, in *Salmon from Chile*, the Department properly classified as a direct material cost item. The petitioners add that it is incorrect to classify these materials as fixed overhead costs such as rent, insurance, and depreciation, which do not vary with production volume.

DOC Position

We agree with petitioners that raw materials are more appropriately accounted for as variable costs because the consumption of these materials (and therefore the expense) varies as production volumes rise and fall. Although crop yields may vary slightly between growing cycles, in general, fewer mushrooms grow in a smaller quantity of growing medium than in a larger quantity. As such, the production of the finished product, *e.g.*, mushrooms, varies with the amount of raw materials used in the production process. However, in this case, treating raw material costs as fixed or variable has no impact on our dumping calculations because we have allocated all manufacturing costs (with the exception of mushroom picking labor) in the same manner, and no difference-in-merchandise adjustment is necessary.

Comment 5: Allocation of Fixed Costs

NFP argues that fixed overhead costs should be allocated on a basis other than the input weight of the merchandise into the production (*i.e.* canning) process. NFP proposes an allocation based on the estimated number of mushrooms consumed for each type of mushroom product. Alternatively, NFP suggests allocations based on gross sales value or total contribution margin for each type of product. NFP contends that these methodologies are more appropriate than the weight input methodology because the latter allocates a higher proportion of costs to pieces and stems, cut from the larger mushrooms, than the smaller whole preserved mushrooms based on size.

The petitioners respond that allocating costs based on the estimated number of mushrooms is unreasonable given that preserved mushrooms are sold by weight, not by the number of mushrooms per can. Noting that, in the production process, mushrooms are weighed, rather than counted, the petitioners contend that a weight-based allocation reflects the production and sales process of the product. Furthermore, the petitioners claim that the number-based allocation

methodology is based on unverified, untimely submitted information, and leads to a distortive shift of costs.

DOC Position:

We agree with the petitioners that a weight-based allocation methodology is appropriate in this case. In accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. Normal GAAP accounting practices provide both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise under investigation. However, in those instances where it is determined that a company's normal accounting practices result in a misallocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21952, May 26, 1992, (adjusting a respondent's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs); and *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29559, June 5, 1995.

NFP did not have an established cost accounting system and, therefore, for purposes of this investigation, NFP developed a reporting methodology. In NFP's original section D questionnaire response, it chose to allocate costs (*e.g.*, manufacturing costs, G&A expenses, and financial expenses) between products based on their relative sales values. At the request of the Department, NFP submitted a revised response with costs based on a weight-based allocation methodology. For purposes of the final determination, we are relying on NFP's costs derived from a weight-based allocation methodology, with the specific adjustments noted elsewhere in this notice.

Section 351.407(c) of the Department's regulations states that ''[i]n determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.'' We rejected NFP's sales value based methodology because it would, if used, require historical costs and sales data for fresh and preserved mushrooms over a period encompassing several years prior to the antidumping proceeding. *See Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7399, February 13, 1998. NFP did not provide the data necessary to utilize a sales value-based methodology. Moreover, we have determined that an allocation methodology based on weight is reasonable for the following reasons: (1) NFP tracks the mushrooms through the production process by weight, not by number of mushrooms or by relative sales value; (2) mushrooms are sold by weight, not by the number of mushrooms per can; and, (3) regardless of whether the mushrooms are going to preserved or fresh product, they are substantially the same input products. On this basis, we continue to rely upon a weight-based methodology because this calculation reasonably reflects the costs of producing the subject merchandise.

We disagree with NFP that the Department recognized in the verification report that an allocation basis other than weight should be used for allocating costs. In our report, we stated that the cost-generating elements of growing mushrooms for both preserved and fresh mushrooms are identical, that a considerable quantity of mushrooms initially selected for the fresh sales market were eventually canned, and that canned whole mushrooms may be re-processed into pieces and stems. Additionally, the Department has accounted for specific cost differences supported by factual documentation, such as differences in picking costs supported by labor union agreements specifying the additional compensation for picking specific sizes of mushrooms.

Finally, we also disagree with NFP that costs could be allocated based on the number of mushrooms used in producing specific products. NFP's suggestion is not feasible, since neither the actual number of mushrooms consumed for each specific product, nor the applicable yield rates are on the record. It would be inappropriate to extrapolate the specific numbers required for such a calculation from a sample of less than ten mushrooms, as suggested by NFP.

Comment 6: Revisions to COP and CV Data based on Auditor's Proposals

The petitioners contend that the Department should reject revisions to the COP and CV data base that NFP presented at the commencement of verification, based on adjustments proposed by NFP's auditors. The petitioners argue that these adjustments are 1) based on an incomplete audit that could not reconcile key parts of NFP's accounting records, 2) not included in NFP's tax return, and 3) associated with pre-POI expenses and thus are not relevant.

NFP states that there is no legal basis for rejecting these revisions because they were requested by the Department. According to NFP, excluding these adjustments would result in less accurate information. NFP adds that it is not relevant whether the tax return and financial statements are in complete agreement as there are differences between GAAP for financial reporting purposes and tax law for tax reporting purposes.

DOC Position

We agree with NFP. There is no basis to reject the audit adjustments proposed by NFP's auditors. All of the auditor's proposed adjustments appear to be in conformance with Chilean GAAP. While some of the adjustments relate to transactions that occurred in prior periods, auditors are required to post these adjustments to NFP's records. Moreover, we are satisfied that our adjustments to account for the items discussed in Comment 2 above isolate those problems and reasonably quantify any potential understatement to the reported costs. Additionally, the fact that the financial statements do not agree to NFP's tax return is not relevant, since the tax return was prepared soon after the end of the tax year, while the audit report did not become available until August 1998. Furthermore, the petitioners' arguments are unpersuasive because there are differences between the reporting standards applicable to a tax return and those applicable to an audited financial statement. Therefore, the exclusion of these items in NFP's tax return, filed prior to completion of the audit, does not render the adjustments unreliable.

Comment 7: Treatment of Unreconciled Value Item in NFP Financial Statement

The petitioners argue that the Department must adjust NFP's reported cost or sales data for an unreconciled value recorded in NFP's POI financial

statements.[1] To account for this unreconciled item cited by NFP's independent auditor, the petitioners state that the Department should apply facts available and either make an upward adjustment to the cost of manufacture, or assume that the unreconciled value reflects unreported sales to the United States and apply the highest calculated margin to the value in question and include this amount in the overall margin calculation.

NFP agrees that the value item was not completely reconciled during the Department's verification, but refers to the stated reason in the verification report, which shows that NFP's approach was fully consistent with Chilean and U.S. GAAP. NFP agrees with the petitioners that costs should be adjusted, but that the appropriate adjustment should result in a decrease in NFP's costs.

DOC Position

We agree with the petitioners in part. In the audit report, NFP's auditors identify discrepancies between certain account balances and the underlying assets and liabilities (see Comment 2 above). While we agree with the petitioners that we must adjust for these items, we disagree with the petitioners' proposal to include these differences as unreported sales, because the footnotes to the 1996 financial statements indicate that the unreconciled differences are not due to sales related activity. Therefore, we have adjusted NFP's costs for the unreconciled item by applying the difference identified in the footnotes to the 1996 financial statements. Since we are able to adjust NFP's reported costs for the specific items noted by its auditors using information contained in NFP's submitted financial statements, we have done so for the final determination. *See Cost Calculation Memo.*

Comment 8: Treatment of Unreported Adjustments to U.S. Sales Prices

Citing a number of omissions and errors to U.S. price adjustments discovered at verification, the petitioners argue that the Department should make adverse inferences in applying facts available to account for these items. Specifically, the petitioners contend that the following adjustments should be made:

(a) To account for unreported discounts, the Department should apply the amount of the discount to every U.S. sale.

(b) To account for unreported letter of credit and bank fees, the Department should apply the highest fee found for any sale and apply that amount to every U.S. sale.

(c) To account for unreported freight and palletizing charges on certain U.S. sales, the Department should apply the highest charges for these items found at verification to these sales.

(d) To account for unreported repacking expenses (i.e., palletizing and shrink wrap expenses), the Department should apply the highest amount for these expenses found at verification to all U.S. sales.

NFP asserts that the errors in reporting these adjustments were inadvertent and that it provided the Department with the information necessary to make appropriate adjustments. Specifically, NFP responds:

(a) To account for unreported discounts, the Department's adjustment should not exceed the amount of total discounts granted by NFP/USA.

(b) No adjustment should be made for letter of credit fees because the letters of credit were between NFP and NFP/USA, i.e., two affiliates. Should the Department consider bank fees as sales expenses, the expenses should be allocated based on sales value.

(c) No adjustment is necessary for freight and palletization charges to customers as NFP supplied this information in a revised sales listing at the Department's request.

(d) To account for unreported repacking expenses, the expenses should be allocated fairly across sales.

DOC Position

Section 776(a) of the Act requires the Department to use the facts otherwise available when necessary information is not on the record or an interested party withholds requested information. As petitioners point out and NFP acknowledges, NFP failed to report these price adjustments in its questionnaire responses. Moreover, NFP did not identify these adjustments at the start of verification, but rather they were discovered by the Department during verification, as described in the verification report. Under these circumstances, we must account for these adjustments using the facts available. Because NFP failed to provide these requested items, we find that it failed to cooperate to the best of its ability in providing this information, and, therefore, adverse inferences are warranted, where possible. Therefore, we applied the highest discount percentage observed to all U.S. sales, as adverse facts available for the unreported discounts. We have also applied an adverse inference to the unreported freight charges by disregarding this addition to CEP.

NFP paid bank fees to unaffiliated banks for NFP's intracompany sales of the subject merchandise to NFP/USA. We did not have sale-specific information on these bank fees because the bank fees were assessed on the container shipments from Chile, not the sale transactions to the unaffiliated parties. Therefore, we have applied the percentage derived from the total expense attributable to these fees, divided by NFP/USA's total POI sales, as obtained at verification, as the only information available for this adjustment. Similarly, we did not have sale-specific information for repacking expenses, so we have applied the percentage derived from the total expense attributable to these expenses, divided by NFP/USA's total POI sales, as obtained at verification, as the only information available for this adjustment. Thus, for these two adjustments, no adverse inference is possible, based on the record evidence.

However, we do not find the use of adverse inferences appropriate with regard to the palletization charges billed to NFP's customers. Palletization charges were included in the gross prices NFP reported to the Department prior to verification. As discussed in the Verification Report at pages 17 and 18, and Exhibit 52, NFP provided a full breakout of these additions to price, and we verified the data. This information was included in a supplemental response specifically requested by the Department subsequent to verification and submitted on September 2, 1998. Therefore, we used this information in our final determination.

Finally, although neither party raised this issue in its briefs, we also applied adverse facts available for unreported bank fees on Brazilian sales. As discussed in the verification report, NFP incurred these expenses on all but one Brazilian sale, but failed to report these items in its questionnaire responses. For the applicable sales, we made an adverse inference by applying the lowest percentage rate of expense observed for a sale at verification to the other Brazilian sales.

Comment 9: Monetary Correction

NFP contends that the Department should include the full amount of its monetary adjustments in its COP and CV calculations since these inflation adjustments are required by Chilean GAAP, and the Department accepted monetary correction adjustments in *Final Results and Partial Recission of*

[1] NFP has requested business proprietary treatment for the identification of this specific item.

Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Colombia (62 FR 53287, October 14, 1997) (''*Flowers from Colombia*''). Moreover, NFP asserts that the petitioners have not identified any legal basis for denying monetary adjustments.

The petitioners object to any monetary correction offset to NFP's financial expense because the problems noted by NFP's independent auditor bring into doubt the accuracy and reasonableness of claimed corrections. Further, the petitioners argue that it is unreasonable to measurably adjust NFP's financial results, which are based on non-monetary factors, because of changes in inflation or exchange rates. The petitioners contend that, at most, the Department should allow a monetary correction only for the current portion of NFP's bank loans, as in the preliminary determination.

DOC Position

The Department's practice with respect to inflation (including the monetary correction of financial data) is to adjust for those items that have a significant impact on the antidumping analysis and to exclude those aspects of the adjustment that would distort the analysis. *See, e.g., Flowers From Columbia,* 62 FR at 53299–300; *Roses from Colombia,* 60 FR at 6993; and, *Salmon From Chile,* 63 FR at 31432. Consistent with this practice, we have: (1) included the depreciation expense calculated on revalued asset values; (2) included the exchange gains and losses on current assets and liabilities; (3) included a portion of the exchange gains and losses on long-term debt; and (4) excluded the gains and losses on non-monetary assets and liabilities.

We did not include the full amount of NFP's monetary correction adjustment because, as explained below, certain monetary adjustments do not constitute, in any meaningful sense, true income or expense to the company. In cases such as this one, where Chile experienced moderate levels of inflation during the POI but not at a level requiring the Department's high-inflation methodology, the Department's practice does not attempt to address all of the inflationary effects resulting within the twelve months of the investigation or review period, because any attempt to quantify the effects of inflation on each measure of cost and price would impose an unreasonable level of complexity to the Department's antidumping analysis. Consequently, in non-high-inflation cases, we do not calculate cost using a constant currency or replacement cost methodology. Instead, the Department adjusts for certain significant expenses, such as depreciation and amortization, because these expenses are derived from asset values recorded at historical cost and whose useful lives extend beyond the period of investigation or review. Since the compounded effects of inflation distort historical costs and the associated depreciation expense, use of unadjusted historical depreciation expenses would understate costs. *See, e.g., Flowers from Columbia,* 62 FR at 53299.

Furthermore, there is neither a statutory requirement that the Department adjust for all effects of inflation in its analysis, nor a requirement to use all aspects of a country's GAAP. Rather, the statute merely requires that the Department include in its calculation of CV the cost of manufacturing ''during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.'' *See* section 773(e)(1) of the Act. Given the inability to measure the effects of inflation on each cost and price item, the Department's practice reasonably achieves the statutory mandate to calculate cost in a manner that reasonably reflects the costs associated with the production and sale of the merchandise. Indeed, the CIT has held that full accounting for inflation is neither necessary nor possible. *See Budd Co. v. United States,* 773 F. Supp. 1549, 1554 (CIT 1991) (''The glowing deficiency in Plaintiff's argument is the underlying premise that a full accounting for inflation is necessary or even possible.''). On this basis, we disagree with NFP's assertion that inclusion of its entire monetary correction is required in this case.

Additionally, we disagree with NFP's claim that the Department should include the annual revaluation of non-monetary assets and liabilities in our calculation. The annual revaluation of non-monetary assets (*e.g.,* fixed assets) does not represent income during the fiscal year. Likewise, the revaluation of non-monetary liabilities (*e.g.,* equity and capital) does not represent a loss during the fiscal year. Rather, they represent the restatement of non-monetary assets and liabilities into current price levels. In other words, the restatement of the book value of a truck into a greater number of (lower value) pesos does not result in an economic gain, since one still only owns a truck. Therefore, we do not include these revaluations in our antidumping analysis. Instead, we include only the amortization of the revalued assets and liabilities, since they represent the expenses stated at current price levels and directly relate to the period under investigation.

Likewise, we disagree with petitioners' assertion that the Department should exclude all of the inflation adjustments (i.e., monetary correction) for purposes of calculating COP or CV. As explained above, certain elements of monetary correction must be taken into account to avoid certain distortions to the antidumping analysis. The exclusion of all inflation adjustments would result in costs that are not reflective of current price levels, producing an improper matching of revenues and expenses. *See Roses from Colombia,* 62 FR at 6993. Finally, we also disagree with petitioner's assertion that the monetary corrections should be ignored because of the problems noted by NFP's independent auditors. As noted elsewhere in this notice, the declarations made by the auditors were for specific problems which the Department addressed through appropriate adjustments.

Comment 10: Depreciation Adjustment

The petitioners challenge NFP's claim of a depreciation adjustment to the COP and CV calculations because the adjustment relates to an unreconciled item in NFP's financial statements. In addition, citing *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea* (63 FR 8934, February 23, 1998) (*SRAMS from Korea*), the petitioners contend that the Department's practice is to grant special depreciation adjustments only when used by a respondent in its regular course of business over time, while NFP's claim is of an extraordinary nature.

NFP responds that the adjustment is in full accordance with the appropriate Statement of Financial Accounting Standards (''SFAS''), which is also part of Chilean GAAP. According to NFP, its application of GAAP to its financial statements is systematic, rational, not extraordinary, and, additionally, there is no legal basis to reject this adjustment.

DOC Position

We disagree with the petitioners. As discussed above in the response to Comment 5, the Department relies on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. In 1996, NFP wrote down the value of certain non-performing fixed assets to amounts in line with the asset's ability to generate revenue. At that time, NFP recognized the loss associated with the write-down on the income statement. The write-down of the value of non-

performing fixed assets was in accordance with both U.S. and Chilean GAAP, and was reflected in NFP's historical books and records. The write-down of asset values in the period prior to an investigation does not, in this case, distort the costs reported for the POI, because, as of the filing of the petition, the asset values were properly valued and were in accordance with both U.S. and Chilean GAAP. Although the audit report for financial statements which first disclosed the write-down was dated April 30, 1998, raising the concern that the adjustment was made only for purposes of this investigation, evidence on the record demonstrates that the write-down was recorded to NFP's books and records prior to the filing of the petition.

Additionally, we disagree with the petitioners that the write-down affects our ability to adjust NFP's costs. The calculation of the write-down was not dependent on the unreconciled difference in fixed assets, cited in the auditors report, but rather was based on the net present value of the assets. Moreover, the Department has adjusted for this unreconciled difference.

Finally, the petitioners' cite to *SRAMS from Korea* is inapposite, because that case related to the selection or change in depreciation methodology, not to the proper valuation of assets and the accounting principle of conservatism. That is, NFP wrote down the value of its fixed assets when it became reasonably certain that the expected revenue stream did not justify the capitalized values. Therefore, for the reasons discussed above, we have accepted NFP's reported depreciation expense calculation. However, we have reallocated the expense based on production quantity rather than sales value, consistent with the methodology discussed in our response to Comment 5.

Comment 11: Source for Calculation of CV Profit

The petitioners claim that, in calculating CV under section 773(e)(2)(B)(iii) of the Act, the Department should rely on contemporaneous, POI data (*i.e.*, 1997 data), rather than the 1996 data from Ianasafrut, a Chilean fruit and vegetable producer, used in the preliminary determination.

Although NFP agrees with the petitioners that, ideally, the surrogate for CV profit should be based on POI data, NFP contends that, in the absence of any better information on the record, the Department should continue to use the 1996 Ianasafrut data as a surrogate for NFP's CV profit.

DOC Position

Section 773(e)(2)(B)(iii) of the Act authorizes the Department to use any reasonable method to determine profit with an appropriate ''cap'' for purposes of CV. Because we were unable to determine an appropriate profit ''cap,'' we calculated CV with an amount for profit on the basis of facts available, as provided in the SAA at 841. Based on the record evidence, we used the 1996 profit margin for Ianasafrut S.A., a leading Chilean fruit and vegetable producer as a reasonable surrogate for NFP's profit. As we explained in the preliminary determination, we consider this data, which was submitted in the petition, as a reasonable surrogate for CV profit because it is based upon a Chilean producer's sales experience on the same general category of merchandise subject to investigation.

Section 773(e)(2)(B)(iii) does not prohibit the use of non-POI data in determining CV profit, but rather provides the Department with broad authority to determine a reasonable surrogate. Although not contemporaneous with the POI, we find no other basis to reject Ianasafrut's 1996 profit margin as a reasonable surrogate for CV profit. Therefore, in the absence of any other reasonable data on the record of this proceeding, we continued to use this data in this final determination.

Comment 12: Brazilian Sales as Basis for Normal Value

The petitioners claim that NFP failed to establish that Brazil is the appropriate foreign market for U.S. sales. According to the petitioners, Chilean export statistics indicate that Hong Kong may be a larger foreign market for NFP than Brazil. In addition, the petitioners suggest that NFP's refusal to provide the financial statement for NFP's Hong Kong affiliate may be an attempt to conceal sales through the Hong Kong affiliate.

NFP contends that there is no factual basis to the petitioners' suggestion that Hong Kong is a viable third country market. NFP states that the determination on the viability of the Brazilian market should rest on NFP's submitted and verified data. In addition, NFP disputes the petitioners' allegations that it intentionally withheld data from the Department and states that it was prepared to provide any sales data on Hong Kong sales had the Department requested such information.

DOC Position

We agree with NFP. We found no discrepancies in NFP's sales reporting (*see* Verification Report). Further, we found no evidence at verification that any other foreign market was larger than Brazil during the POI. Our ability to make this determination was not affected by our inability to examine the Hong Kong affiliate's financial statement because we were able to examine all of NFP's sales records in Chile. Therefore, we are satisfied that Brazil is the appropriate third country market in this proceeding.

Comment 13: Export Incentive

NFP argues that the export incentive credits it received for its export sales should be treated as either revenue or as a reduction of costs, rather than disregarded, as in the preliminary determination. In support of its claim, NFP states that the export incentive credit is considered additional revenue under Chilean law, and that no countervailing duty case has been filed against it.

The petitioners agree with the Department's preliminary determination that there is no statutory basis for a USP or NV adjustment for the export incentive. Further, the petitioners contend that NFP failed to demonstrate that it actually received any of these credits during the POI in a manner akin to a duty drawback claim, under which NFP initially reported this item.

DOC Position

We agree with the petitioners. Section 772(c)(1) of the Act limits additions to the EP or CEP starting price to packing, rebated import duties (*i.e.*, ''duty drawback''), or the amount of any countervailing duty imposed on the product to offset an export subsidy. The Chilean export incentive does not meet any of these conditions. The program is not contingent upon importation of inputs used to produce the exported subject merchandise—the duty drawback system contemplated under section 772(c)(1)(B) of the Act. *See e.g., Certain Welded Carbon Steel Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review*, (63 FR 32825, 32828–29, June 16, 1998). Instead, the incentives are provided to any Chilean exporter (*see* NFP May 19, 1998, supplemental response at Appendix S–12). Similarly, section 773(a)(6) of the Act does not provide for this type of adjustment to NV. Therefore, there is no statutory basis for adjusting NFP's price data for this export incentive. We also disagree with NFP's contention that we should account for this incentive by reducing its costs because section 773(b)(3) of the Act provides no basis for such a reduction when the respondent

participates in an export incentive program such as that presented here. Accordingly, we have continued to disregard this claimed adjustment in our calculation.

Comment 14: Imputed Interest Rate for Brazilian Sales

NFP contends that the Department should use NFP/USA's short-term interest rate for calculating imputed credit on sales to Brazil, as applied in NFP's questionnaire response, rather than the short-term U.S. dollar interest rates the Department observed at verification. NFP states that the NFP/USA rate is more appropriate because NFP/USA is the primary funding source of NFP's operations.

DOC Position

As stated in Import Administration Policy Bulletin 98–2, where the respondent (the seller) has short-term borrowings in the same currency as that of the transaction the Department's practice is to use the respondent's own weighted-average short-term borrowing rate realized in that currency to quantify the credit expenses incurred. For example, for U.S. dollar transactions, we impute credit expenses using the respondent's interest rate realized on U.S. dollar borrowings. *See, e.g., Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33555, June 28, 1995. We observed at verification that NFP, in fact, has short-term borrowings in U.S. dollars, the currency of its sales to Brazil. Thus, NFP's actual experience is the proper basis for determining the imputed credit interest rate. The only information on the record that we have for the imputed rate is the examples seen at verification. In our verification report, we noted the lowest and highest interest rates observed. Therefore, as facts available, we recalculated NFP's imputed interest rate using the midpoint of the U.S. dollar short-term borrowings observed at verification. We made no adjustments to NFP's reported inventory carrying expense claim because we had insufficient information to recalculate this expense using NFP's sale-specific methodology.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Chile, that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Nature's Farm Products (Chile) S.A.	148.51
All Others	148.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: October 13, 1998.

Robert A. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–28393 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Rutgers, The State University of New Jersey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 98–027. *Applicant:* Rutgers, The State University, University Procurement & Contracting, 56 Bevier Road, Piscataway, NJ 08854–8010. *Instrument:* (10ea.) Specimen Micromanipulator, Model A–3–S. *Manufacturer:* Narishige Scientific, Japan. Date of Denial Without Prejudice to *Resubmission:* July 29, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–28396 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Initiation of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel, at (202) 482–4847, or Kristen Johnson, at (202) 482–4406, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

INITIATION OF INVESTIGATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On September 30, 1998, the Department of Commerce (the

Department) received a petition filed in proper form on behalf of Bethlehem Steel Corporation, US Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (the petitioners). The Department received supplemental information to the petition on October 13, 1998.

In accordance with section 702(b)(1) of the Act, petitioners allege that manufacturers, producers, or exporters of hot-rolled flat-rolled carbon-quality steel products (subject merchandise or hot-rolled steel) in Brazil receive countervailable subsidies within the meaning of section 701 of the Act. Petitioners also allege that imports of the subject merchandise are materially injuring, or threaten material injury to, an industry in the United States.

The Department finds that the petitioners are interested parties as defined in sections 771(9)(C) and (D) of the Act. Further, the petitioners have demonstrated industry support for the petition, as required by section 732(c)(4) of the Act. *See Determination of Industry Support for the Petition* section, below.

Scope of the Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of the *Harmonized Tariff Schedule of the United States* (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is 2 percent or less, by weight, and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the levels listed above, are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded by example from the scope, and the physical and chemical description of the product coverage. The Department encourages all parties to submit such comments by November 4, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Brazilian

government for consultations with respect to the petition filed. On October 7, 1998, the Department held consultations with a representative of the Government of Brazil. See October 8, 1998, memoranda to the file regarding these consultations (public document on file in the Central Records Unit of the Department of Commerce, Room B–099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, ''the article subject to investigation'' includes certain products which have not previously been included within the scope of investigations involving hot-rolled carbon steel products. To this end, the Department has reviewed reasonably available information to determine whether the products within the scope of the investigation constitute one or more than one domestic like product(s).

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel*, a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA, IF, and motor lamination steels as falling within categories of plain carbon sheet steels (*see* chapters 44, 45, and 52). Also, *Carbon and Alloy Steels*, published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). *Carbon and Alloy Steels* also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.*, pages 159 and 161).

We discussed these issues with representatives of the ITC and ITA's Office of Trade Development. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the agency representatives cited reasons why the products in question might be treated as distinct from hot-rolled carbon steels. Regarding the AISI classification, the ITC representatives noted that their initial research indicates that various companies, in reporting shipment data by chemical category (*e.g.*, carbon or alloy) to the AISI, categorized steels such as those in question as carbon steels even if they fit the AISI (and HTSUS) definition of alloy steel. *See Attachment to the Initiation Checklist, Re: Industry Support*, October 15, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B–099).

Thyssen Inc., an importer and interested party in this proceeding, filed comments with the Department on October 8, 1998, and on October 13, 1998, alleging that deficiencies in petitioners' domestic like product analysis undermine their allegation of industry support. First, Thyssen argues that petitioners have not clearly defined the scope, specifically with regard to the inclusion of certain alloy steel within the product description, and that, as a result, petitioners' claims regarding industry support are called into question. The Department has clarified the language used in the ''Scope of Investigation'' section, above. In addition to the research discussed above, the Department has determined that, with respect to certain steel products, such as high-strength low-alloy steel, industry sources indicate that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications. *See* the *Attachment to the Initiation Checklist, Re: Industry Support*, October 15, 1998. For these reasons, the Department determines that for purposes of this investigation, the domestic like product definition is the single domestic like product defined in the ''Scope of the Investigation'' section, above.

Thyssen also argues that including cut-to-length sheet and strip products in the scope calls into question petitioners' industry support allegations. Thyssen asserts that petitioners do not produce cut-to-length sheet and strip in any significant quantities, and that, in ongoing investigations of stainless steel sheet and strip, petitioners (including certain of the same petitioning domestic producers as in this carbon hot-rolled investigation) have argued that cut-to-length sheet and strip is a downstream product, and therefore not encompassed within the same domestic like product as sheet and strip in coils. However, in recent cases the Department has not treated cut-to-length carbon sheet and strip as a separate like product from other carbon hot-rolled merchandise (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products from Argentina*, 58 FR 7066 (February 4, 1993) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37063 (July 9, 1993) (collectively, *Flat Products from Argentina*). Furthermore, the

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

classification of cut-to-length sheet and strip as a ''downstream'' product, relative to coiled sheet and strip, is not itself an indication that the latter should be considered a different like product from the former. It has not been established that the additional processing stage (cutting to length) has an effect upon the typical ultimate uses, costs, prices, or marketing associated with these products which is significant enough to result in their classification as a separate like product. The earlier investigations involving *Flat Products from Argentina,* the Department considered the cut-to-length versus coiled distinction as relatively unimportant in its product matching hierarchy, and there is no evidence suggesting that such treatment would no longer be appropriate.

Thyssen also argues that including pickled and oiled coiled sheet in the scope calls into question petitioners' industry support allegations. Thyssen asserts that petitioners internally consume coils that they have pickled and oiled, and that this should be taken into account in the Department's determination of the level of industry support accounted for by petitioners. However, Thyssen has presented no legal argument for distinguishing, in the context of an industry support determination, between internally and externally consumed products, and we find no basis here for such a distinction. For a further description of this methodology, *see Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998.* Furthermore, as in the case of cut-to-length sheet and strip, the Department, in recent cases, has not treated pickled and oiled carbon steel coils as separate like products from other carbon hot-rolled merchandise (*see, e.g., Flat Products from Argentina*). Thyssen has provided no evidence that the additional processing stage (pickling and oiling) has an effect upon the typical ultimate uses, costs, prices, or marketing associated with these products significant enough to result in their classification as a separate like product. In the earlier investigations involving *Flat Products from Argentina,* the Department considered the pickled versus not pickled distinction as relatively unimportant in its product matching hierarchy, and there is no evidence suggesting that such treatment would no longer be appropriate.

Thyssen also argues that the inclusion in the scope of hot-rolled sheet and strip in widths less than 600 mm calls into question petitioners' industry support allegations. Thyssen asserts that petitioners do not produce these narrow products domestically. As in the case of cut-to-length sheet and strip, the Department has not in recent cases treated such narrower products as separate like products from other carbon hot-rolled merchandise (*see, e.g., Flat Products from Argentina*). Furthermore, Thyssen has provided no evidence or information that the variation in processing (whether it is slitting wider coils, or rolling more narrow coils) has an effect upon the typical ultimate uses, costs, prices, or marketing associated with these products significant enough to result in their classification as a separate like product. In the earlier investigations involving *Flat Products from Argentina,* the Department considered the width of products as unimportant in its product matching hierarchy, and there is no evidence suggesting that such treatment would no longer be appropriate.

Based on our analysis of the information and arguments presented to the Department and the information independently obtained and reviewed by the Department, we have determined that there is a single domestic like product which is defined as stated in the ''Scope of Investigation'' section, above. Moreover, the Department has determined that the petition (and subsequent amendment) and supplemental information obtained through Department research contain adequate evidence of industry support and, therefore, polling is unnecessary (*see Attachment to the Initiation Checklist, Re: Industry Support,* October 15, 1998). For this investigation, petitioners have established industry support representing over 50 percent of total production of the domestic like product.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Brazil is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry.

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a) and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

The Department has examined the petition on hot-rolled steel from Brazil and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of hot-rolled steel from Brazil receive subsidies. *See Initiation Checklist,* October 15, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B–099).

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers and exporters of the subject merchandise in Brazil:

1. *Pre-1992 GOB Equity Infusions to COSIPA, CSN, and USIMINAS*
2. *GOB Equity Infusion to CSN in 1992*
3. *GOB Equity Infusions to COSIPA in 1992 and 1993*
4. *GOB Assumption of Debt owed by COSIPA in 1993.*

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of subsidized imports of the subject merchandise. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Attachment to Initiation Checklist, Re: Material Injury,* October 15, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B–099).

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of the Brazilian government. We will attempt to provide copies of the public version of the petition to all the producers/

exporters named in the petition, as provided for under § 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determination by the ITC

The ITC will determine by November 16, 1998, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of hot-rolled steel from Brazil. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: October 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–28392 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 94–036.

Title: Wall Thickness and Flow Detection Apparatus and Method for Gas Pipelines.

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and Southwest Research Institute. A new ultrasonic method for measuring wall thickness and detecting material flaws in natural-gas pipelines, risers, and similar structures. The method is inherently suitable for the task, because it relies on the use of the natural gas as the coupling fluid for transmitting the probing ultrasonic signals into and out of the pipe wall. Furthermore, the method facilitates the operation of the inspection from the inside of the pipe. An experimental apparatus used to demonstrate the technical feasibility of this approach and provide experimental and theoretical evidence that support the claims is described. Significantly, it is shown that by the use of a diplexer, the same transducer can be used to generate and detect the probing ultrasonic signals. The same configuration is used in commercial ultrasonic inspection of oil pipelines where oil is the coupling fluid; but until now this method could not be used in natural gas pipelines due to the low specific acoustic impedance of natural gas. The inventions available for licensing are 94–036US, 94–036CAN, 94–036EPO, 94–036JPN.

NIST Docket Number: 97–006US.

Title: Metal Hydrides Lamp and Fill For the Same.

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and Matsushita Corporation. The invention comprises a lamp in which the radiation of one or more metal hydride molecules dominates the light emission. This is achieved by loading a transparent container with one or more metals (M) plus hydrogen gas (H2), perhaps with the addition of a noble gas (NG). The novel character of the lamp results from the use of H2 together with metal vapors, which results in the emission of radiation from the MH molecule. An electrodeless sapphire envelope houses the gas, which is excited inductively at 13.6 Mhz.

Dated: October 16, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–28270 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101698D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Groundfish Oversight Committee and Groundfish Advisory Panel in November, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between November 5 and November 16, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Danvers and Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1097; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, November 5, 1998, 9:30 a.m.—Groundfish Advisory Panel Meeting

Location: King's Grant Inn, Route 128 and Trask Lane, Danvers, MA, 01923; telephone: (978) 774–6800.

Review comments from the October 19, 1998, industry meeting on mesh management and develop advice to the Groundfish Committee on mesh management issues; advise the Groundfish Committee on options for cod management in Framework Adjustment 26 to the Northeast Multispecies Fishery Management Plan (FMP), especially those measures already identified by the Council (''rolling closure'' modifications, no ''running clock'' and no crucifiers)

Monday, November 16, 1998, 9:30 a.m.—Groundfish Oversight Committee Meeting

Location: Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

Review reports on the October 19, 1998, industry meeting and the November 5, 1998, advisory panel meeting; develop recommendations to the Council on mesh management options and on Framework Adjustment 26 cod management proposals, especially those measures already identified by the Council (''rolling closure'' modifications, no ''running clock'' and no crucifiers); review and finalize the Groundfish Advisory Panel membership; and a progress report on Multispecies Monitoring Committee analyses for the upcoming annual adjustment to the FMP.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 16, 1998.

Richard W. Surdi,

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

[FR Doc. 98–28279 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Postponement

ACTION: Notice is hereby given of the postponement of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

REFERENCE: This notice amends the notice of open meeting published in the **Federal Register** on October 14, 1998. Citation: 63 FR 55091.

AUTHORITY: Executive Order 13038, signed by President Clinton on March 11, 1997.

NEW DATE: The meeting scheduled for Monday and Tuesday, October 26 and 27, 1998 has been postponed to Monday, November 9, 1998.

ADDRESSES: The location of the November 9 meeting will be announced in a separate **Federal Register** notice. Updates about the location of the meeting will also be available on the Advisory Committee's website at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4720, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

MEDIA INQUIRIES: Please contact NTIA's Office of Public Affairs at 202–482–7002.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 98–28406 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Meeting: With the Community College of the Air Force Board of Visitors to Review and Discuss Academic Policies and Issues Relative to the Operation of the College (Reference: FR 63, page 49690, September 17, 1998)

AGENCY: Community College of the Air Force, DOD.

ACTION: Notice of Meeting Location Change: Due to the damage inflicted by Hurricane Georges, the CCAF Board of Visitors location has been moved to Maxwell Air Force Base. The initial article was published on September 17, 1998.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact First Lieutenant Cornel Taite, Designated Federal Officer for the Board, at the address below no later than 4:00 p.m. on October 22, 1998. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of the presentation materials must be given to First Lieutenant Cornel Taite no later than three days prior to the time of the board meeting for distribution. Visual aids must be submitted to First Lieutenant Cornel Taite on a 3½'' computer disc in Microsoft PowerPoint format no later than 4:00 p.m. on October 22, 1998 to allow sufficient time for virus scanning and formatting of the slides.

DATES: The meeting will be held on Friday, November 6, 1998 at 8:00 a.m. on the First Floor Conference Room, Community College of the Air Force, Building 836, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112.

FOR FURTHER INFORMATION CONTACT: First Lieutenant Cornel Taite, (334) 953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama, 36112–6613, or through electronic mail at cotaite@max1.au.af.mil.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–28390 Filed 10–21–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/062,735 entitled ''Thin-Film Edge Field Emitter Device'' Navy Case No. 79,154.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, code 3008.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Dr. Richard H. Rein, head, Technology Transfer office, NRL code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: October 13, 1998.

Ralph W. Corey,

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

[FR Doc. 98–28368 Filed 10–21–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 23, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Werfel__d@a1.eop.gov. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 16, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.
Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.
Frequency: On occasion.
Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 1,400,000.
Burden Hours: 1,400,000.
Abstract: This promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

Office of Postsecondary Education

Type of Review: New.
Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Master Promissory Note.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 2,031,360.
Burden Hours: 2,031,360.
Abstract: This form is the means by which a Federal Direct Stafford/Ford Loan and/or Federal Direct Unsubsidized Stafford/Ford Loan borrower promises to repay his or her loan.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Dwight D. Eisenhower Professional Development Program Triennial Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 52.
Burden Hours: 433.
Abstract: States are required to submit a triennial report to the Department on their progress toward achieving performance indicators for professional development.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Program Cost Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 82.
Burden Hours: 385.
Abstract: Collected data submitted on the Annual Vocational Rehabilitation Program/Cost Report (RSA–2) by State vocational agencies for each fiscal year is used by the Rehabilitation Services Administration (RSA) to administer and manage the Title I Program, to analyze expenditures, evaluate program accomplishments, and to examine data for indication of problem areas.

[FR Doc. 98–28298 Filed 10–21–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Awards Program for Model Professional Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On October 15, 1998, a notice inviting applications for new awards under the National Awards Program for Model Professional Development was published in the **Federal Register** (63 FR 55496). The year in the deadline date for transmitting applications for FY 1999 was incorrectly stated as ''1998.'' The purpose of this notice is to correct that date to read ''Deadline for Transmittal of Applications: January 15, 1999.''

FOR FURTHER INFORMATION CONTACT: Sharon Horn, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 506E, Washington, DC 20208–5644. Telephone: 202–219–2203. Inquiries also may be sent by e-mail to sharon__horn@ed.gov or by FAX at (202) 219–2198. 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.

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

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

http://ocfo.ed.gov/fedreg.htm

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

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

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

Program Authority: 20 U.S.C. 8001.

Dated: October 19, 1998.

C. Kent McGuire,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 98–28404 Filed 10–21–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2170–008]

Chugach Electric Association; Notice of Intent to Conduct a Site Visit

October 16, 1998.

The Federal Energy Regulatory Commission (Commission) has pending an application to amend the license for the Cooper Lake Hydroelectric Project. The proposed amendment is for modifying the project dam and spillway to allow safe passage of the Probable Maximum Flood. On July 7, 1998, the Commission issued a Draft Environmental Assessment (DEA) that addressed the environmental effects of this proposed amendment. Numerous comments were received from state and federal agencies and non-governmental organizations; some of these entities have intervened in this proceeding.

A site visit to the project facilities is scheduled for November 3, 1998. The purpose of this site visit is for staff and interested persons to observe the existing area resources and site conditions and for staff to gather any information on resources at issue. All entities interested in accompanying staff on the site visit need to provide their own transportation to the project facilities. Access to the facilities may require 4-wheel drive vehicles due to inclement weather conditions. Water access to various site features would require boats.

The site visit will begin at the project powerhouse on Kenai Lake at 10:00 AM. The powerhouse is located on Snug Harbor Road. From Anchorage take the Seward Highway (Route 1) to its intersection with Route 9; continue on Route 1 towards Soldotna; after crossing the Kenai River take an immediate left on to Snug Harbor Road and just before an uphill grade take a left on to a gated road to the powerhouse on Kenai Lake.

Further, the staff is intending to conduct a public meeting on the Cooper Lake Project in Anchorage, Alaska in December. A public notice providing details on this meeting will be issued by the Commission.

Those intending to go on the site visit should contact either John K. Novak at (202) 219–2828 of Commission staff or Burke Wick of Chugach Electric Association at (907) 762–4779 by October 29, 1998, for any further details.

David P. Boergers,

Secretary.

[FR Doc. 98–28333 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–127–000]

Cove Point LNG Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

October 16, 1998.

Take notice that on October 13, 1998, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective April 1, 1998:

Fifth Revised Sheet No. 7

Cove Point states that the listed tariff sheet sets forth an adjustment to its retainage percentage for quantities of LNG carried-over in accordance with Section 5(h) of the Cove Point Tariff pursuant to Section 1.37 of the General Terms and Conditions of the Cove Point Tariff.

Cove Point states that copies of the filing were served upon Cove Point's affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–28342 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–22–001]

Dynegy Midstream Pipeline, Inc., Notice of Tariff Filing

October 16, 1998.

Take notice that on October 13, 1998, Dynegy Midstream Pipeline, Inc. (DMP), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

First Revised Sheet No. 68

DMP states that it is submitting this sheet to correct a tariff sheet numbering error made in its filing on October 1, 1998, to incorporate the GISB intra-day standards adopted by Order No. 587–H into its tariff. DMP proposes the same November 1, 1998 effective date for this sheet as the other sheets filed on October 1.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–28339 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TN99–1–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 16, 1998.

Take notice that on October 13, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff. First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date or November 1, 1998.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–28341 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–11–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

October 16, 1998.

Take notice that on October 9, 1998, Northern Natural Gas (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–11–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade the Farley #1 TBS existing delivery point and appurtenant facilities located in Dubuque County, Iowa, to accommodate natural gas deliveries to UtiliCorp United, Inc. (UCU) under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to 18 CFR Part 157, Subpart F 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.

Northern states that it requests authorization to upgrade the existing delivery point to accommodate natural gas deliveries to UCU under currently effective throughput service agreement(s). Northern asserts that UCU has requested the proposed upgrade to provide additional natural gas service to the Farley #1#1 TBS for redelivery to a grain dryer. It is further stated that the estimated incremental volumes proposed to be delivered to UCU at this delivery point is 171 MMBtu on a peak day and 19,276 MMBtu on an annual basis. Northern states that the estimated cost to upgrade the existing delivery point is $7,000. Northern further states that UCU would reimburse Northern for the total cost to upgrade the existing delivery point.

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) 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 be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–28331 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–12–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

October 16, 1998.

Take notice that on October 9, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–12–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205,

157.212, 157.216) for authorization to abandon certain regulating facilities in conjunction with the change in operation of an existing delivery point Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states it is currently authorized to deliver natural gas to Alabama Gas Corporation (Alagasco) at Southern's Anniston #3 Delivery Point (Anniston #3) as specified under Exhibit B to the Firm Service Agreements between Southern and Alagasco. Anniston #3 is located at or near Milepost 371.641 on Southern's 20-inch North Main Line in Section 32, Township 16 South, Range 7 East, Calhoun County, Alabama. Specifically, Southern proposes to abandon the regulating facilities and relief valve, isolation valves, and header at Anniston #3, and to install four 6-inch regulators, one 6-inch meter run, six 6-inch ball valves and one 12-inch header. As a result of these modifications the meter station at the delivery point will be redesigned to deliver gas to Alagasco at a minimum contract pressure of 200 psig during the period April 1 through September 30 of each year and at a minimum contract pressure of 250 psig during the period October 1 through March 31 of each year. Alagasco agrees that it shall be responsible for any necessary regulation or modification to its facilities downstream of the station to receive the gas at the contract pressures described in this paragraph.

Southern states that the abandonment of facilities proposed in this application will not result in any termination of service, and that said changes will not result in a change in the total Firm Transportation Demand delivered to Alagasco. Further, Southern states that (1) the revised delivery pressure will not cause a detriment or disadvantage to its other firm customers; (2) deliveries at the revised delivery pressure will have no impact on Southern's peak day and annual deliveries; and (3) the abandonment and delivery pressure change are not prohibited by any existing tariff of Southern.

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. 98–28332 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–99–005]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 16, 1998.

Take notice that on October 14, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing to become part its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, with an effective date of August 1, 1998:

2nd Substitute Original Sheet No. 232

Tennessee states that the revised tariff sheet is filed in compliance with the Commission's September 29, 1998 Order in the above-referenced docket. Tennessee Gas Pipeline Company, 84 FERC ¶ 61,335 (1998). Tennessee states that the revised tariff sheet incorporates certain clarifications to its proposed Rate Schedule FT–BH under which Tennessee proposes to provide a new type of firm backhaul transportation service in addition to the firm backhaul service currently available under Tennessee's Rate Schedules FT–G, FT–GS, and FT–A and the General Terms and Conditions affected thereby. In accordance with the September 29 Order, Tennessee requests that the tariff sheet be deemed effective on August 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–28336 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–809–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 16, 1998.

Take notice that on September 30, 1998, Texas Gas Transmission Corporation (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed a request with the Commission in Docket No. CP98–809–000, pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by removal the Stanolind Oil & Gas Corporation Meter Station (meter station) located on Texas Gas' Eunice-Woodlawn Line in Jefferson Davis Parish, Louisiana authorized in blanket certificate issued in Docket No. CP92–407–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas reports that on April 24, 1997, Texas Gas received approval in Docket No. CP98–288–000 to abandon the transportation service for ANR authorized in Docket No. G–10295. With the abandonment of the transportation service, the meter station is no longer needed. The meter station was constructed by Texas Gas to receive gas for the account of American Louisiana Pine Line Company, now ANR Pipeline Company (ANR), which was being produced from Stanolind's acreage in the South Elton and transport the gas to points of interconnection between the systems of Texas Gas and American Louisiana. Texas Gas further reports that the facilities to be removed consist of a 4″-meter run, measurement building and related equipment. Texas Gas has estimated the cost of removal to be $500.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, filed 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 NGA (18 CFR 157.205) a protest to the

request. If no protest is filed within the allowed time 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 NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–28330 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–000]

Viking Gas Transmission Company; Notice of Informal Settlement Conference

October 16, 1998.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, October 28, 1998, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or John P. Roddy at (202) 208–0053.

David P. Boergers,

Secretary.

[FR Doc. 98–28337 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–87–000]

Westgas Interstate, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 16, 1998.

Take notice that on October 13, 1998, WestGas InterState, Inc. (WGI), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, effective November 2, 1998:

Third Revised Sheet No. 40
First Revised Sheet No. 40A
Second Revised Sheet No. 46
First Revised Sheet No. 46A
First Revised Sheet No. 46B
Second Revised Sheet No. 92

WGI states that the purpose of this compliance filing is to conform its tariff to requirements of Order No. 587–H.

WGI further states that copies of this filing have been served on WGI's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–28340 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–109–015]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 16, 1998.

Take notice that on October 13, 1998, Williams Natural Gas Company, now known as Williams Gas Pipelines Central, Inc. (Williams) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Second Substitute First Revised Sixth Revised Sheet No. 6
Second Substitute First Revised Sixth Revised Sheet No. 6A
Second Substitute Sixth Revised Sheet No. 6
Second Substitute Sixth Revised Sheet No. 6A
Substitute First Revised Fifth Revised Sheet No. 6
Substitute First Revised Fifth Revised Sheet No. 6A
Second Substitute Fifth Revised Sheet No. 6
Second Substitute Fifth Revised Sheet No. 6A
Second Substitute Fourth Revised Sheet No. 6
Second Substitute Fourth Revised Sheet No. 6A
Second Substitute First Revised Third Revised Sheet No. 6
Second Substitute First Revised Third Revised Sheet No. 6A
Second Substitute Third Revised Sheet No. 6
Second Substitute Third Revised Sheet No. 6A
Third Substitute Second Revised Sheet No. 6
Fourth Substitute Second Revised Sheet No. 6A
Fourth Substitute First Revised Sheet No. 6
Third Substitute First Revised Sheet No. 6A

Williams states that this filing is being made pursuant to letter order issued September 30, 1998 in Docket No. RP93–109–013.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–28335 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–395–001]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC GAS Tariff

October 16, 1998.

Take notice that on October 14, 1998, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original

Volume No. 1, Substitute Sixth Revised Sheet No. 4, Substitute Original Sheet No. 47B and Substitute Original Sheet No. 52A to be effective October 5, 1998.

Young states that the purpose of this compliance filing is to conform Young's tariff to requirements of the Order that issued October 1, 1998 in Docket No. RP98–395–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–28338 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–3–000, et al.]

Cook Inlet Energy Supply Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

October 14, 1998.

Take notice that the following filings have been made with the Commission:

1. Cook Inlet Energy Supply Limited Partnership

[Docket No. EC99–3–000]

Take notice that on October 8, 1998, Cook Inlet Energy Supply Limited Partnership (Cook Inlet) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization of a transaction that changed the ownership interests in Cook Inlet.

Comment date: November 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Municipal Electric Agency v. Illinois Power Company

[Docket No. EL99–2–000]

Take notice that on October 7, 1998, Illinois Municipal Electric Agency (IMEA) filed an Application for an Expedited Order directing Illinois Power Company (IP) to permit IMEA to establish a physical connection between IP's transmission system near its East Collinsville Substation and IMEA's under-construction transmission line from the City of Highland, Illinois (Highland).

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint are also due on or before November 13, 1998.

3. Chicago Electric Trading, LLC; Mid-Power Service Corp.; Power Exchange Corporation; Kaztex Energy Ventures, Inc.; NAP Trading and Marketing, Inc.; Vanpower, Inc.; Energy Transfer Group; EMC Gas Transmission Company; NW Natural

[Docket Nos. ER90–225–034; ER94–1329–017; ER95–72–013; ER95–295–016; ER95–1278–008; ER96–552–011; ER96–280–011; ER96–2320–009; and ER97–683–003]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Public Reference Room.

On October 5, 1998, Chicago Electric Trading, LLC, filed certain information as required by the Commission's April 19, 1990 order in Docket No. ER90–225–000.

On October 5, 1998, Mid-Power Service Corp. filed certain information as required by the Commission's August 11, 1994 letter order in Docket No. ER94–1329–000.

On October 5, 1998, Power Exchange Corporation filed certain information as required by the Commission's February 1, 1995 letter order in Docket No. ER95–72–000.

On October 5, 1998, Kaztex Energy Ventures, Inc. filed certain information as required by the Commission's February 24, 1995 letter order in Docket No. ER95–295–000.

On October 5, 1998, NAP Trading and Marketing, Inc. filed certain information as required by the Commission's October 25, 1995 letter order in Docket No. ER95–1278–000.

On October 6, 1998, Vanpower, Inc. filed certain information as required by the Commission's January 19, 1996 order in Docket No. ER96–552–000.

On October 6, 1998, Energy Transfer Group, L.L.C. filed certain information as required by the Commission's January 29, 1996 letter order in Docket No. ER96–280–000.

On October 1, 1998, EMC Gas Transmission Company filed certain information as required by the Commission's September 3, 1996 letter order in Docket No. ER96–2320–000.

On October 5, 1998, NW Natural filed certain information as required by the Commission's February 6, 1997 order in Docket No. ER97–683–000.

4. Intercoast Power Marketing Company; New Jersey Natural Energy Company; Central Hudson Gas & Electric Corporation; ICPM, Inc.; Southwood 2000, Inc.

[Docket Nos. ER94–6–011; ER96–2627–007; ER99–73–000; ER95–640–013; and ER98–2603–001]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room.

On October 7, 1998, Intercoast Power Marketing Company filed certain information as required by the Commission's August 19, 1994 order in Docket No. ER94–6–000.

On October 7, 1998, New Jersey Natural Energy Company filed certain information as required by the Commission's October 2, 1996 letter order in Docket No. ER96–2627–000.

On October 7, 1998, Central Hudson Gas & Electric Corporation filed certain information as required by the Commission's June 26, 1997 order in Docket No. ER97–2872–000.

On October 8, 1998, ICPM, Inc. filed certain information as required by the Commission's March 31, 1995 order in Docket No. ER95–640–000.

On October 9, 1998, Southwood 2000, Inc. filed certain information as required by the Commission's June 12, 1998 order in Docket No. ER98–2603–000.

5. Energy Sales Network, Incorporated; Illinois Power Company; Quark Power L.L.C.; Total Gas & Electric, Inc.; Salem Electric, Inc.; Agway Energy Services; Con Edison Solutions, Inc.

[Docket Nos. ER98–753–004; ER99–26–000; ER97–2374–006; ER97–4202–005; ER98–2175–002; ER97–4186–004; and ER97–705–006]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Public Reference Room.

On October 1, 1998, Energy Sales Network, Incorporated filed certain information as required by the Commission's January 2, 1998 order in Docket No. ER98–753–000.

On October 1, 1998, Illinois Power Company filed certain information as required by the Commission's December 26, 1995 order in Docket No. ER96–185–000.

On October 2 and October 7, 1998, Quark Power L.L.C. filed certain information as required by the

Commission's June 6, 1997 order in Docket No. ER97–2374–000.

On October 5, 1998, Total Gas & Electric, Inc. filed certain information as required by the Commission's September 26, 1997 order in Docket No. ER97–4202–000.

On October 5, 1998, Salem Electric, Inc. filed certain information as required by the Commission's April 30, 1998 order in Docket No. ER98–2175–000.

On October 5, 1998, Agway Energy Services, Inc. filed certain information as required by the Commission's September 26, 1997 order in Docket No. ER97–4186–000.

On October 6, 1998, Con Edison Solutions, Inc. filed certain information as required by the Commission's March 14, 1997 order in Docket No. ER97–705–000.

6. New England Power Company

[Docket No. ER98–4690–000]

Take notice that on October 8, 1998, New England Power Company (NEP), tendered for filing a Second Amendment to its FERC Rate Schedule No. 382, NEP's Unit Power Contract with UNITIL Power Corporation.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER99–66–000]

Take notice that on October 8, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated January 16, 1998 with Electric Clearinghouse, Inc. (ECI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of November 1, 1998, for the Agreement.

PECO states that copies of this filing have been supplied to ECI and to the Pennsylvania Public Utility Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER99–67–000]

Take notice that on October 8, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Firm Transmission Service Agreement between WPSC and Manitowoc Public Utilities, providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date to make agreement effective on the date of execution by WPSC, October 1, 1998.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER99–68–000]

Take notice that on October 8, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 18, 1998, between KCPL and Cargill-Alliant LLC. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

KCPL proposes an effective date of September 29, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER99–69–000]

Take notice that on October 8, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 18, 1998, between KCPL and Cargill-Alliant, LLC. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

KCPL proposes an effective date of September 29, 1998, and requests waiver of the Commission's notice requirement.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER99–70–000]

Take notice that on October 8, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 et seq., a Transaction Letter dated August 25, 1998 with PG&E Energy Trading-Power, LP (PGET), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of September 1, 1998, for the Transaction Letter.

PECO states that copies of this filing have been supplied to PGET and to the Pennsylvania Public Utility Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER99–71–000]

Take notice that on October 8, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreements between Virginia Electric and Power Company and Con Edison Energy, Inc., Con Edison Solutions, Inc., and GPU Advance Resources, Inc., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Under the tendered Service Agreements, Virginia Power will provide services to Con Edison Energy, Inc., Con Edison Solutions, Inc., and GPU Advance Resources, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff.

Copies of the filing were served upon Con Edison Energy, Inc., Con Edison Solutions, Inc., and GPU Advance Resources, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Energy, Inc.

[Docket No. ER99–72–000]

Take notice that on October 8, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Public Utility District No. 2 of Grant County (Grant), as Transmission Customer. A copy of the filing was served upon Grant.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER99–74–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and NYSEG Solutions, Inc. This Transmission

Service Agreement specifies that NYSEG Solutions, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and NYSEG Solutions, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for NYSEG Solutions, Inc., as the parties may mutually agree.

NMPC requests an effective date of October 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and NYSEG Solutions, Inc.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER99–75–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and NYSEG Solutions, Inc. This Transmission Service Agreement specifies that NYSEG Solutions, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and NYSEG Solutions, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for NYSEG Solutions, Inc., as the parties may mutually agree.

NMPC requests an effective date of October 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and NYSEG Solutions, Inc.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99–76–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Green Island Power Authority. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Green Island Power Authority and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER99–77–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Indeck Ilion Limited Partnership. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Indeck Ilion Limited Partnership and the New York Public Service Commission.

Comment date: October 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER99–78–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for American Electric Power Service Corp. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon American Electric Power Service Corp., and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER99–79–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for New Energy Ventures—East, LLC. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon New Energy Ventures—East, LLC, and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER99–88–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Agway Energy Service. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Agway Energy Service and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER99–89–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services

Tariff for City of Watertown. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon City of Watertown and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER99–90–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Indeck Olean Limited Partnership. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Indeck Olean Limited Partnership and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corporation

[Docket No. ER99–91–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Citizens Lehman Power Sales. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Citizens Lehman Power Sales and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER99–92–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for City of Salamanca. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon City of Salamanca and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Niagara Mohawk Power Corporation

[Docket No. ER99–93–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for American Energy Solutions, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon American Energy Solutions, Inc., and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER99–94–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Cinergy Service. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Cinergy Service and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Niagara Mohawk Power Corporation

[Docket No. ER99–102–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Morgan Stanley Capital Group, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Morgan Stanley Capital Group, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Niagara Mohawk Power Corporation

[Docket No. ER99–103–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for GPU Energy. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon GPU Energy and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Niagara Mohawk Power Corporation

[Docket No. ER99–104–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for FirstEnergy Corp. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon FirstEnergy Corp., and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Niagara Mohawk Power Corporation

[Docket No. ER99–105–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Washington Electric Cooperative, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Washington Electric Cooperative, Inc., and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Niagara Mohawk Power Corporation

[Docket No. ER99–106–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Green Mountain Power Corp. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Green Mountain Power Corp., and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Niagara Mohawk Power Corporation

[Docket No. ER99–107–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Hydro Quebec Energy Services, US. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Hydro Quebec Energy Services, US, and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Niagara Mohawk Power Corporation

[Docket No. ER99–108–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for AMP—Ohio, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon AMP—Ohio, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Niagara Mohawk Power Corporation

[Docket No. ER99–109–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Central Maine Power. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Central Maine Power and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Niagara Mohawk Power Corporation

[Docket No. ER99–110–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for PanEnergy Trading & Market Services. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon PanEnergy Trading & Market Services and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Niagara Mohawk Power Corporation

[Docket No. ER99–122–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services

Tariff for CMS Marketing, Services & Trading Company. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon CMS Marketing, Services & Trading Company and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Niagara Mohawk Power Corporation

[Docket No. ER99–123–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Ontario Hydro. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Ontario Hydro and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Niagara Mohawk Power Corporation

[Docket No. ER99–124–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Enserch Energy Services, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Enserch Energy Services, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Niagara Mohawk Power Corporation

[Docket No. ER99–125–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Southern Company Energy Marketing. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Southern Company Energy Marketing and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Niagara Mohawk Power Corporation

[Docket No. ER99–126–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for VTEC Energy, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon VTEC Energy, Inc., and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Niagara Mohawk Power Corporation

[Docket No. ER99–127–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Village of Wellsville Electric System. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Village of Wellsville Electric System and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Niagara Mohawk Power Corporation

[Docket No. ER99–128–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation, tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for PG&E Energy Trading—Power, L.P. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon PG&E Energy Trading—Power, L.P., and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Niagara Mohawk Power Corporation

[Docket No. ER99–129–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for ProMark Energy, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon ProMark Energy, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. Niagara Mohawk Power Corporation

[Docket No. ER99–130–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Public Service Electric & Gas Company. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Public Service Electric & Gas Company and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Niagara Mohawk Power Corporation

[Docket No. ER99–131–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for SCANA Energy Marketing, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon SCANA Energy Marketing, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Niagara Mohawk Power Corporation

[Docket No. ER99–132–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Village of Churchville Electric System. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Village of Churchville Electric System and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. Niagara Mohawk Power Corporation

[Docket No. ER99–133–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Village of Brockton Electric System. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Village of Brockton Electric System and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Niagara Mohawk Power Corporation

[Docket No. ER99–134–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Village of Arcade Electric System. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Village of Arcade Electric System and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. Niagara Mohawk Power Corporation

[Docket No. ER99–135–000]

Take notice that on Occtober 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Village of Andover Electric System. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Village of Andover Electric System and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. Niagara Mohawk Power Corporation

[Docket No. ER99–136–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Entergy Power Marketing Corp. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Entergy Power Marketing Corp. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Niagara Mohawk Power Corporation

[Docket No. ER99–137–000]

Take notice that On October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Engage Energy US, LP. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Engage Energy US, LP, and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. Niagara Mohawk Power Corporation

[Docket No. ER99–138–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Delmarva Power & Light Company. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Delmarva Power & Light Company and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

53. Niagara Mohawk Power Corporation

[Docket No. ER99–139–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for North American Energy Conservation, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon North American Energy Conservation, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

54. Niagara Mohawk Power Corporation

[Docket No. ER99–140–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Advantage Energy, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Advantage Energy, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

55. Niagara Mohawk Power Corporation

[Docket No. ER99–141–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Constellation Power Source, Inc. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Constellation Power Source, Inc. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

56. Niagara Mohawk Power Corporation

[Docket No. ER99–142–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Sonat Power Marketing, L.P. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Sonat Power Marketing, L.P. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

57. Niagara Mohawk Power Corporation

[Docket No. ER99–143–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Waste Management of New Hampshire. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Waste Management of New Hampshire and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

58. Niagara Mohawk Power Corporation

[Docket No. ER99–144–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for TransCanada Power Corp. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic

incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon TransCanada Power Corp. and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

59. Niagara Mohawk Power Corporation

[Docket No. ER99–145–000]

Take notice that on October 8, 1998, Niagara Mohawk Power Corporation tendered for filing an unsigned pro forma Service Agreement for Niagara Mohawk Power Corporation's Scheduling and Balancing Services Tariff for Strategic Energy Limited. This Service Agreement implements the terms of the proposed Tariff, which would establish a system of economic incentives designed to induce users of Niagara Mohawk's electric transmission system to match actual deliveries of electricity to delivery schedules provided under Niagara Mohawk's Open Access Transmission Tariff (OATT).

A copy of the filing was served upon Strategic Energy Limited and the New York Public Service Commission.

Comment date: October 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

60. Western Resources, Inc.

[Docket No. ES99–1–000]

Take notice that on October 1, 1998, Western Resources, Inc. (Western Resources), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, to issue not more than $1.5 billion in short term securities on or before December 31, 2000, with a final maturity date no later than December 31, 2001.

Comment date: October 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

61. Kansas Gas and Electric Company

[Docket No. ES99–2–000]

Take notice that on October 1, 1998, Kansas Gas and Electric Company (KG&E), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, to issue not more than $500 million in short term securities on or before December 31, 2000, with a final maturity date no later than December 31, 2001.

Comment date: October 27, 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. 98–28329 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2674–003–VT]

Green Mountain Power Corporation; Notice of Availability of Environmental Assessment

October 16, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Vergennes Hydroelectric Project, located in the city of Vergennes, Addison County, Vermont, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental effects of the existing project and has concluded that approval of the project, as proposed with additional staff-recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Room 1–A, Washington, D.C. 20426. Please affix ''Vergennes Hydroelectric Project No. 2674'' to the top page of all comments. For questions concerning preparation of the EA for this proposed action, please contact Lee Emery, E-mail address, lee.emery@ferc.fed.us, or telephone (202) 219–2779, Federal Energy Regulatory Commission, Office of Hydropower Licensing.

David P. Boergers,

Secretary.

[FR Doc. 98–28334 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–750–000]

Valero Natural Gas Pipeline Company; Notice of Corporate Name Change

October 19, 1998.

On October 13, 1998, Mobil Natural Gas Pipeline Company (MNGPC) made a filing formally notifying the Commission of the change in its corporate name to Valero Natural Gas Company (VNGPC). By this notice, the certificate issued to MNGPC in the above-docketed proceeding is hereby redesignated to reflect the change in name to VNGPC.

Given that MNGPC was not obligated to file a tariff, no new tariff sheets are necessary to reflect the change in corporate name.

David P. Boergers,

Secretary.

[FR Doc. 98–28328 Filed 10–21–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6178–9]

National Drinking Water Advisory Council Right-to-Know Working Group; Notice of Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a conference call of

the Right-to-Know Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (U.S.C. S300f *et seq.*), will be held on November 4, 1998, from 1–4 p.m., EST. The call will be held at the U.S. Environmental Protection Agency, 401 M Street, S.W., Room 1209 East Tower, Washington, D.C., 20460. The call is open to the public, but seating will be limited.

The purpose of this call is to agree on recommendations of the Right-to-Know Working Group to the NDWAC at its November 17–18, 1998, meeting. The Working Group met September 24–25, 1998, to analyze the public information and public involvement provisions in the Safe Drinking Water Act as Amended in 1996, and to identify products to recommend to the NDWAC through which EPA, States, water suppliers, and others could inform stakeholders and the public about the provisions, and suggest ways to assure that the provisions achieve the intent of the 1996 Amendments. Statements from the public will be taken on this call as time allows.

For more information, please contact Marjorie Jones, designated Federal Officer, Right-to-Know Working Group, U.S. EPA, Office of Ground Water and Drinking Water, Mail Code 4601, 401 M Street SW, Washington, D.C. 20460. The telephone number is 202/260–4152 and the e-mail address is *jones.marjorie@epa.gov*.

Dated: October 13, 1998.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98–28363 Filed 10–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6179–2]

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act: JIS Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Administrative Settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an ''CERCLA section 122(h) Agreement for Recovery of Past Response Costs'' to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of the below listed parties for costs incurred by EPA at the JIS Landfill Superfund Site.

DATES: Comments must be provided on or before November 23, 1998.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, office of Regional Counsel, New Jersey Superfund Branch, 17th Floor, New York, New York 10007-1866 and should refer to: In the Matter of: JIS Landfill Superfund Site, U.S. EPA Index No. II-CERCLA–98–0114.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 17th Floor, New York, New York 10007–1866. Attention: Denise Finn, Esq., (212) 637–3135.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the JIS Landfill Superfund Site which is located in South Brunswick Township, Middlesex County, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The BASF Corporation, Cities Services Company, Columbian Chemicals Company, Frederick H. Levey Co., OXY USA, Inc., Occidental Petroleum Co., Delco Remy, a division of General Motors Corp., American Standard, Inc. (representing the interest of General Electric, Co. at the JIS Landfill Superfund Site), Shell Oil Co., E.R. Squibb & Sons, Inc., Jefferson Smurfit Corporation, and Patterson Sargent Company, A Division of Textron, Inc. are committed to participate in this settlement. The Settling Parties will pay a total of $375,000 under this agreement to reimburse EPA for response costs incurred at the JIS Landfill Superfund Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway, 17th Floor, New York, New York 10007–1866.

Dated: September 24, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 98–28364 Filed 10–21–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 15, 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 November 23, 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: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CC Doc. No. 92–90).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 30,000.

Estimated Time Per Response: 31.2 hours (avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 936,000 hours.

Cost to Respondents: None.

Needs and Uses: In CC Docket No. 92–90, the FCC implemented final rules pursuant to the requirements of the Telephone Consumer Protection Act of 1991, Public Law 102–243, Dec. 20, 1991 (TCPA) which added Section 227 to the Communications Act of 1934, as amended, to restrict the use of automatic telephone dialing systems, artificial or prerecorded messages, facsimile machines or other devices to send unsolicited advertisements. The rules require that telephone solicitors maintain and use company-specific lists of residential subscribers who request not to receive further telephone calls (company-specific do-not-call lists), thereby affording consumers the choice of which solicitors if any, they will hear from by telephone. Telephone solicitors also are required to have a written policy for maintaining do-not-call lists, and are responsible for informing and training their personnel in the existence and use of such lists. The rules require that those making telephone solicitations identify themselves to called parties, and that basic identifying information also be included in telephone facsimile transactions. The Commission believes that these rules are the best means of preventing unwanted telephone solicitations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28315 Filed 10–21–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 16, 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 November 23, 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: 3060–0168.

Title: Section 43.43, Reports of Proposed Changes in Depreciation Rates.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11.

Estimated Time Per Response: 6,000 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 66,000 hours.

Cost to Respondents: None.

Needs and Uses: Section 220(b) of the Communications Act of 1934 (the Act), as amended (47 U.S.C. Section 220(b)), states that the FCC may prescribe depreciation charges for the subject carriers. Section 219 of the Act requires annual and other reports from the carriers. Section 43.43 of the Commission's Rules (47 C.F.R. Section 43.43) establishes the reporting requirements for depreciation prescription purposes. Communication common carriers with annual operating revenues of $112 million or more that the Commission has found to be dominant must file information specified in § 43.43 before making any change in the depreciation rates applicable to their operating plant. Section 220 also allows the Commission, in its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the Act, including the accounts, records, and memoranda of the movement of traffic, as well as receipts and expenditures of monies.

The Communication Act, as amended, seeks to develop efficient competition by opening all telecommunications markets through a pro-competitive, deregulatory national policy framework. To that end, Section 11 of the Act requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications service to determine whether the regulations are no longer necessary in the public interest as a result of meaningful economic competition between providers of such service and whether such regulations should be repealed or modified.

In the attached NPRM, the Commission proposes to reduce or streamline further our depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent LECs, provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission, expanding the prescribed range for the digital switching plant account, and eliminating salvage from the depreciation process. We also seek comment on whether we should permit carriers to set their own depreciation rates if they are willing to waive the automatic low-end adjustment. These proposed modifications are designed to minimize the reporting burden on carriers and to provide incumbent LECs with a greater flexibility to adjust their depreciation rates while allowing the commission to maintain adequate oversight.

If we remove net salvage from the depreciation process, we should create a new account 6566, Net cost of removal, to record both salvage receipts

and removal costs incurred. We also tentatively conclude that we revise §§ 32.3100, Accumulated depreciation, and 32.2000, Instructions for telecommunications plant accounts, to eliminate the provisions that salvage and cost removal be recorded in the depreciation reserve account. We also request comment on whether we should require carriers to keep subsidiary record categories in Account 6566 for salvage and cost of removal. If adopted, these proposals may have an impact on OMB control number 3060–0370. However, at this time we do not believe that the impact will be significant.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28316 Filed 10–21–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–121; FCC 98–271]

Application by BellSouth Corporation, et al. to Provide In-Region, InterLATA Services in Louisiana

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Memorandum Opinion and Order (Order) in CC Docket No. 98–121 concludes that BellSouth Corporation, et al. (BellSouth) has not satisfied the requirements of section 271(c)(1) of the Communications Act of 1934, as amended (Act). The Commission therefore denies BellSouth's application to provide in-region interLATA services in Louisiana. The Order declines to grant BellSouth authority to provide in-region, interLATA services in Louisiana.

EFFECTIVE DATE: October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or William Bailey, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580 or via the Internet at cpabo@fcc.gov or wbailey@fcc.gov, respectively. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a brief description of the Commission's Memorandum Opinion and Order adopted and released October 13, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98271.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, D.C. 20036.

Synopsis of Order

1. *Department of Justice's Evaluation.* The Department of Justice recommends that BellSouth's application for entry into the long distance market in Louisiana be denied. The Department of Justice concluded that, despite a number of encouraging improvements since its earlier applications in South Carolina and Louisiana, the Louisiana market is not fully and irreversibly open to competition, and that BellSouth has failed to demonstrate that it is offering access and interconnection that satisfy the requirements of the competitive checklist.

2. *State Verification of Compliance with Section 271(c).* The Louisiana Commission voted to approve and support BellSouth's second application to enter the long distance market in Louisiana. Unlike the process it followed when BellSouth filed its first application, the Louisiana Commission did not compile an evidentiary record or conduct a formal proceeding to determine whether BellSouth's revised application complies with section 271 of the Act. Thus, there is no record evidence submitted by the state commission to show whether BellSouth has implemented changes in response to our previous Louisiana order.

3. *Track A: Broadband PCS and Wireline.* We conclude that the broadband PCS services at issue here satisfy the statutory definition of ''telephone exchange service'' for purposes of Track A, and therefore, may serve as the basis for a qualifying application under Track A. Based on the facts presented in this application, however, BellSouth has not shown that broadband PCS is a *substitute* for the wireline telephone service offered by BellSouth in Louisiana. We also discuss whether BellSouth demonstrates that it satisfies the requirements of Track A based on its implemented agreements with wireline competitive LECs.

4. *Checklist—General.* We conclude that, in any future application for section 271 approval in Louisiana, BellSouth may incorporate by reference its prior showing on checklist items we deem satisfied in this Order. BellSouth must also certify that its actions and performance at the time of any future application are consistent with the showing it incorporates by reference. We hope this new certification option will enable BOCs to focus their energies on quickly satisfying the remaining statutory requirements and thereby expedite the local market-opening process by which BOCs may obtain approval to provide in-region long distance service.

5. *Checklist Item 1—Interconnection.* BellSouth does not satisfy the requirements of checklist item (i). Pursuant to this checklist item, BellSouth must allow other carriers to link their networks to its network for the mutual exchange of traffic. To do so, BellSouth must permit carriers to use any available method of interconnection at any available point in BellSouth's network. For the reasons stated in the *BellSouth South Carolina Order*, 63 FR 78, January 2, 1998, we find BellSouth's collocation offering insufficient. Furthermore, interconnection between networks must be equal in quality whether the interconnection is between BellSouth and an affiliate, or between BellSouth and another carrier. BellSouth also does not show that it provides interconnection that meets this standard.

6. *Checklist Item 2—Access to Unbundled Network Elements.* BellSouth does not satisfy the requirements of checklist item (ii). The telephone network is comprised of individual network elements. In order to provide ''access'' to an unbundled network element, for purposes of the checklist, BellSouth must provide a connection to the network element at any technically feasible point under rates, terms, and conditions that are just, reasonable, and nondiscriminatory. To fulfill the nondiscrimination obligation under checklist item (ii), BellSouth must provide access to its operations support systems, meaning the information, systems, and personnel necessary to support the elements and services. This is important because access to BellSouth's operations support systems provides new entrants with the ability to order service for their customers and allows new entrants to communicate effectively with BellSouth regarding such basic activities as placing orders and providing repair and maintenance service for customers. BellSouth does not demonstrate that its operation support systems enable other carriers to connect electronically to its pre-ordering and ordering functions, thus placing those carriers at a competitive disadvantage relative to BellSouth's own retail operation. Although BellSouth has made some progress in addressing deficiencies in its operations support systems, it has failed to address successfully other problems

that we specifically identified in previous orders as critical for nondiscriminatory access.

7. In addition, BellSouth must provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Other carriers are entitled to request any ''technically feasible'' method for combining network elements. As we held in the *BellSouth South Carolina Order*, BellSouth has failed to demonstrate that it can provide nondiscriminatory access to unbundled elements through the one method it identifies for such access, collocation.

8. *Checklist Item 3—Access to Poles, Ducts, Conduits, and Rights-of-Way.* BellSouth satisfies the requirements of checklist item (iii). Telephone company wires must be attached to, or pass through, poles, ducts, conduits, and rights-of-way. In order to fulfill the nondiscrimination obligation under checklist item (iii), BellSouth must show that other carriers can obtain access to its poles, ducts, conduits, and rights-of-way within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, and consistent with fair and efficient practices. Failure by BellSouth to provide such access may prevent other carriers from serving certain customers. BellSouth demonstrates that it has established nondiscriminatory procedures for access to poles, ducts, conduits, and rights-of-way.

9. *Checklist Item 4—Unbundled Local Loops.* BellSouth does not satisfy the requirements of checklist item (iv). Local loops are the wires, poles, and conduits that connect the telephone company end office to the customer's home or business. To satisfy the nondiscrimination requirement under checklist item (iv), BellSouth must demonstrate that it can efficiently furnish unbundled loops to other carriers within a reasonable time frame, with a minimum level of service disruption, and at the same level of service quality it provides to its own customers. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business. BellSouth does not provide evidence, such as meaningful performance data, that it can efficiently furnish loops to other carriers in a nondiscriminatory manner.

10. *Checklist Item 5—Unbundled Local Transport.* But for deficiencies in its operations support systems, BellSouth would satisfy the requirements of checklist item (v). Transport facilities are the trunks that connect different switches within BellSouth's network or those switches with long distance carriers' facilities. This checklist item requires BellSouth to provide other carriers with transmission links that are dedicated to the use of that carrier as well as links that are shared with other carriers, including BellSouth. Nondiscriminatory access to transport ensures that consumer calls travelling over other carriers' lines are completed properly. Although BellSouth demonstrates that it provides transport on terms and conditions consistent with our regulations, it does not provide evidence, such as meaningful performance data, that it provides nondiscriminatory access to operations support systems for the purpose of providing transport facilities.

11. *Checklist Item 6—Unbundled Local Switching.* BellSouth does not satisfy the requirements of checklist item (vi). A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with ''vertical features'' such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services. We find that BellSouth does not satisfy the requirements of checklist item (vi), because BellSouth does not show that it provides all of the features, functions, and capabilities of the switch.

12. *Checklist Item 7—911 and E911 Services, Operator Services, and Directory Assistance.* BellSouth satisfies the requirements of checklist item (vii)(I), regarding 911 and E911 services. 911 and E911 services transmit calls from end users to emergency personnel. It is critical that BellSouth provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. We previously concluded in the *BellSouth South Carolina Order* that BellSouth met the requirements of this checklist item. BellSouth demonstrates that it continues to meet the statutory requirements as described in the *BellSouth South Carolina Order.*

13. BellSouth does not satisfy the requirements of checklist item (vii)(II) and (vii)(III), regarding provision of nondiscriminatory access to directory assistance and operator services. Customers use directory assistance and operator services to obtain customer listing information and other call completion services. BellSouth does not demonstrate that it provides other carriers with the same access to these services that it provides to itself.

14. *Checklist Item 8—White Pages Directory Listings.* BellSouth satisfies the requirements of checklist item (viii). White pages are the directory listings of telephone numbers of residences and businesses in a particular area. This checklist item ensures that white pages listings for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider. BellSouth demonstrates that its provision of white page listings to customers of competitive LECs is nondiscriminatory in terms of their appearance and integration, and that it provides white page listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.

15. *Checklist Item 9—Numbering Administration.* BellSouth satisfies the requirements of checklist item (ix). Telephone numbers are currently assigned to telecommunications carriers based on the first three digits of the local number known as ''NXX'' codes. To fulfill the nondiscrimination obligation in checklist item (ix), BellSouth must provide other carriers with the same access to new NXX codes within an area code that BellSouth enjoys. This checklist item ensures that other carriers have the same access to new telephone numbers as BellSouth. BellSouth demonstrates that, in acting as the code administrator, it has adhered to industry guidelines and the Commission's requirements under section 251(b)(3).

16. *Checklist Item 10—Databases and Associated Signaling.* BellSouth satisfies the requirements of checklist item (x). Databases and associated signaling refer to the call-related databases and signaling systems that are used for billing and collection or the transmission, routing, or other provision of a telecommunications service. To fulfill the nondiscrimination obligation in checklist item (x), BellSouth must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that other carriers have the same ability to transmit, route, complete and bill for telephone calls as BellSouth. BellSouth demonstrates that it provides other carriers nondiscriminatory access to its: (1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical

access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems.

17. *Checklist Item 11—Number Portability*. BellSouth does not satisfy the requirements of checklist item (xi). Number portability enables consumers to take their phone number with them when they change local telephone companies. BellSouth does not sufficiently demonstrate that it provides number portability to competing carriers in a reasonable timeframe. A failure to provide timely number portability prevents a customer from receiving incoming calls for a period of time after switching from BellSouth to a competing carrier.

18. *Checklist Item 12—Local Dialing Parity*. BellSouth satisfies the requirements of checklist item (xii). Local dialing parity permits customers to make local calls in the same manner regardless of the identity of their carrier. To fulfill the nondiscrimination obligation in checklist item (xii), BellSouth must establish that customers of another carrier are able to dial the same number of digits to make a local telephone call. In addition, the dialing delay experienced by the customers of another carrier should not be greater than that experienced by customers of BellSouth. This checklist item ensures that consumers are not inconvenienced in how they make calls simply because they subscribe to a carrier other than BellSouth for local telephone service. BellSouth demonstrates that customers of other carriers are able to dial the same number of digits that BellSouth's customers dial to complete a local telephone call, and that these customers do not otherwise suffer inferior quality such as unreasonable dialing delays compared to BellSouth customers.

19. *Checklist Item 13—Reciprocal Compensation*. BellSouth satisfies the requirements of checklist item (xiii). Pursuant to this checklist item, BellSouth must compensate other carriers for the cost of transporting and terminating a local call from BellSouth. Alternatively, BellSouth and the other carrier may enter into an arrangement whereby neither of the two carriers charges the other for terminating local traffic that originates on the other carrier's network. This checklist item is important to ensuring that all carriers that originate calls bear the cost of terminating such calls. BellSouth demonstrates that it has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and that it is making all required payments in a timely fashion. Louisiana has not reached a final determination on the issue of a BOC's obligation to pay reciprocal compensation for traffic delivered to Internet service providers (ISPs). We do not, at this time, consider BellSouth's unwillingness to pay reciprocal compensation for traffic that is delivered to ISPs located within the same local calling area as the originating BellSouth end user in assessing whether BellSouth satisfies this checklist item. Any future grant of in-region interLATA authority under section 271 will be conditioned on compliance with decisions relating to Internet traffic in Louisiana.

20. *Checklist Item 14—Resale*. BellSouth does not satisfy the requirements of checklist item (xiv). This checklist item requires BellSouth to offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations such that other carriers may resell those services to an end user. This checklist item ensures a mode of entry into the local market for carriers that have not deployed their own facilities. BellSouth demonstrates that it offers all of its retail services for resale at wholesale rates without unreasonable or discriminatory conditions or limitations. BellSouth, however, does not show that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.

21. *Section 272 Compliance*. Although BellSouth has undertaken significant efforts to institute policies and procedures to ensure compliance with section 272, it does not meet all section 272 requirements. In particular, it does not disclose all transactions with its section 272 affiliate, which means its affiliate has superior access to information about these transactions than unaffiliated entities. In addition, it does not provide nondiscriminatory access to its operations support systems, and thereby discriminates in its provision of information to unaffiliated entities.

22. *Public Interest Standard*. We reaffirm the Commission's prior conclusion that it has broad discretion to identify and to weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest. We reaffirm the Commission's prior conclusion that we consider as part of our public interest inquiry whether approval of a section 271 application will foster competition in all relevant markets, including the local exchange market, not just the in-region, interLATA market.

23. In assessing whether the public interest will be served by granting a particular application, we will consider and balance a variety of factors in each case. For example, we would consider a BOC's agreement to submit to enforcement mechanisms in the event it falls out of compliance with agreed upon performance standards.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28365 Filed 10–21–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, October 27, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 29, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1998–20: Dr. Lenora B. Fulani and Lenora B. Fulani for President by counsel, Arthur R. Block.
Advisory Opinion 1998–21: National Republican Senatorial Committee by counsel, Craig M. Engle.
Advisory Opinion 1998–24: American Heritage Party by counsel, William J. Olson (tenatative).
Public Financing of Presidential Primary and General Election Candidates: Notice of Proposed Rulemaking.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–28518 Filed 10–20–98; 3:51 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–011375–043

Title: Trans-Atlantic Conference Agreement

Parties:

Atlantic Container Line AB
Cho Yang Shipping Co., Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Co., S.A.
DSR-Senator Lines
POL-Atlantic
Orient Overseas Container Line (UK) Ltd.
Mexican Line Limited
Hyundai Merchant Marine Co., Ltd.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Nippon Yusen Kaisha
Tecomar Limited

Synopsis: The proposed modification to the agreement extends the parties' individual service contract authority through calendar year 1999.

By Order of the Federal Maritime Commission.

Dated: October 16, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–28272 Filed 10–21–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 5, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Eatherly Family Limited Partnership, Ponca City, Oklahoma; to acquire voting shares of First Bancorp of Oklahoma, Tonkawa, Oklahoma, and thereby indirectly acquire voting shares of First National Bank of Oklahoma, Oklahoma City, Oklahoma.

2. Liggett Enterprises, LLLP, Limon, Colorado; to acquire voting shares of Big Sandy Holding Company, Limon, Colorado, and thereby indirectly acquire voting shares of First National Bank of Limon, Limon, Colorado.

Board of Governors of the Federal Reserve System, October 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28285 Filed 10–21–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Jacksonville Bancorp, Inc., Jacksonville, Florida; to become a bank holding company by acquiring The Jacksonville Bank, Jacksonville, Florida (in organization).

2. Red River Bancshares, Inc., Alexandria, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Red River Bank, Alexandria, Louisiana.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. Northpointe Bancshares, Inc., Grand Rapids Township, Michigan; to become a holding by acquiring 100 percent of the voting shares Northpointe Bank, Grand Rapids Township, Michigan.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Marquette Bancshares, Inc., Minneapolis, Minnesota; to acquire 100 percent for the voting shares of C.A.S., Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Smith Trust & Savings Bank, Morrison, Illinois; Farmers and Mechanics Bank, Galesburg, Illinois; Oelwein Bancorporation, Minneapolis, Minnesota; and thereby indirectly acquire Lakeside Credit Co., Inc., Minneapolis, Minnesota; Iowa State Savings Bank, Clinton, Iowa; First Trust & Savings Bank, Cedar Rapids, Iowa, and The First National Bank of Oelwein, Oelwein, Iowa; Wisconsin Financial Bancorporation, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First National Bank and Trust Co. of Baraboo, Baraboo, Wisconsin; and The Bank of Edgar, Edgar, Wisconsin.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lamar Trust Bancshares, Inc., Lamar, Missouri; to acquire 10 percent of the voting shares of University National Bancshares, Inc., Pittsburg, Kansas; and thereby indirectly acquire University National Bank, Pittsburg, Kansas, a de novo bank in organization.

2. University National Bancshares, Inc., Pittsburg, Kansas; to become a bank

holding company by acquiring 100 percent of the voting shares of University National Bank, Pittsburg, Kansas, a de novo bank in organization.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. South Plains Financial, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of West Texas National, Bancshares, Inc., Lockney, Texas, and thereby indirectly acquire Lockney Holding Company, Inc., Wilmington, Delaware; First National Bank, Lockney, Texas; and First State Bank, Silverton, Texas.

2. Texas Country Bancshares, Inc., Brady, Texas, and TCB Delaware, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of Knox City Bancshares, Inc., Knox City, Texas, and thereby indirectly acquire Citizens Bank, Knox City, Texas.

Board of Governors of the Federal Reserve System, October 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28286 Filed 10–21–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Warwick Community Bancorp, Inc, Warwick, New York; to acquire more than 5 percent but less than 10 percent of GSB Financial Corporation, Goshen, New York, and thereby indirectly acquire Goshen Savings Bank, Goshen, New York, and operate a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Kansas City, (Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Gold Banc Corporation, Leawood, Kansas; to acquire The Trust Company, St. Joseph, Missouri, and thereby indirectly engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, October 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28287 Filed 10–21–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File Nos. 9823162, 9823528, & 9723267]

Chrysler Corporation, Bozell Worldwide, Inc., & Martin Advertising, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreements.

SUMMARY: The three consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Rolando Berrelez or Sally Pitofsky, FTC/S–4429, Washington, DC 20580. (202) 326–3211 or 326–3318.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement packages can be obtained from the FTC Home Page (for October 15, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

Summary

The Federal Trade Commission has accepted separate agreements, subject to final approval, from Chrysler Corporation (''Chrysler'') and two advertising agencies, Bozell Worldwide, Inc. (''Bozell'') and Martin Advertising, Inc., (''Martin'') (collectively referred to as ''respondents''). Bozell is the advertising agency for Chrysler, and Martin is an advertising agency for numerous automobile dealers and dealer marketing groups.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaints allege that respondents created and disseminated autombile lease advertisements that violate the Federal Trade Commission Act (''FTC Act''), the Consumer Leasing Act (''CLA''), and Regulation M. The complaint against Martin also alleges that respondent Martin's automobile

credit advertisements violated the FTC Act, the Truth in Lending Act (''TILA''), and Regulation Z. One of Martin's advertisements was a balloon payment credit advertisement at issue in the Federal Trade Commission's enforcement action against General Motors Corporation (''GM''), Dkt. No. C–3710.

Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and TILA, respectively, and directed the Federal Reserve Board (''Board'') to promulgate regulations implementing such statutes—Regulations M and Z. *See* 15 U.S.C. §§ 1667–1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226.

I. Chrysler and Bozell

A. FTC Act Violations—Lease Advertising

1. Misrepresentation of Model Availability

The complaints against Chrysler and Bozell allege that these companies misrepresent the vehicle models available at the advertised lease terms. According to the complaints, these respondents represent that consumers can lease the Chrysler vehicles featured in respondents' advertisements at the lease terms prominently stated in the advertisements. This representation is false, according to the complaints, because the lease terms apply to Chrysler models of lesser value than the Chrysler vehicles featured in the advertisements. The complaints allege that the fine print disclosures in Chrysler and Bozell's lease advertisements, including but not limited to ''Limited model shown, higher'' are inadequate to disclaim or modify the representation. The Bozell complaint also alleges that Bozell, the advertising agency, knew or should have known that this representation was false and misleading. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

2. Failure to Provide Adequate Disclosures in Lease Advertising

The Chrysler and Bozell complaints also allege that respondents' lease advertisements represent that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not limited to the monthly payment amount. These advertisements allegedly do not adequately disclose additional terms pertaining to the lease offers, such as the total amount of any payments due at lease inception. The existence of these additional terms would be material to consumers in deciding whether to lease the advertised vehicles, according to the complaints. The Bozell complaint alleges that Bozell knew or should have known that the failure to disclosure adequately material terms was deceptive. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

Chrysler and Bozell's lease advertisements also allegely violate the CLA and Regulation M. According to the complaints, these respondents' lease advertisements state a monthly payment amount but fail to disclose clearly and conspicuously certain additional terms required by the CLA and Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation, and that such amount: (1) excludes third-party fees, such as taxes, licenses, and registration fees, and discloses that fact or (2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; and the number, amount, and timing of scheduled payments.

According to the complaints, respondents' television lease disclosures are not clear and conspicuous because they appear on the screen in very small type, for a very short duration, and/or accompanied by background sounds and images. The Chrysler and Bozell complaints, therefore, allege that these practices violate Section 184 of the CLA, 15 U.S.C. § 1667c, as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

II. Martin

A. FTC Act Violations—Lease Advertising

1. Misrepresentation of Advertised Transaction

Count I of the Martin complaint alleges that respondent's automobile lease advertisements represent that consumers can purchase the advertised vehicles by financing the vehicles though credit at the monthly payment amounts prominently stated in the advertisements. This representation is false, according to the complaint, because the monthly payment amounts stated in respondent's lease advertisements are components of lease offers and not credit offers. Count I, therefore, alleges that respondent's practices constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

2. Misrepresentation of Inception Fees

Count II of the Martin complaint alleges that Martin's automobile lease advertisements represent that a particular amount stated as ''down'' or ''cash or trade down'' is the total amount consumers must pay at lease inception to lease the advertised vehicles. According to the complaint, this representation is false because consumers must pay additional fees at lease inception beyond the amount stated as ''down'' or ''cash or trade down,'' such as a security deposit, first month's payment, and/or an acquisition fee, to lease the advertised vehicles. Count II alleges that these practices constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

3. Failure to Disclose Adequately that Transaction Advertised in a Lease

Count III of the Martin complaint further alleges that respondent, in lease advertisements, represents that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. The advertisements allegedly do not adequately disclose that each advertised monthly payment amount is a component of a lease offer. The complaint alleges that the existence of this additional information would be material to consumers in deciding whether to visit the dealership named in the advertisements and/or whether to lease or purchase an automobile from the dealership. Count III, therefore, alleges that the failure to disclose adequately this additional information, in light of the representation made, was, and is, a deceptive practice in violation of Section 5 of the FTC Act.

4. Failure to Disclose Adequately Inception Fees

Count IV of the Martin complaint alleges that Martin represents in lease advertisements that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as ''down'' or ''cash or trade down.'' Like the Chrysler and Bozell complaints, the Martin complaint alleges that Martin's lease advertisements do not adequately disclose additional material terms pertaining to the lease, such as the total

amount due at lease inception. The failure to disclose these additional terms, according to the complaint, was, and is, a deceptive practice in violation of the FTC Act.

The complaint alleges that Martin knew or should have known that the alleged misrepresentations and failure to disclose adequately material terms was, and is deceptive. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

Count V of the Martin complaint alleges that respondent Martin's lease advertisements state a monthly payment amount, the number of required payments, and/or an amount ''down.'' Respondent Martin's advertisements, however, allegedly omit or fail to clearly and conspicuously disclose certain additional terms required by the CLA and Regulation M. Martin's radio lease advertisements, for example, allegedly contain none of the required lease disclosures or rapidly state the disclosures at the end of the advertisements. The complaint, therefore, alleges that respondent Martin's failure to disclose lease terms in a clear and conspicuous manner violates the CLA and Regulation M.

C. FTC Act Violations—Credit Advertising

1. Misrepresentation in Credit Advertising

Count VI of the Martin complaint further alleges that respondent Martin's credit advertisements represent that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as a low monthly payment and/or a low amount ''down.'' This representation is false, according to the complaint, because consumers must also pay a final balloon payment of several thousand dollars, in addition to the monthly payment and/or amount down, to purchase the advertised vehicles. The complaint alleges that Martin knew or should have known that this representation was false or misleading. Accordingly, Count VI alleges that these practices dilate Section 5(a) of the FTC Act.

2. Failure to Disclose Adequately in Credit Advertising

Count VII of the Martin complaint alleges that Martin knew or should have known that the failure to disclose adequately in its credit advertisements additional terms pertaining to the credit offer, including the existence of a final ballon payment of several thousand dollars and the annual percentage rate, was deceptive. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

D. TILA and Regulation Z Violations

1. Failure to State Rate of Finance Charge as Annual Percentage Rate

The Martin complaint alleges in Count VIII that respondent Martin's credit advertisements state a rate of finance charge without stating the rate as an ''annual percentage rate,'' using that term or the abbreviation ''APR.'' According to the complaint, these practices constitute a violation of Section 144 and 107 of the TILA, 15 U.S.C. §§ 1664 and 1606, respectively, and Sections 226.24(b) and 226.22 of Regulation Z, 12 C.F.R. § 226.24(b) and 226.22, respectively.

2. Failure to Disclose Required Information Clearly and Conspicuously

The complaint further alleges in Count IX that Martin's credit advertisements fail to disclose required credit terms in a clear and conspicuous manner, as required by the TILA and Regulation Z. According to the complaint, respondent's televeision advertisements contain credit disclosures that are not clear and conspicuous because they appear on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The complaint, therefore, alleges that these practices violate Section 144 of the TILA, 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended.

III. Proposed Consent Orders

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future. Specifically, subparagraph I.A. of the Chrysler and Bozell proposed orders prohibits these respondents form misrepresenting the vehicle model(s) available to consumers in connection with any advertised lease offer. Subparagraph I.A. of the proposed Martin order prohibits Martin, in any motor vehicle lease advertisement, from misrepresenting that any advertised lease terms pertain to a cash or credit offer.

Subparagraph I.B. of the proposed orders prohibits respondents from misrepresenting the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required). Additionally, subparagraph I.C. of the proposed orders prohibits respondents, in any motor vehicle lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such amount is due, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease inception. The ''prominence'' requirement prohibits respondents from running deceptive advertisements that highlight low amounts ''down,'' with inadequate disclosures of actual total inception fees. This ''prominence'' requirement for lease inception fees also is found in Regulation M.

Moreover, subparagraph I.D. of the proposed orders prohibits respondents, in any motor vehicle lease advertisement, form stating the amount of any payment, or that any or not initial payment is required at consummation of the lease, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as follows: (1) that the transaction advertised is a lease; (2) the total amount due at lease signing or delivery; (3) whether or not a security deposit is required; (4) the number, amount, and timing of scheduled payments; and (5) that an extra charge may be imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the vehicle.

Subparagraph II.A of the proposed Martin order prohibits respondent Martin, in any closed-end credit advertisement involving motor vehicles, from misrepresenting the existence and amount of any balloon payment or the annual percentage rate; subparagraph II.B also prohibits respondent Martin from stating the amount of any payment, including but not limited to any monthly payment, in any motor vehicle closed-end credit advertisement unless the amount of any balloon payment is disclosed prominently and in close proximity to the most prominent of the above statements.

Furthermore, subparagraph II.C of the proposed Martin order also enjoins respondent from stating a rate of finance charge without stating the rate as an ''annual percentage rate'' or using the abbreviation ''APR''. Additionally, subparagraph II.D of the proposed Martin order enjoins respondent from disseminating motor vehicle closed-end credit advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of

any periodic payment, including but not limited to the monthly payment, or the amount of any finance charge without disclosing, clearly and conspicuously, all of the terms required by Regulation Z, as follows: (1) the amount or percentage of the downpayment; (2) the terms of repayment, including but not limited to the amount of any balloon payment; and (3) the correct annual percentage rate, using that term or the abbreviation ''APR,'' as defined in Regulation Z and the Official Staff Commentary to Regulation Z. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be clearly and conspicuously disclosed.

The information required by subparagraphs I.D. (lease advertisements) and II.D (credit advertisements) of the proposed orders must be disclosed ''clearly and conspicuously'' as defined in the proposed orders. The ''clear and conspicuous'' definition requires respondents to present such lease or credit information,as applicable, within the advertisement in a manner that is readable (or audible) and understandable to a reasonable consumer. This definition is consistent with the ''clear and conspicuous'' requirement for advertising disclosures in Regulation M and Regulation Z that require disclosure that consumers can see and read (or hear) and comprehend. Is is also consistent with prior Commission orders and statements interpreting Section 5 to require that advertising disclosures be readable (or audible) and understandable to reasonable consumers.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–28400 Filed 10–21–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9810161]

Lafarge Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joe Lipinsky or Patricia Hensley, Seattle Regional Office, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, WA. 98174, (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 16, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis to Aid Public Comment on the Proposed Consent Order

The Federal Trade Commission (''Commission'') has accepted for public comment an agreement containing a proposed Consent Order from Lafarge, S.A., and Lafarge Corporation (collectively ''Lafarge''), which is designed to remedy the anticompetitive effects resulting from Lafarge's acquisition of Holnam, Inc.'s (''Holnam''), Seattle Washington, cement plant and related assets. Under the terms of the consent agreement, Lafarge's purchase price for Holnam's assets cannot be affected by the quantity of cement produced or sold by Lafarge in any market in the states of Washington or Oregon.

The agreement containing the proposed Consent Order has been placed on the public record for 60 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the proposed Consent Order and the comments received, and will decide whether it should withdraw from the proposed Consent Order or make final the proposed Order.

On February 4, 1998, Lafarge and Holnam signed a Letter of Intent setting out the principal elements of a proposed transaction, whereby Lafarge would acquire Holnam's Seattle cement plant and related assets. According to the Commission's draft complaint that the Commission intends to issue, the acquisition, if consummated, may substantially lessen competition in the portland cement market in the Puget Sound area of the state of Washington, and would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Lafarge and Holnam, along with Lone Star Northwest, Ash Grove Cement Company and CBR Cement Corp., sell portland cement in the Puget Sound area. Portland cement, the essential binding ingredient in concrete, is a construction raw material that users mix with water and aggregates (crushed stone, sand, or gravel) to form concrete. Portland cement is a closely controlled chemical combination of calcium (normally from limestone), silicon, aluminum, iron and small amounts of other ingredients. It is made by quarrying, crushing and grinding the raw materials, burning them in huge kilns at extremely high temperatures and grinding the resulting marble-size pellets (called ''clinker'') with gypsum into an extremely fine, usually gray, powder. Portland cement produced by one manufacturer is virtually indistinguishable from that manufactured by another.

The Puget Sound area of the state of Washington consists of the portion of Washington state south from the Canadian border to the area just south of the state capital of Olympia (roughly halfway between Seattle and Portland, Oregon) and east from the Pacific Ocean to the Cascade mountains, plus two adjacent counties just east of the

Cascade Mountains. Its commercial center is the city of Seattle. The counties in this market west of the Cascades are Clallum, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston and Whatcom, and the two counties east of the Cascade mountains are Chelan and Kittitas.

Absent the proposed acquisition, Holnam would likely have increased the amount of cement it supplied to the Puget Sound market, which would likely have resulted in a decrease in the price of cement. As originally structured, the proposed acquisition would likely have prevented this increase in supply because it contained a contractual provision that imposed a significant cost penalty on Lafarge for quantities of cement produced at the Holnam cement plant in excess of 85% of the plant's capacity. The proposed acquisition thus would have given Lafarge the incentive to restrict the output of cement at the Holnam plant in order to avoid the additional contractual cost. This would have prevented any increase in the supply of cement to the market and thus avoided the expected price decrease.

The proposed Consent Order would eliminate the contractual penalty provision. Therefore, Lafarge would no longer have this incentive to limit the amount of cement that it supplies to the Puget Sound area portland cement market.

By accepting the proposed Consent Order, the Commission anticipates that the competitive problems alleged in the draft complaint will be resolved. The purpose of this analysis is to aid public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By direction of the Commission.

Donald Clark,

Secretary.

[FR Doc. 98–28399 Filed 10–21–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0259]

Submission for OMB Review; Comment Request Entitled Market Research Questionnaire

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0259).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement entitled Market Research Questionnaire.

DATES: *Comment Due Date:* December 21, 1998.

ADDRESSES: Additonal comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT:

Thomas Bacon, Federal Supply Service on (703) 305–6573.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0259 concerning Market Research Questionnaire. The Market Research Questionnaires are used to gather information that is necessary to develop and/or revise Federal specifications and other purchase descritions.

B. Annual Reporting Burden

Respondents: 25; annual responses: 25; average hours per response: 2.4; burden hours: 60.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: October 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–28355 Filed 10–21–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320 and is essential to the mission of the Department. The Balanced Budget Act of 1997 authorized the Department of Labor (DoL) to implement a new grant program to fund state and local efforts to get the hardest-to-serve welfare recipients into employment. The statute directs the Secretary of the Department of Health and Human Services, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, to develop a plan to evaluate how Welfare-to-Work (WtW) grants to states and tribes have been used. An interim evaluation report is due to Congress by January 1, 1999, and a final report is due by January 1, 2001.

DoL announced the first WtW competitive grants in May. The first formula grant funds were distributed to states in February. Once formula grant funds are awarded by DoL, states require additional time to distribute funds to substate operating entities. Since the WtW program operators have not had the WtW funds very long, it would not be feasible to collect the baseline information before fall 1998. Following the normal clearance procedures would cause the statutory deadline of January 1, 1999 to be missed.

Without emergency approval of the proposed information collections described below, the Department could not submit to Congress by January 1, 1999 the interim evaluation report for the Welfare-to-work grant program, as required by the Balanced Budget Act of 1997.

DHHS is requesting that OMB grant emergency approval by October 26, 1998 for 180 days.

Title and Description of Information Collection: Multi-site Evaluation of the Welfare-to-Work Grants Program—

NEW—As required by the Balanced Budget Act of 1997, DHHS is planning a four-year project to evaluate the effectiveness of welfare-to-work initiatives undertaken though competitive and formula grants awarded by the U.S. Department of Labor. DHHS' Office of the Assistant Secretary for Planning and Evaluation, in conjunction with DoL and the U.S. Department of Housing and Urban Development (HUD), has designed an evaluation that will involve several rounds of data collection for grantees and grant program participants. The information collection instruments in this request for OMB approval consist of an all-grantee mail survey to gather baseline program information, and a protocol for conducting 35 site visits to gather more detailed preliminary information. *Respondents:* State and Local Governments, Businesses or Other For-profit Organizations, Not-for-profit Institutions; Burden Information for the Mail Survey—*Number of Respondents:* 548; *Number of Responses per Respondent:* one; *Average Burden per Response:* .95 hours; *Total Burden for Mail Survey:* 521 hours— Burden Information for the Site Visits—*Number of Respondents:* 280; *Number of Responses per Respondent:* one; *Average Burden per Response:* 1 hour; *Total Burden of Site Visits:* 280 hours. Total Burden: 801 hours.

To request more information or a copy of the proposed data collection, please contact Alana Landey on 202–401–6636.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations for the proposed information collection should be immediately sent directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503. Comments may be faxed to Ms. Eydt at 202–395–5167.

Please send a copy of your comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC, 20201.

Dated: October 14, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–28346 Filed 10–21–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–01]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Project

The State and Local Area Integrated Telephone Survey (SLAITS)—(0920–0406)-Revision—The National Center for Health Statistics, (NCHS) is planning to expand from the short term pilot study phase to a long term integrated and coordinated survey system designed to collect needed health and welfare data at the state and local levels. Using the random-digit-dialing sampling frame from the ongoing National Immunization Survey (NIS) and Computer Assisted Telephone Interviewing (CATI), the State and Local Area Integrated Telephone Survey (SLAITS) can quickly collect and produce data to monitor health status, child and family well-being, health care utilization, access to care, program participation, and changes in health care coverage at the state and local levels. These efforts are conducted in cooperation with state and local officials. SLAITS offers a centrally administered data collection mechanism with standardized questionnaires and quality control measures which allow comparability of estimates between states, over time, and with national data. As demonstrated in the pilot study phase, SLAITS is designed to allow for oversampling of population subdomains and to meet federal, state and local needs for subnational estimates which are compatible with national data.

Questionnaire content is drawn from existing surveys such as the National Health Interview Survey (NHIS), the National Health and Nutrition Examination Survey (NHANES), the Current Population Survey (CPS), the Survey of Income and Program Participation (SIPP), the National Household Education Survey, and the National Survey of America's Families, as well as the three questionnaire modules that were developed for SLAITS during the pilot study phase. These modules include Health, Child Well-Being and Welfare, and Children's Health Insurance and Health Care Utilization.

The strategy of building on established survey systems provides several advantages. It is less costly than establishing a new system; the proposed questions have been thoroughly tested; and implementation can occur rapidly. Basing SLAITS on questions from the NHIS, CPS, and other national in-person surveys will allow for comparisons with national data. In addition, the quality of the estimates developed from the telephone survey can be improved with adjustments for households without telephones using health and socio-demographic information from telephone and non telephone households from the NHIS and other in-person surveys.

Funding for SLAITS is being sought through a variety of mechanisms including Foundation grants, State collaborations, and federal appropriation and evaluation monies. The level of implementation will depend on the amount of funding received and can be expanded as funding permits. Questionnaire modules will be compiled to address the data needs of interest to the federal, state or

local funding agency or organization. The total cost to respondents is estimated at $463,500.

Respondents	Number of respondents	Number of responses/respondents	Average burden/response in hrs.)	Total burden (in hrs.)
Noninstitutionalized household population in 50 States and D.C	102,000	1	0.30	30,600
Pretest modules	900	1	0.30	300
Total				30,900

2. The National Health and Nutrition Examination Survey (NHANES)—(0920–0237)—Revision—The National Center for Health Statistics (NCHS). The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by NCHS. NHANES will begin again in February 1999 and will be conducted on a continuous, rather than periodic, basis from that point on. The plan is to sample about 5,000 persons annually. They will receive an interview and a physical examination. A dress rehearsal of 555 sample persons is needed to test computer-assisted personal interviews (including translations into Spanish), examination protocols, automated computer systems and quality control procedures. Participation in the dress rehearsal and main survey will be completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. Approval was received on 5/29/98 for only a pilot test of the revised survey—without the genetic research component. This submission requests three year approval for the dress rehearsal and the full survey, including all components.

The survey description, contents, and uses are the same as those in the **Federal Register** notice for the pilot test. The total cost to respondents for the period covered by this notice is estimated at $1,889,440.

Burden category	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (hours)
1. Screening interview only	40,401	1	0.167	6,747
2. Screener and household interviews only	2,130	1	0.434	924
2. Screener, household, and SP interviews only	3,198	1	1.100	3,518
3. Screener, household, and SP interviews and primary MEC exam only	15,771	1	6.613	104,294
4. Screener, household, and SP interviews, primary MEC exam and full MEC replicate exam	789	1	11.613	9,163
5. Screener, household, and SP interviews, MEC exam and dietary replicate interview only (5% + optional 15%)	3,156	1	8.363	26,394
6. Home exam	213	1	2.700	575
7. Telephone follow-up of elderly -option	3,501	1	0.750	2,626
Total				154,240

Dated: October 15, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–28304 Filed 10–21–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–P0015S]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy

of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey: National Baseline Medicare Beneficiary Knowledge Supplement; *Form No.:* HCFA–P–0015S; *Use:* This survey will establish baseline measures of Medicare beneficiary knowledge / understanding of the Medicare program, their new choices legislated under the Balanced Budget Act (BBA) which will allow HCFA to quantify current knowledge and attribute future changes in their understanding and knowledge to HCFA information and education initiatives. *Frequency:* Biennially; *Affected Public:* Business or other for-profit; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 2,667.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 28, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–28290 Filed 10–21–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0153]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Drug Utilization Review and Supporting Regulations in 42 CFR 456.700, 456.705, 456.709, 456.711, and 456.712; *Form No.:* HCFA–R–153, HCFA–R–153a (OMB# 0938–0659); *Use:* These information collection requirements are necessary to establish patient profiles in pharmacies, identify problems in prescribing and/or dispensing, determine each program's ability to meet minimum standards required for Federal financial participation, and ensure quality pharmaceutical care for Medicaid patients. State Medicaid agencies that have prescription drug programs are required to perform prospective and retrospective drug use review in order to identify aberrations in prescribing, dispensing and/or patient behavior; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government, Business or other for-profit, and Not for profit institutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 655,067.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

Dated: October 15, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–28344 Filed 10–21–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice Regarding HRSA Grant Requirement—Participation in the 340B Drug Pricing Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the ''Veterans Health Care Act of 1992,'' enacted section 340B of the Public Health Service (PHS) Act, ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of HHS in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed that amount determined under a statutory formula.

The purpose of this notice is to request comments on a proposed grant award requirement in which all entities, except those entities which fall within excepted categories, that receive HRSA grants listed in section 340B(a)(4) and that purchase or reimburse for covered outpatient drugs must participate in the 340B Drug Pricing Program, or demonstrate good cause for nonparticipation.

When the Prime Vendor program is operational, HRSA intends to publish a second **Federal Register** notice proposing an expansion of the grant award requirement to include participation in the Prime Vendor Program.

DATES: The public is invited to submit comments on the proposed grant requirement by December 21, 1998. After consideration of comments submitted, HRSA will determine whether to issue a final notice imposing the grant requirement.

ADDRESSES: Comments should be submitted to: Director, Division of Grants and Procurement Management,

Health Resources and Services Administration, Room 13A03, 5600 Fishers Lane, Rockville, Md 20857; Phone (301) 443–1433; FAX (301) 443–6830. All comments will be available for public inspection at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: See above section, **ADDRESSES** for contact information.

SUPPLEMENTARY INFORMATION: Section 340B requires manufacturers, as a condition for the receipt of Medicaid matching funds with respect to their covered outpatient drugs, to charge eligible entities (i.e., ''covered entities'' as defined in section 340B(a)(4)) no more for such drugs than a specified ceiling price. The ceiling price is determined by a formula provided in section 340B(a)(1) & (2), and ''covered outpatient drug'' is defined in section 340B(b). HRSA has established the Drug Pricing Program to implement this statutory mandate.

Section 340B covered entities include certain HHS grantees, as specified in section 340B(a)(4). This proposed grant requirement will apply only to the following covered entities (HRSA grantees): health centers receiving grants under section 330 of the PHS Act, 42 U.S.C. § 254b; black lung clinics receiving assistance under section 427(a) of the Black Lung Benefits Act, 30 U.S.C. § 937(a); comprehensive hemophilia diagnostic treatment centers receiving a grant under section 501(a)(2) of the Social Security Act, 42 U.S.C. § 701(a)(2); Native Hawaiian Health Centers receiving funds under the Native Hawaiian Health Care Act of 1988, 42 U.S.C. § 11701 *et seq.*; an entity receiving a categorical grant for early intervention services for HIV disease under section 2651 of the PHS Act, 42 U.S.C. § 300ff–51, a State-operated AIDS drugs assistance program (ADAP) receiving financial assistance under title XXVI of the PHS Act, 42 U.S.C. § 300ff *et seq.*; and all other entities (other than States and units of local government) receiving assistance under title XXVI of the PHS Act, 42 U.S.C. § 300ff *et seq.* It also should be noted that entities seeking to qualify as ''Federally-Qualified Health Centers'' (FQHCs) as ''lookalikes''—i.e., entities which meet all the requirements for receiving a grant under section 330 of the PHS Act but which do not receive such a grant—will also have to satisfy the grant requirement specified below in order to qualify as a FQHC. Further, please note that eligibility to access 340B discount pricing is not contingent upon purchasing drugs with Federal grant funds. A covered entity ''may use any revenues or funds available to it to procure drugs.'' *See* H.R. Rep. No. 102–384, 102d Cong., 2d Sess. pt. 2, at 16 (1992).

It is the policy of the Department that funds which are utilized by grantees for the acquisition of drugs must be expended in the most economical manner feasible. *See* 42 C.F.R. Part 50, Subpart E. In addition, allowable costs under a grant award, among other criteria, must be reasonable for the performance of the grant. ''Reasonable cost'' is defined as one that is ordinary and ''does not exceed that which would be incurred by a prudent person'' using sound business practices and arms length bargaining. *See* OMB Circular A–122, ''Cost Principles for Nonprofit Organizations.'' *See also* OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.'' Consequently, HRSA covered entity grantees must utilize an economical and reasonable method of purchasing their outpatient drugs, and section 340B was enacted to provide an effective means of lowering drug prices for covered entities.

Under the proposed policy, HRSA would require all entities that receive HRSA grants listed in section 340B(a)(4) and that purchase or reimburse for covered outpatient drugs to participate in the 340B Drug Pricing Program, unless such requirement is waived by HRSA for good cause. A good cause waiver would be granted if the covered entity submits adequate drug purchasing or reimbursement records that demonstrate that it is accessing drug prices as good as, or better than, the current 340B ceiling price, or for other good causes, as determined by HRSA.

HRSA recognizes that some covered entities will be excepted from the grant requirement or parts of it. Those covered entities which purchase covered outpatient drugs at or below a total cost of $30,000 a year will not be required to participate in the 340B program. However, such entities are not precluded from participation and are welcome to access the benefits of such a program. The $30,000 amount does not include covered drugs purchased at nominal prices—10% of the average manufacturer price, as defined in section I(s) of the Health Care Financing Administration's Manufacturer Rebate Agreement and in section 1927(k)(1) of the Social Security Act. Please note that the $30,000 amount is subject to adjustment by HRSA, as appropriate. HRSA established this amount after consultation with a number of national professional organizations, including the National Association of Community Health Centers, the Pharmaceutical Manufacturers and Research Association, the American Pharmaceutical Association and the National Association of Retail Druggists.

Covered entities, which do not fall within an excepted category or have not been granted a good cause waiver, must purchase all outpatient drugs through participation in the Drug Pricing Program. However, to the extent that a covered outpatient drug is not available at the 340B ceiling price and the quality of patient care will be impacted, the covered entity may purchase the drug at market prices. In such situations, the covered entity will be required to provide HRSA with documentation of the unavailability of the drug. When appropriate, HRSA will refer such information to the appropriate authorities for a complete investigation.

Currently, HRSA grantees must incur only reasonable costs and use only sound business practices and arms length bargaining when purchasing or reimbursing for covered outpatient drugs. Consistent with these principles, HRSA proposes to make this new grant requirement (which will use the 340B ceiling price as a reasonable standard) effective for each of the HRSA programs listed in section 340B(a)(4) at the beginning of the first grant cycle for that program which begins at least 30 days after the date of publication in the **Federal Register** of the final notice formally adopting this policy. At that time, all such HRSA grantees must certify in their grant requests that they participate in the section 340B program, are exempted or have received a good cause waiver. Existing contracts or agreements with manufacturers, prime vendors and other members of the drug distribution network concerning covered drug purchasing and distribution will not be considered a basis for a good cause waiver, unless they provide for pricing at or below the 340B ceiling prices. Section 340B waivers will be effective for the approved project period or other specified time periods, as deemed appropriate by HRSA.

To assist covered entities not only in accessing the section 340B manufacturer drug price reductions, but also in obtaining competitive pricing for wholesaler drug distribution, section 340B(a)(8) mandates the Secretary to establish a prime vendor program for covered entities. To increase the overall benefit of such a prime vendor program, the service of the prime vendor will include price negotiation as well as drug distribution services. HRSA is in the process of developing this program and will notify covered entities when the

prime vendor is selected and service is available. At a later date, after the HRSA Prime Vendor begins operations, HRSA will issue a new **Federal Register** notice soliciting comments on a proposal to require covered entities subject to the grant requirement proposed in this notice to purchase their covered outpatient drugs from the HRSA Prime Vendor. Those AIDS Drug Assistance Projects (ADAPs), which participate in 340B through rebates, would not be subject to this additional grant requirement or eligible to participate in the Prime Vendor Program.

Dated: October 16, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–28275 Filed 10–21–98; 8:45 am]

BILLING CODE 4160–15–P

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.

Pretesting of Substance Abuse Prevention and Treatment and Mental Health Services Communication Messages—NEW—As the Federal agency responsible for developing and disseminating authoritative knowledge about substance abuse prevention, addition treatment, and mental health services and for mobilizing consumer support and increasing public understanding to overcome the stigma attached to addiction and mental illness, the Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for development and dissemination of a wide range of education and information materials for both the general public and the professional communities. This submission is for generic approval and will provide for formative and qualitative evaluation activities to (1) assess audience knowledge, attitudes, behavior and other characteristics for the planning and development of messages, communication strategies and public information programs; and (2) test these messages, strategies and program components in developmental form to assess audience comprehension, reactions and perceptions. Information obtained from testing can then be used to improve materials and strategies while revisions are still affordable and possible. The annual burden associated with these activities is summarized below.

Activity	Number of respondents	Responses per respondent	Hours per response	Total Hours
Individual in-depth interviews:				
General public	400	1	.75	300
Service Providers	200	1	.75	150
Focus group interviews:				
General public	3,000	1	1.50	4,500
Service Providers	1,500	1	1.50	2,250
Telephone interviews:				
General public	335	1	.08	27
Service Providers	165	1	.08	13
Self-administered questionnaires:				
General public	2,680	1	.25	670
Service Providers	1,320	1	.25	330
Gatekeeper reviews:				
General public	1,200	1	.50	600
Service Providers	600	1	.50	300
Total	11,400			9,140

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: October 15, 1998.

Richard Kopanda,

Executive Officer SAMHSA.

[FR Doc. 98–28303 Filed 10–21–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–003868.

Applicant: International Center for Gibbon Studies, Santa Clara, CA.

The applicant requests a permit to export/re-export 1.1 agile gibbons (*Hylobates agilis*) to the Moscow Zoo for the purpose of enhancement of the survival and propagation of the species through captive breeding.

PRT–003846.

Applicant: Government of the Northwest Territories, Wildlife and Fisheries Division, Yellowknife, NWT, Canada.

The applicant requests a permit to import biological samples from captive wood bison (*Bison bison athabascae*) to Biotracking, Moscow, ID, for pregnancy testing for the purpose of enhancement of propagation. This notification covers

activities by this applicant over a period of five years.

PRT–003845.

Applicant: Government of the Northwest Territories, Wildlife and Fisheries Division, Yellowknife, NWT, Canada.

The applicant requests a permit to import biological samples from captive wood bison (*Bison bison athabascae*) to North Carolina State Univ., College of Veterinary Medicine, Raleigh, NC, for pregnancy testing for the purpose of enhancement of propagation. This notification covers activities by this applicant over a period of five years.

PRT–003613.

Applicant: The American Museum of Natural History, New York, NY.

The applicant requests a permit to import biological samples of green sea turtles (*Chelonia mydas*) and olive Ridley sea turtles (*Lepidochelys olivacea*) collected by Projeto TAMAR turtle project in Brazil during tagging operations for the purpose of genetic research to enhance the survival of the species. This notification covers activities by this applicant over a period of five years.

PRT–003979.

Applicant: Robin L. Fiske, Porter, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–003980.

Applicant: Joseph E. Fiske, Porter, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–003534.

Applicant: Donald L. Bricker, Lubbock, TX.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: October 19, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–28356 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–55–P

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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Barona Band of Mission Indians, which was executed on August 12, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: October 14, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28313 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–02–P

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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Big Sandy Rancheria of Mono Indians of California, which was executed on July 20, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: October 9, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28310 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–02–P

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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Cher-Ae Heights Indian Community of the Trinidad Rancheria, which was executed on July 13, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Date: October 8, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28311 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–02–P

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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Jackson Rancheria Band of Miwuk Indians, which was executed on July 13, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 8, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28308 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–02–P

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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Mooretown Rancheria of Concow/Maidu Indians, which was executed on July 13, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: October 8, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28312 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–02–P

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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Rumsey Indian Rancheria, which was executed on July 13, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: October 8, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28309 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–02–P

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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Sycuan Band of Mission Indians, which was executed on August 12, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066

Dated: October 14, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28314 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1610–00: GP9–0010]

Notice of Availability of Draft Southeastern Oregon Resource Management Plan/Environmental Impact Statement

AGENCY: Vale and Burns Districts, Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of Draft Southeastern Oregon Resource

Management Plan/Environmental Impact Statement (Draft SEORMP/EIS).

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, a draft Resource Management Plan/Environmental Impact Statement has been prepared for the Southeastern Oregon planning area. The area covered by this plan includes all BLM-managed lands, approximately 6.3 million acres, in Southeastern Oregon, in portions of Harney, Malheur and Grant Counties. This planning area is within the Vale and Burns Districts and includes the Andrews, Malheur, and Jordan Resource Areas. Decisions generated during this planning process will supersede planning guidance presented in the Andrews, Southern Malheur, and Northern Malheur Management Framework Plans, as amended, and land use guidance pertaining to the Ironsides (southern portion), Southern Malheur and Andrews rangeland management programs. Other subordinate activity, implementation or projects plans, such as the Donner and Blitzen Wild and Scenic River Plan, will also be amended or otherwise brought into conformance with the Final SEORMP/EIS.

SUPPLEMENTARY INFORMATION: This land use plan focuses on the principles of multiple use management and sustained yield as prescribed by Section 202 of FLPMA. This plan provides direction for management of these public lands for a period of 15 to 20 years. The Draft SEORMP/EIS has identified five alternatives for managing 6.3 million acres of public land in Southeastern Oregon. Input provided by the public during the scoping process helped develop the five alternatives, which are described and analyzed in the draft plan. ''Alternative A'' emphasizes commodity production or extraction. ''Alternative B'' is a continuation of current management and is the No Action Alternative. ''Alternative C'', the Agency Preferred Alternative, provides a balance with a high level of natural resource protection and improvement in ecological conditions, while allowing commodity production. ''Alternative D'' emphasizes resource values and the functioning of natural systems. ''Alternative E'' would minimize human intervention in the ecosystem, and eliminate commodity production.

Objectives and criteria for land management are established to be used within the concept of the adaptive management process. Adaptive management is the continuing process of action-based planning, monitoring, evaluating and adjusting management to improve achievement of goals and objectives. Using this adaptive approach calls for applying the latest information and professional judgement to develop activity plans that will most likely meet objectives and desired future conditions. New information will be evaluated and decisions made whether or not to make adjustments or changes as experience is gained from implementing activity plans. The adaptive management approach will enable resource managers to determine how well management actions meet their objectives and what steps are needed to modify activities to successfully obtain the objectives of this plan. Major RMP issues include rangeland, woodland and riparian vegetation management, energy and mineral resources, designation and management of Special Management Areas, fire management, recreation management, fish, wildlife, botany and Special Status species, and land tenure. The draft document includes consideration of 60 existing and nominated areas for designation as Areas of Critical Environmental Concern. Also, addressed is suitability of wild, scenic, and recreational designations on 289 miles of stream segments determined to be eligible for such designations under the Wild and Scenic Rivers Act. The preferred alternative was developed to represent the best estimate of an optimum multiple use mix of land management commitments for these lands.

This document also serves as the draft EIS requirement for the Wild and Scenic River Act to consider potential new rivers for congressional action, as well as the EIS for a management plan on the previously designated Donner und Blitzen River to meet court mandates in the lawsuit with ONDA et al. vs. Green et al., 953F Supp. 1133 (D. OR 1997).

DATES & ADDRESSES: The Draft SEORMP/EIS will have a 120 day comment period. Due to the extended comment period being allowed, there will not be additional time authorized. The comment period will end on March 1, 1999. BLM encourages interested public to provide comments. Comments are most useful when they address the following: (1) errors in the analysis; (2) new information or non-Bureau analysis that may have a bearing on the EIS analysis; or (3) a need for clarification of information, or direction.

Copies of the Draft SEORMP/EIS will be mailed to all known interested parties around October 30, 1998 and available in the Vale and Burns District Offices. in addition, electronic copies of the text and map will be available from the District Offices as well as accessible on the District Internet home pages listed below.

Written comments are requested to be sent to: SEORMP; Bureau of Land Management; Vale District Office; 100 Oregon Street; Vale, Oregon 97918 or SEORMP; Bureau of Land Management; Burns District; HC74–12533 Hwy 20 W; Hines, Oregon 97738. Copies of the Draft SEORMP/EIS will be available for inspection at the Harney and Malheur County libraries as well as the BLM, Oregon State Office, Land Office, 1515 SW Fifth Street, Portland, Oregon, the Baker Resource Area Office, Baker City, Oregon, during normal working hours. Informal meetings will be scheduled at Burns, Vale, Fields, Diamond, Jordan Valley, McDermitt and Portland. These meetings are intended to provide answers to questions in an effort to get meaningful comments. Only written comments will be accepted. The schedules for these meetings will be sent to those on the mailing list as well as through the media, at a later date.

All meaningful comments received during the 120 day comment period will be analyzed and considered in the preparation of the Final SEORMP/EIS.

FOR FURTHER INFORMATION CONTACT:

Vale District, Gary Cooper, 541–473–6203, (phone), 541–473–6213 (fax), http://www.or.blm.gov/Vale/

Burns District, Glenn Patterson, 541–573–4429, (phone), 541–573–4411 (fax), http://www.or.blm.gov/Burns/

Public participation has occurred throughout the Draft SEORMP process. A Notice of Intent was filed in the **FEDERAL REGISTER** on August 24, 1995. Since that time several open houses, public meetings, field tours, and discussions with the Southeastern Oregon Resource Advisory Council and public mailings were conducted to solicit comments, ideas and report progress. Any comments presented throughout the process have been considered. In addition, the Draft SEORMP/EIS incorporates applicable information from the ongoing Interior Columbia Basin Ecosystem management Project.

This notice meets the requirements of 43 CFR 1610.7–2 for consideration of designation of Areas of Critical Environmental Concern.

Edwin J. Singleton,

Vale District Manager.

[FR Doc. 98–28345 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–51]

Iditarod Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Iditarod Advisory Council will conduct an open meeting Tuesday, November 10, 1998, from 9 a.m. until 4 p.m. The purpose of the meeting is to sunset as a federal advisory council and recognize the contributions of council members over the years. The council will also discuss the formation of a non-profit organization to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the Campbell Creek Science Center, 6881 Abbott Loop Road, Anchorage, Alaska.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken at 1 p.m. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: October 14, 1998.

Clinton Hanson,

Associate Field Manager.

[FR Doc. 98–28322 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Monday and Tuesday, November 23–24, 1998, at the Bureau of Land Management (BLM) District Office in Grand Junction, Colorado.

DATES: Monday, November 23, and Tuesday, November 24, 1998.

ADDRESSES: For further information contact Mark Morse, BLM, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3000.

SUPPLEMENTARY INFORMATION: The Northwest Colorado Resource Advisory Council will meet on Monday, November 23 and Tuesday, November 24, 1998, at the BLM District Office, 2815 H Road, Grand Junction, Colorado.

The two day meeting will begin at 8 a.m. on November 23, 1998. The purpose of the meeting is to conduct Ecosystem Training for the Council members from 8 a.m. to 4:30 p.m. on November 23, 1998, followed by a field trip for Council members from 8 a.m. to 4 p.m. on November 24, 1998. The field trip will focus on riparian, prescribed fire, and grazing issues.

Interested members of the public may make oral statements at the meeting at 4:30 p.m. on Monday, November 23, 1998, or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: October 16, 1998.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 98–28302 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–01: WYW–143440]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public land in Sublette County has been examined and found suitable for direct sale under Section 203 of the Federal Land Management Policy Act of 1976, (43 U.S.C. 1713), at no less than the fair market value.

Sixth Principal Meridian

T33 N.R. 108 W.

Section 9, NW¼NW¼

These lands contain approximately 40 acres.

SUPPLEMENTARY INFORMATION: The BLM proposes to sell the surface estate of the above described land to Christmann Corporation. They wish to acquire the lands for ranch operations. The parcel is completely surrounded by Christmann Corporation private lands.

FOR FURTHER INFORMATION CONTACT:

Grace Jensen, Realty Specialist, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941, 307–367–5313.

The proposed sale is consistent with the Pinedale Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other know public values. The planning document and environmental assessment/land report covering the proposed sale will be available for review at the Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941.

Conveyance of the above land will be subject to:

1. Reservation of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890. 43 U.S.C. 945.

2. Reservation of all minerals to the United States of America, together with the right to prospect for, mine and remove the minerals.

3. All valid existing rights documented on the official public land records at the time of conveyance.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Federal Land Policy and Management Act and leasing under the mineral leasing laws. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever occurs first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: October 16, 1998.

Leslie Theiss,

Field Manager.

[FR Doc. 98–28299 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., October 13, 1998.

The plat representing the dependent resurvey of portions of the south boundary of Fort Hall Indian Reservation, of the west boundary, subdivisional lines, and of Mineral Survey No. 2513, and the subdivision of certain sections, and the survey of lot 16 in section 17, and of lots 19 and 20 in section 18, *T. 6 S., R. 36 E.*, Boise Meridian, Idaho, Group 963, was accepted October 13, 1998. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: October 13, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–28369 Filed 10–21–98; 8:45 am]

BILLING CODE 4310–66–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, October 29, 1998 and Friday, October 30, 1998 at the Embassy Suites Hotel, 1250 22nd Street NW, Washington, DC. The meeting is tentatively scheduled to begin at 10:00 a.m. on October 29 and at 9:00 a.m. on October 30.

The Commission will discuss payments to hospital outpatient departments and physicians, graduate medical education, and setting and updating payment rates. Several sessions will be devoted to discussion of the Commission's plans for work on issues affecting the Medicare+Choice program.

Agendas will be mailed on Friday, October 16, 1998. Final agenda will be available on the Commission's web sites (WWW.MedPAC.GOV).

ADDRESSES: 1730 K Street, NW,; Suite 800; Washington, D.C. 20006. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 98–28401 Filed 10–21–98; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the combined Arts Advisory Panel, Folk & Traditional Arts Section A (Heritage & Preservation and Education & Access categories) to the National Endowment for the Arts will be held on November 3–4, 1998. The panel will meet each day from 9:00 a.m. to 6:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: October 16, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–28306 Filed 10–21–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Folk & Traditional Arts Section B (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on November 5–6, 1998. The panel will meet each day from 9:00 a.m. to 6:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC., 20506. A portion of this meeting, from 11:30 a.m. to 1:00 p.m. on November 6th, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on November 5th and from 9:00 a.m. to 11:30 a.m. and 1:00 p.m. to 6:30 p.m. on November 6th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: October 16, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–28307 Filed 10–21–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Submission for OMB Review; Survey of Industrial Research and Development (OMB Control No. 3145–0027)

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** on page 43960 in the Monday, August 17, 1998 issue [Vol. 63, No. 158] and two comments were received. NSF is forwarding the proposed renewal submission to OMB for clearance simultaneously with the publication of this second notice.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the collection instrument and instructions contact Ms. Mary Lou Higgs, Acting Clearance Officer, via surface mail: National Science Foundation, ATTN: NSF Reports Clearance Officer, Suite 295, 4201 Wilson Boulevard, Arlington, VA 22230; telephone (703) 306–2063; e-mail mlhiggs@nsf.gov; or FAX (703) 306–0201.

SUPPLEMENTARY INFORMATION:

1. Abstract: The proposed continuing information collection involves the estimation of the expenditures on research and development performed within the United States by industrial firms. A mail survey, the Survey of Industrial Research and Development, has been conducted annually since 1953. Industry accounts for over 70 percent of total U.S. R&D each year and since its inception, the survey has provided continuity of statistics on R&D expenditures by major industry groups and by source of funds. The survey is the industrial component of the NSF statistical program that seeks to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government'' as mandated in the National Science Foundation Act of 1950. Statistics from the survey are published in NSF's annual publication series Research and Development in Industry. The proposed collection will continue the survey for three years.

2. Expected Respondents: The survey will be mailed to a statistical sample of approximately 24,000 companies to collect information on the amount and sources of funds for and character of R&D performed and contracted out by industrial firms, and information on sales and employment of the firms themselves.

3. Burden on the Public: To minimize burden, over 90-percent of the companies selected for the Survey of Industrial Research and Development are asked to respond to the Form RD–1A, the abbreviated version of the basic survey questionnaire, Form RD–1. Further, only companies with five paid employees or more are asked to participate in the survey and extensive use is made of the descriptive codes and information on the establishment list that is the source of the survey sample to avoid sampling firms in industries that traditionally do not perform R&D. NSF, with input from the Bureau of the Census, the collection and compiling agent for the survey, estimates that the average annual reporting and record keeping burden on each Form RD–1A respondent will be 1 hour and on Form RD–1 respondents will be 15 hours. The total annual burden is estimated at 43,000 hours, calculated as follows:

RD–1A respondents: 22,000 respondents × 1 response × 1 burden hour = 22,000 hours/year

RD–1 respondents: 1,400 respondents × 1 response × 15 burden hours = 21,000 hours/year

All respondents: 22,000 + 21,000 = 43,000 burden hours/year during 1999, 2000, and 2001.

Comments Requested

DATES: The Office of Management and Budget (OMB) should receive written comments on or before November 23, 1998.

ADDRESSES: Submit written comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: National Science Foundation Desk Officer, OMB, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Special Areas for Review

NSF especially requests comments on:

(a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility;

(b) the accuracy of the Foundation'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 those who are to respond, e.g., permitting submission of responses through the use of automated, electronic, mechanical, or other technological collection techniques.

Dated: October 16, 1998.

Mary Lou Higgs,

Acting NSF Clearance Officer.

[FR Doc. 98–28273 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Advanced Technologies and Instrumentation Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on November 10 (2) and on November 17 and 18 (1). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 9:00 AM to 5:00 PM each day.

Contact Person: Dr. Benjamin B. Snavely, Program Director, Advanced Technologies and Instrumentation, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1828.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28386 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Infrastructure (1215).

Date and time: November 9–10, 1998, 8:30 am–5:00 pm.

Place: Rm. 310, National Science Foundation at 4201 Wilson Blvd, Arlington, VA.

Typed of meeting: Closed.

Contact person: Lee Makowski and Patricia Moore, Program Directors, Biological Instrumentation and Instrument Development, National Science Foundation, Rm. 615, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1472.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Instrument Development Biological Research (IDBR) Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28387 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer-Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer-Communications Research (1192)

Date: November 10, 1998

Time: 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150 Arlington, VA 22230

Type of meeting: Closed

Contact Persons: Rodger E. Ziemer, Program Director, Communications Research, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (703) 306–1912.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Communications Research proposals as a part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), of the Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28385 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation-(1194).

Date and time: November 12–13, 1998, 8:00 a.m.-5:30 p.m.

Place: Rooms 310, 320, 330, 340, 680, and 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ming Leu, Program Director, Manufacturing, Machines, and Equipment, Dr. Delcie Durham, Program Director, Material Processes and Manufacturing, Dr. George A. Hazelrigg, Program Director, Design and Integration Engineering, Dr. Larry Seiford, Program Director, Operations Research and Production Systems, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Career proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28384 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications System (1196)

Date and Time: November 16, 1998: 8:30 a.m. to 5:00 p.m.

Place: Room 630, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed

Contact Persons: Dr. Tien P. Lee, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230 Telephone: (703) 306–1339

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Physical Foundations of Enabling Technologies program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28383 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Geosciences (1756).

Date & Time: November 16–20, 1998; 8:30 AM–5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Reeve, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 2230. Telephone: (703) 306–1587.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Science Research Programs (OSRS) as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28382 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (1203)

Date & Time: November 10, 1998; 8:00 am–5:00 pm

Place: Room 1060, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed

Contact person: Dr. Liselotte J. Schioler, Program Director, Division of Materials Research, Room 1065.41, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 (703) 306–1836.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER—Ceramics proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28388 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

U.S. National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: U.S. National Assessment Synthesis (Team #5219).

Date: November 16–17, 1998 (see agenda for times).

Place: Room 1235 on 11/16 & Room 770 on 11/17, National Science Foundation, Arlington, VA.

Type of Meeting: Part Open (see agenda for times).

Contact Person: Melissa J. Taylor, Office of the U.S. Global Change Research Program (USGCRP), 400 Virginia Avenue, SW, Suite 750, Washington, DC 20024. Tel: 202 314–2230; Fax: 202 488–8681; Email: mtaylor@usgcrp.gov. Interested persons should contact Ms. Taylor as soon as possible to assure space provisions are made for all participants and observers.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the interagency Subcommittee on Global Change Research on the design and conduct of the national effort to assess the consequences of climate variability and climate change for the United States.

Agenda: A closed breakfast session will be held each morning from 7:30–8:30 to discuss personnel matters. The open meeting will take place from 8:30–12:00 a.m. and 3:00–5:00 p.m. each day.

Day 1 (November 16) will review overall progress since the August meeting, and will focus on comments received on the draft outline, and progress made in revising the outline and adding text.

Day 2 (November 17) will focus on sections of the Synthesis Report outline dealing with regions and sectors. The meeting will then review the timetable for next steps and will address any outstanding issues.

Reason for Closing: The personnel matters being discussed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: October 19, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28381 Filed 10–21–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1]

General Electric Company; Notice of Docketing of the Materials License SNM–2500-Amendment Application for the General Electric—Morris Operation Independent Spent Fuel Storage Installation

By letter dated April 30, 1998, as supplemented June 17, 1998, General Electric Company submitted an application to the U.S. Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR Part 72, requesting the amendment of the General Electric—Morris Operation (GEMO) independent spent fuel storage installation (ISFSI) Materials License SNM–2500 and the associated Technical Specifications (TS) for the GEMO ISFSI located in Morris, Illinois. The amendment application requests changes to the GEMO Safety Committee membership and the facility organizational structure and deletes specific environmental monitoring limits from the TS. This application supersedes in its entirety, General Electric's amendment application dated May 24, 1996, as supplemented August 13, 1996.

This application was docketed under 10 CFR Part 72; the GEMO ISFSI Docket No. 72–1. The amendment of an ISFSI license is subject to the Commission's approval.

The Director, Office of Nuclear Material Safety and Safeguards, or his designee, 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 a hearing or a notice of proposed action and opportunity for a 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 April 30, 1998, as supplemented June 17, 1998, which are available for public inspection at the NRC's Public Document Room, 2120 L Street, NW, Washington, DC 20003–1527 .

Dated at Rockville, Maryland, this 13th day of October 1998.

For the U.S. Nuclear Regulatory Commission.

William F. Kane,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–28358 Filed 10–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices; Revised

A two-day meeting of the Joint ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices scheduled to be held on Thursday, and Friday, October 29–30, 1998, has been changed to a one-day meeting which will be held on Thursday, October 29, 1998, beginning at 8:30 a.m., in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. Notice of this meeting was published in the **Federal Register** on Thursday, October 15, 1998 (63 FR 55414). All other items pertaining to this meeting remain the same as previously published.

For further information contact, Mr. Michael T. Markley, cognizant ACRS staff engineer, (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: October 16, 1998.

Michael T. Markley,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–28359 Filed 10–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453 and License No. SEA–917]

Atlas Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt of petition for Director's Decision under 10 CFR 2.206.

Notice is hereby given that a request for Hearing and Petition for Leave to Intervene (Petition) filed by the State of Utah (State) has been referred by the Atomic Safety and Licensing Board (ASLB) to be treated as a petition under 10 CFR 2.206.

On August 2, 1988, Atlas Corporation (Atlas), 370 Seventeenth Street, Suite 3050, Denver, Colorado 80202, submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its site near Moab, Utah. On April 4, 1994, notice of Receipt of Application and notice of opportunity for hearing on the application were published in the **Federal Register**. 59 Fed. Reg. 16,665 (1994). On July 13, 1998, the State filed its Petition stating that if the Petition is found to be untimely that it be treated as a 10 CFR 2.206 petition in accordance with 10 CFR 2.1205(l)(2). The Petition was filed by Denise Chancellor, Assistant Attorney General on behalf of the State. By Memorandum and Order dated August 13, 1998, the ASLB determined that the Petition was inexcusably late and would be treated as a petition under 10 CFR 2.206 in accordance with 10 CFR 2.1205(l)(2).

In its Petition the State asserts that if Atlas were to proceed with its reclamation plan as approved by the Nuclear Regulatory Commission, it would be in violation of 10 CFR Part 40, Appendix A. More specifically, the State asserts that the rock apron design (armoring the tailings pile) does not provide ''reasonable assurance' against engineering failure at the Atlas Uranium Tailings Site, and, thus does not satisfy Appendix A.'' As bases for its assertion, Utah stated that the unpredictability of flood events, erosion, and vegetation growth along the river banks makes computation of the probability of river migration extremely difficult and that, therefore, conservatism should be built into how the tailings pile is armored.

The Petition has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Petition Manager, Telephone (301) 415–6629.

Dated at Rockville, Maryland, this 16th day of October, 1998.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Deputy Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–28357 Filed 10–21–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 26, 1998.

An open meeting will be held on Tuesday, October 27, 1998, at 10:00 a.m. A closed meeting will be held on Tuesday, October 27, 1998, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, October 27, 1998, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Joseph J. Barbato from an administrative law judge's initial decision. For further information, contact Joan L. Loizeaux or Sara Crovitz at (202) 942–0950.

The subject matter of the closed meeting scheduled for Tuesday, October 27, 1998, following the 10:00 a.m. open meeting, will be:

Institution and settlement and injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Post argument discussion.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain, what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

October 20, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–28460 Filed 10–20–98; 11:49 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40559; File No. SR–Amex–98–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Opening Transactions in Flexible Equity Options

October 15, 1998.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934[1] notice is hereby given that on September 28, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to change the required minimum value size for opening transactions in FLEX Equity Options series that have no open interest, so that the minimum value size will be the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to change the minimum value size for opening transactions (other than FLEX Quotes responsive to FLEX Request for Quotes) in any FLEX Equity Option series in which there is no open interest at the time the Request for Quotes is submitted. Currently, Rule 903G states that the minimum value size for these opening transactions shall be 250 contracts. The Exchange is proposing to change this rule such that the minimum value size for these transactions shall be the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities.

The Exchange is proposing this change because it believes the current rule is overly restrictive. The rule was originally put in place to limit participation in FLEX Equity options to sophisticated, high end worth individuals. However, the Exchange believes that this limit tied to the number of contracts alone hurts the liquidity and trading interest in FLEX Equity Options for higher priced equities. The Exchange believes the value of the securities underlying FLEX Equity Options is just as valid a restraint as one tied solely to the number of contracts and if set at the right limit can prevent the participation of investors who do not have adequate resources. In fact, the limitation on the minimum value size for opening transactions in FLEX Index Options is tied to the same type of standard, the Underlying Equivalent Value. The Exchange believes the number of contracts overlying $1 million in underlying securities is adequate to provide the right amount of investor protection. An opening transaction in a FLEX Equity series on a stock priced at more than $40 would reach this limit before it would reach the contract size limit *i.e.*, 250 contracts times the multiplier (100) times the stock price ($40) equals $1 million in underlying value. It should also be noted that the minimum value size in FLEX Equity series overlying low priced stocks may currently be permitted although the transaction may overlie a much smaller value. For example, FLEX Equity Options overlying a $10 stock would be permitted although the underlying value for Options may be $250,000 *i.e.*, 250 times 100 (multiplier) times $10 (stock price).

(2) Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[2] in general, and furthers the objectives of Section 6(b)(5),[3] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change is based on substantively identical rules relating to the minimum opening transaction size in FLEX Equity Options at the Chicago Board Options Exchange, Inc.[4] and: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from September 28, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(e)(6)[6] thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[2] 15 U.S.C. 78f(b)(5).

[4] *See* Securities Exchange Act Release No. 40451 (September 18, 1998), 63 FR 51393 9September 25, 1998).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(6).

[7] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 US.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–98–35 should be submitted by November 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28318 Filed 10–21–98; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Number 34–40560; File Number SR–CHX–98–15]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Payment of Listing Fees by Specialists

October 15, 1998.

1. Introduction

On June 16, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish that Specialists, Co-Specialists and Relief Specialists may not pay listing fees for any issuing corporation for which they act as a Specialist, Co-Specialist or Relief Specialist.

The proposed rule change was published for comment in the **Federal Register** on July 22, 1998.[3] No comments were received on the proposal. On September 24, 1998, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and grants accelerated approval to Amendment No. 1 thereto. The Commission is also soliciting comments on Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 20A to Article XXX to prohibit Exchange members and member organizations from directly or indirectly paying listing fees, including initial and maintenance fees, for any issuing corporation for which the member or member organization acts as a Specialist, Co-Specialist or Relief Specialist. According to the CHX, the purpose of the proposed rule is to avoid potential conflicts of interest, both actual and apparent, that could arise in such situations. The Exchange believes that Specialists have an obligation to maintain a free and open market in an issue. To maintain the integrity of the market, the Exchange believes that Specialists must remain independent of issuers.

III. Discussion

After careful review, the Commission finds that the proposed rule, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[6] because the rule is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and to protect investors and the public interest.

The Commission notes that proposed Rule 20A specifically prohibits CHX members from directly or indirectly paying listing fees for any issuer for which such member acts as a Specialist, Co-Specialist or Relief Specialist. The Commission believes that the proposed prohibition on specialists' payment of issuer listing fees, either directly or indirectly, should help to ensure and make clear that financial incentives given to an issuer to be listed, or remain listed, on the CHX will not be permitted. Any payment by a specialist to an issuer clearly raises a conflict of interest and puts into question the independence of the specialist in making a market in the issuer's stock. The Commission also notes that the proposed new rule is consistent with other CHX rules intended to ensure that Exchange specialists remain independent of issuers.[7]

The proposal has also been amended to explicitly prohibit specialists' from paying issuer listing fees either directly or indirectly. The Commission believes that the addition of this language will make clear that financial incentives to obtain or retain listings, irrespective of whether the incentive is received directly or indirectly from the specialist, is prohibited. This should further preserve the independence of CHX specialists and issuers.

While the Commission believes it is useful for the CHX to adopt an explicit prohibition under its rules to prohibit specialist payments to issuers, the Commission notes that any actions of specialists that raise questions as to their independence from an issuer when making a market in the issuer's stock would raise concerns under the Act. Based on the above, the Commission believes that the proposed new rule will enhance the integrity of the market and should help to ensure just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.[8]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that Amendment No. 1 clarifies the proposed rule by specifically stating that indirect, as well as direct, payments of listing fees for issuers by specialists are prohibited. The amendment, therefore, does not substantively change the meaning or intent of the proposed rule. As Amendment No. 1 strengthens the original proposal by making clear that indirect payments of listing fees are prohibited, the Commission believes that Amendment No. 1 raises no new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40202 (July 14, 1998), 63 FR 39319 (July 22, 1998).

[4] Letter from David T. Rusoff, Foley & Lardner to Deborah Flynn, Division of Market Regulation, Commission, dated September 23, 1998 (''Amendment No. 1''). In Amendment No. 1, the CHX amends its proposal to clarify that the proposed rule prohibits indirect as well as direct payments of listing fees, by a specialist, on behalf of an issuer.

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* CHX Article XXX, Rule 23.

[8] 15 U.S.C. 78f(b)(5).

issues of regulatory concern. For these reasons, the Commission believes that good cause exists, consistent with Section 6(b)(5)[9] and Section 19(b)[10] of the Act, to approve Amendment No. 1 to the proposed rule on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other 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 at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–15 and should be submitted by November 12, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act.[11] that the amended proposed rule change (SR–CHX–98–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28319 Filed 10–21–98; 8:45 am]

BILLING CODE 8010–01–M

[9] U.S.C. 78(b)(5).

[10] U.S.C. 78s(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40555; File No. SR–NASD–98–48]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers

I. Introduction

On July 10, 1998, the National Association of Securities Dealers, Inc., (''NASD'' or ''association'') through its wholly-owned subsidiary, NASD Regulation, submtited to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 10308 to set forth new procedures to be used to select arbitrators for arbitrations involving public customers.[3] Under the new procedures, NASD regulation will allow the parties to an arbitration to rank arbitrators from lists generated primarily using an automated process, providing parties with a larger role in determining the composition of their arbitration panels. NASD Regulation also is proposing conforming changes to Rules 10104, 10309, 10310, 10311, 10312, and 10313. In addition, NASD Regulation proposes to amend Rule 10315 concerning the scheduling of the first meeting of the parties and the arbitration panel to reflect that such meetings usually occur prior to the first hearing of an arbitration proceeding. Finally, NASD Regulation proposes to correct in its rules the name of the NASD Regulation committee that addresses arbitration and related matters, the National Arbitration and Mediation Committee.

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 40261 (July 24, 1998) 63 FR 40761 (July 30, 1998). Three comment letters were received in response to the proposal.[4] NASD Regulation filed Amendment Nos. 3 and 4 to the proposed rule change [5] on August 14, 1998 and September 4, 1998, respectively. The NASD also responded to the comment letters.[6] Below is the text of the proposed rule change contained in the Amendment Nos. 3 and 4. Proposed new language is italicized; proposed deletions are in brackets.

10308. Selection of Arbitrators in Customer Disputes

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed a proposed rule change to use a similar list selection process for intra-industry arbitrations (SR–NASD–98–64), which the Commission is approving on an accelerated basis simultaneously with this filing.

[4] *See* letters from Stephen G. Sneeringer, Chairman, Securities Industry Association (''SIA'') Arbitration Committee, to Jonathan G. Katz, Secretary, Commission, dated August 19, 1998 (''SIA Letter''); Scot D. Bernstein (''Bernstein''), Law Offices of Scot D. Bernstein, to Jonathan G. Katz, Secretary, Commission, dated August 19, 1998 (''Bernstein Letter''); and Richard P. Ryder (''Ryder''), Securities Arbitration Commentator, to Jonathan G. Katz, Secretary, Commission, dated September 2, 1998 (''Ryder Letter'').

[5] Amendment No. 3 amends the definition of ''non-public arbitrator'' to incorporate the standard terminology ''municipal securities dealer'' and to add an explicit reference to government and municipal securities to make clear that employees of banks or other financial institutions who engage in government or municipal securities transactions are included in the definition; by reordering proposed Rule 10308(b)(1) to make it more clear and to conform it to previously approved amendments to Rule 10308 and Rule 10302; by amending Rule 10308(b)(1) to clarify parties' right to change the panel composition if they all agree; to clarify in the rule language what information will be available with regard to the initial conflict of interest review by NLSS; to clarify in the rule language that the information on each arbitrator forwarded to the parties is employment information for a 10 year period and any other background information; to clarify in the rule language that a ranking of ''1'' means the most preferred arbitrator; to clarify in the rule language that when the Director must appoint an unranked arbitrator the Director will provide the parties Rule 10308(b)(6) information and the parties shall have the right to object to the arbitrator as provided in Rule 10308(d)(1); to delete the reference in the rule to parties acting cooperatively to rank arbitrators; and to reorder Rule 10312(d), (e), and (f) and to clarify the information contained in those paragraphs. *See* letter from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated August 14, 1998 (''Amendment No. 3'').

Amendment No.4 amends Rule 10308(c)(5) to state that the Director must chose one of the public arbitrators as chairperson of the arbitration panel, subject to certain parameters; amends Rule 10308(c)(3) to eliminate the exception where a Director could determine not to consolidate a party's rankings with the other parties if he or she determines that their interests are ''sufficiently divergent;'' amends Rule 10313 to align the time period with previous revisions to rules 10312 and 10315; to clarify the effective date of the proposed rule change; and to respond to the comment letters. *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated September 4, 1998 (''Amendment No. 4'').

[6] *See* Amendment No. 4 and letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated September 11, 1998 (''Response Two'').

(a) Definitions

(1) through (3) No change

(4) ''non-public arbitrator''

The term ''non-public arbitrator'' means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past three years, was:

(i) associated with a broker or a dealer (including a government *securities broker or dealer* or a municipal securities [broker or] dealer);

(ii) through (iv) No change

(B) through (C) No change

(D) is an employee of a bank or other financial institution and effects transactions in securities, *including government or municipal securities,* and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) through (7) No change

(b) Composition of Arbitration Panel; Preparation of Lists for Mailing to Parties

(1) Composition of Arbitration Panel

(A) *Claims of $50,000 or Less* [General Rule Regarding Panel Composition] [(i)]

If the amount of a claim is $50,000 or less, the Director shall appoint an arbitration panel composed of one public arbitrator, unless the parties agree [otherwise] *to the appointment of a non-public arbitrator.*

(i) If the amount of a claim is $25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

(ii) If the amount of a claim is greater than $25,000 and not more than $50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

[(ii) If the amount of a claim is more than $50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree otherwise.]

(B) [Special Request] *Claims of More than $50,000. If the amount of a claim is more than $50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.*

[If the amount of a claim is greater than $25,000 and not more than $50,000 and the claimant requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree otherwise.]

(2) through (3) No change

(4) Preparation of Lists

(A) Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the lists of public and non-public arbitrators on a rotating basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest *identified within the Neutral List Selection System database.*

(B) No change

(5) No change

(6) Information About Arbitrators

The Director shall send to the parties employment history for each listed arbitrator for the past 10 years and [any] *other background* information [disclosed by the arbitrator under Rule 10312 relating to personal or financial interests or the existence of a relationship that gives rise to an appearance of a conflict of interest or bias]. If a party requests additional information about an arbitrator, the Director shall send such request to the arbitrator, and shall send the arbitrator's response to all parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for the parties to return the ranked lists under paragraph (c)(2).

(c) Striking, Ranking, and Appointing Arbitrators on Lists

(1) Striking and Ranking Arbitrators

(A) No change

(B) Ranking—Panel of One Arbitrator

Each party shall rank all of the arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking *, with a ''1'' rank indicating the party's first choice, a ''2'' indicating the party's second choice, and so on.*

(C) Ranking—Panel of Three Arbitrators

Each party shall rank all of the public arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, *with a ''1'' rank indicating the party's first choice, a ''2'' indicating the party's second choice, and so on.* Each party [and] separately shall rank all of the non-public arbitrators remaining on the list, using the same procedure.

[(D) Joint Action Permitted

All claimants may act jointly and all respondents, including third-party respondents, may act jointly to file a single list that reflects their unanimous agreement as to the striking and ranking of arbitrators. If multiple claimants or respondents do not act jointly, the rankings of multiple claimants or respondents will be consolidated as described in paragraph (b)(3)(A).]

(2) No change

(3) Process of Consolidating Parties' Rankings

[(A) General Rule] The Director shall prepare one or two consolidated lists of arbitrators, as appropriate under paragraphs (b)(2) or (b)(3), based upon the parties' numerical rankings. The arbitrators shall be ranked by adding the rankings of all claimants together and all respondents together, including third-party respondents, to produce separate consolidated rankings of the claimants and the respondents. The Director shall then rank the arbitrators by adding the consolidated rankings of the claimants, the respondents, including third-party respondents, and any other party together, to produce a single consolidated ranking number, excluding arbitrators who were stricken by any party.

[(B) Exception If the Director determines that the interests of a party are sufficiently different from the interests of other claimants or respondents, the Director may determine not to consolidate the rankings of that party with the rankings of the other claimants or respondents.]

(4) Appointment of Arbitrators

(A) No change

(B) Discretion to Appoint Arbitrators Not on List

If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director shall appoint one or more arbitrators to complete the arbitration panel. [; *provided,* however,] *U*[u]nless the parties agree otherwise, the Director may not appoint a non-public arbitrator under paragraphs (a)(4)(B) or (a)(4)(C). *The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).*

(5) Selecting the Chairperson for the Panel

The parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties cannot agree, the Director shall appoint [one of the public arbitrators as the chairperson. Unless all parties agree otherwise, the Director shall not appoint as the chairperson a public arbitrator who: (A) is an attorney, accountant, or other

professional, and (B) has devoted 50% or more of his or her professional or business activities; within the last two years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters.] *a chairperson from the panel as follows:*

(A) The Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties as long as the person is not an attorney, accountant, or other professional who has devoted 50% or more of his or her professional or business activities, within the last two years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters.

(B) If the most highly ranked public arbitrator is subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the other public arbitrator, as long as the person also is not subject to the exclusion set forth in subparagraph (A).

(C) If both public arbitrators are subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties.

(6) No change

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) through (2) No change

(3) Vacancies Created by Disqualification or Resignation

Prior to the commencement of the earlier of (i) the first prehearing conference or (ii) the first hearing, [I]*if* an arbitrator appointed to an arbitration panel is disqualified or *is otherwise unable or unwilling to serve,* [resigns from an arbitration panel,] the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). *The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).*

(e) No change

* * * * *

Rule 10312. Disclosures Required of Arbitrators and Director's Authority To Disqualify

(a) through (c) No change

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(d) *Prior to the commencement of the earlier of (i) the first prehearing conference or (ii) the first hearing, the Director may remove an arbitrator based on information disclosed pursuant to this Rule.*

(e) Prior to the commencement of the earlier of (i) the first prehearing conference or (ii) the first hearing, t[T]he Director shall inform the parties to an arbitration proceeding of any information disclosed to the Director under this Rule unless *either* the arbitrator who disclosed the information withdraws [from being considered for appointment] voluntarily *as soon as* [and immediately after] the arbitrator learns of any interest or relationship described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding*, or the Director removes the arbitrator.*

[(e) Prior to the commencement of the earlier of (i) the first prehearing conference of (ii) the first hearing, the Director may remove an arbitrator based on information disclosed pursuant to this Rule.]

(f) After the commencement of the earlier of (i) the first prehearing conference or (ii) the first hearing, the Director's authority to remove an arbitrator from an arbitration panel ceases. *During this period, the Director shall inform the parties of any information disclosed by an arbitrator under this Rule.*

Rule 10313. Disqualification or Other Disability of Arbitrators

In the event that any arbitrator, after the commencement of the *earlier of (i) the first prehearing conference or (ii) the* first hearing [session] but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within 5 days of notification of the vacancy on the panel.

II. Background and Description

NASD Regulation developed a rule that provides parties in arbitration with more input into the selection of arbitrators. Under the proposal, parties will select their arbitrators from lists provided by NASD Regulation. In a one-arbitrator panel case, the parties to the arbitration will be provided a list of public arbitrators, and, in a three-arbitrator panel case, the parties will be provided a list of public and a list of non-public arbitrators.[7] The parties will use the lists to express numerical preferences for the arbitrators listed and those rankings will determine the outcome of the arbitrator selection process, unless all ranked arbitrators decline to serve because they are unavailable, recuse themselves, or are disqualified because of conflicts of interest.

The lists of arbitrators will be generated by computer from an arbitrator database called the Neutral List Selection System (''NLSS'').[8] However, the Director of Arbitration (''Director'') also has the discretion to supplement the NLSS process in response to party requests.

The proposed rule change is divided into five parts.[9] Paragraph (a) contains definitions. Paragraph (b) specifies how lists of public and non-public arbitrators will be compiled and forwarded to the parties. Paragraph (c) specifies how the parties indicate their preferences by numerical rankings and how the Director reconciles the preferences of the parties, selects the arbitrators, selects the chairperson if the parties do not make the selection, and, if necessary, disqualifies an arbitrator before the arbitrator is appointed. Paragraph (d) describes generally how parties and the Director may remove a person from serving as an arbitrator if the person has a conflict of interest or a bias. Paragraph (e) specifies that the Director has discretionary authority to resolve issues arising in the administration of the list selection process.

NASD Regulation amended several other rules in the Rule 10000 Series in order to make the Rule Series 10000 consistent. Proposed amendments to those rules are discussed at the end of the discussion of the proposed changes to Rule 10308.

Definitions—Paragraph (a)

Paragraph (a) of Rule 10308 of the proposed rule change contains seven definitions: ''day,'' ''claimant,'' ''Neutral List Selection System,'' ''non-public arbitrator,'' ''public arbitrator,'' ''respondent'' and ''send.''

[7] For ease of reference, the NASD focused the discussion in this rule filing on of the process of selecting a three-person arbitration panel.

[8] The term ''Neutral List Selection System'' is defined in proposed Rule 10308(a)(3).

[9] The NASD has filed a proposed rule change to apply a similar list selection process to intra-industry disputes, which the Commission is approving on an accelerated basis simultaneously with this filing. *See* SR–NASD–98–64.

The definition of ''non-public arbitrator'' at paragraph (a)(4) largely retains the existing definition in the Rule 10000 Series of an arbitrator who is deemed to be ''from the securities industry,'' but it adds to that defined term persons employed by banks and other financial institutions who are engaged in securities activities or in the supervision of such activities.

The definition of ''public arbitrator'' at paragraph (a)(5) of Rule 10308 also largely retains the existing definition in the Rule 10000 series. The proposed rule change clarifies the securities-related activities or affiliations that would exclude an arbitrator from the ''public arbitrator'' classification. For example, the proposed rule change adds that persons employed by banks and other financial institutions who are engaged in securities activities or in the supervision of such activities may not be public arbitrators.

''Immediate family member'' is defined in proposed Rule 10308(a)(5)(B) with reference to the person's familial or economic ties to the person associated with the securities or commodities industry.[10] A person who has a close familial, personal, or economically dependent relationship with an associated person can be viewed as biased in favor of the securities or commodities industry even though he or she is not involved directly with the identified industry.[11]

The term ''Neutral List Selection System'' defines the new software program that will implement the proposed list selection rule. NASD Regulation defines ''Neutral List Selection System'' as ''the software that maintains the roster of arbitrators and performs various functions relating to the selection of arbitrators.''[12] Among other things, NLSS will maintain the roster of arbitrators, identify arbitrators as public or non-public, screen arbitrators for conflicts of interest with parties, list arbitrators according to geographic hearing sites and, on occasion, by expertise, and consolidate the numerical rankings that parties assign to listed arbitrators.

Two other terms, ''claimant'' and ''respondent,'' are defined in paragraph (a) to simplify certain aspects of the rule. Under proposed Rule 10308(a)(2), if one or more persons files a single claim they will be treated as one claimant. A parallel definition is proposed for respondents; one or more persons who file the same answer will be treated as one respondent.[13] The Office of Dispute Resolution (''ODR'') views claimants who file one claim or respondents who file one answer as generally having sufficiently similar interests in the outcome of the proceeding to be considered as one party for purposes of the list selection process.[14] This approach will simplify consolidating the parties' preferences for arbitrators described below.[15]

Composition of Arbitration Panel; Compilation of Lists of Arbitrators for Parties' Selection—Paragraph (b)

Proposed Rule 10308(b)(1) states the number of arbitrators that the Director should appoint to a panel, general panel composition requirements, and exceptions to those requirements. If the claim is $50,000 or less, the claim generally will be heard by a single public arbitrator, unless the parties agree to the appointment of a non-public arbitrator.[16] If the claim is more than $50,000, a panel of two public arbitrators and one non-public arbitrator will hear the dispute, unless the parties agree to a different panel composition.[17] Under proposed paragraph (b)(1)(i), if the claim is $25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director will appoint an arbitration panel composed of one non-public and two public arbitrators, unless the parties agree to a different panel composition.[18]

Under proposed paragraphs (b)(2) and (b)(3) of Rule 10308, the Director will send lists of names of arbitrators for ranking to the claimant and the respondent. When only one arbitrator will hear the proceeding, the Director will send the parties one list of public arbitrators.[19] When three arbitrators will hear the proceeding, the Director will send the parties two lists, one containing the names of public arbitrators and the other containing the names of non-public arbitrators.[20] When the parties agree to change the panel composition, references in the balance of the rule to a panel would be interpreted accordingly. For example, if the parties agree to a panel composed of three public arbitrators, under proposed paragraph (c)(1)(C) the parties would rank a list of public arbitrators only; the Director would not send the parties a list of non-public arbitrators. In addition, if the panel composition varies from that provided in proposed paragraph (b)(1)(A) or (B), NLSS is not capable of processing all combinations. NLSS can generate the lists and consolidate the rankings for one-person panel of either public or non-public classification. For a three-person panel, NLSS can only generate the lists and consolidate the rankings for a panel composed of one non-public and two public arbitrators or three non-public arbitrators.[21]

(i) Director's Minimum Numbers for Lists

Subparagraphs (b)(2) and (b)(3) of proposed Rule 10308 do not set a fixed ratio of arbitrators or a minimum number of arbitrators that ODR must

[10] ''Immediate family member'' means:

(i) a family member who shares a home with a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraph (a)(4)(A) through (D); or

(iii) a person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraph (a)(4)(A) through (D).

[11] As under existing rules, a small group of persons will continue to be excluded from serving as either public or non-public arbitrators (e.g., spouses and immediate family members of registered representatives). Excluded by subparagraph (a)(5) from serving as public arbitrators, such persons are also excluded from serving under subparagraph (a)(4) as non-public arbitrators because a non-public arbitrator must have the professional securities experience (or the related qualifications) listed in subparagraph (a)(4). For example, unless the spouse of a registered representative was also employed in the securities or commodities industry (or engaged in one of the business activities related to the securities industry), that person might not posses securities industry experience (or the related qualifications) and therefore could not serve as a non-public arbitrator. In addition, because of the marital relationship, the spouse would be excluded from serving as a public arbitrator.

[12] Proposed Rule 10308(a)(3).

[13] Proposed Rule 10308(a)(6).

[14] The consolidated process is described in greater detail below. However, it should be noted that a group of claimants that does not file a single claim, or, similarly, a group of respondents that does not file a single answer, does not obtain an advantage in the consolidation process or in the weighting of their preferences for arbitrators. For example, if in a case there are two claimants who are not viewed as one claimant under the rule, and one respondent, the two claimants' arbitrator rankings will be weighted as only 50% of the total; the one respondent's arbitrator rankings be weighted as the other 50%.

[15] The terms ''day'' and ''send'' are also defined in paragraph (a).

[16] *See* Proposed Rule 10308(b)(1)(A)(i) and Amendment No. 3. Under proposed paragraph (b)(1)(A)(ii) of Rule 10308, a claimant with a claim valued greater than $25,000 and not more than $50,000 may request a three-person arbitration panel. Obtaining a three-person panel under this subparagraph then obligates the parties to pay hearing session deposit fees for a three-person panel under Rule 10332. An arbitrator appointed to the case may also request a three arbitrator panel. *See* Amendment No. 3.

[17] *See* Proposed Rule 10308(b)(1)(A)(ii) and Amendment No. 3.

[18] *See* Amendment No. 3.

[19] Proposed Rule 10308(b)(2).

[20] Proposed Rule 10308(b)(3).

[21] Although the parties could agree to changes in panel composition, NASD Regulation states that experience indicates that composition changes for disputes involving customers is almost never requested.

list. ODR, however, has established the following guidelines. For a panel of one arbitrator, the Director intends to provide five names of public arbitrators whenever possible, but not less than three names. For a panel of three arbitrators, the Director intends to provide lists that contain up to 10 public arbitrator names and five non-public arbitrator names; when that is not possible, the Director will provide a public arbitrator list of not less than six names, and a non-public arbitrator list of not less than three names. To the extent possible, NASD Regulation expects that, for a three-person panel, the list of public arbitrators will contain approximately twice as many names as the list of non-public arbitrators. The Director's ability to provide full lists of names will vary and depends on the number of available arbitrators and the demands on the arbitrator roster. Circumstances may arise where a small arbitrator roster in a particular hearing location (for example, Richmond, Va., Norfolk, Va., Alaska, or Hawaii), combined with a high demand for arbitrators, would prevent the Director from meeting the objectives.

To address possible arbitrator shortages, NASD Regulation plans to combine arbitrator rosters from near-by hearing locations. For example, under proposed paragraph (b)(2), the list to be sent to the parties should contain, at a minimum, three names of public arbitrators. If, with one hearing location coded into NLSS, NLSS does not generate the names of three public arbitrators, the Director will return to NLSS, add a second hearing location code, and generate a list of public arbitrators that will include the additional arbitrators. The second hearing location coded will be one that is geographically close to the first hearing location code.

(ii) NLSS Functions and Capabilities

Proposed paragraphs (b)(2), (3), and (4) of Rule 10308 together state the four factors which are used by NLSS to generate the list or lists of arbitrators by ''selecting'' or ''sorting'' the NLSS database. The four factors are arbitrator classification, hearing location code, rotation,[22] and conflicts of interests [23] identified within the NLSS database.[24]

Under proposed Rule 10308(b)(4)(B), the automated NLSS selection process that generates the arbitrators may be altered in order to add a fifth factor, expertise. Expertise has three subcategories: (1) subject matter expertise (also known as a controversy code); (2) security expertise (also known as a security code); and (3) case expertise (also known as a qualification code).

Two of these types of expertise, subject matter expertise and security expertise, are factors that may be included in the NLSS's selection or sorting process at the option of a party as provided in proposed paragraph (b)(4)(B) of Rule 10308.

First, a party may request for listing arbitrators who possess certain types of subject matter expertise.[25] The NLSS will add the additional factor and sort or select for placement on the lists some arbitrators having the subject matter expertise identified unless such arbitrators are not available.[26]

The second subcategory of expertise, security expertise, is also added to the NLSS selection process at the option of a party. There are 22 security subcategories, listing various types of securities or other financial instruments (e.g., common stock, municipal bonds, stock index futures, Ginnie Maes, etc.), and a party may indicate whether expertise regarding a particular instrument is desired. The same procedure described above regarding NLSS selection to accommodate the additional factor of subject matter expertise will apply if a party opts to include security expertise in the NLSS selection process. If available in the hearing location, certain arbitrators may be included in the arbitrator lists generated by NLSS. However, the Director is not obligated to provide a list that contains one or more names having the requested security expertise.

The third type of expertise, case expertise, will be a factor in the NLSS selection process at the option of the Director or at the request of the parties; the category is very narrow and its use is primarily to aid in the administration of a case. Case expertise contains only three subcategories: injunctive relief cases; employment law cases; and large and complex cases. Only one of the subcategories, that identifying expertise in large and complex cases, is relevant for any customer arbitration and is very infrequently utilized.[27] When used, the NLSS will search for the names of arbitrators, if such arbitrators exist, in the appropriate hearing location with expertise in large and complex cases.

(iii) Conflicts-of-Interest

During the preparation of the arbitrator lists, two types of conflict-of-interest checks will occur. The first is the check for conflicts of interests between parties and potential arbitrators that will be performed as part of the automated NLSS process that was noted

[22] The NLSS rotation feature also may be described as a ''first-in-first-out'' feature. For a case that will be heard by one public arbitrator, the following steps would apply. As an arbitrator's name rises to the top of the list of all arbitrators who are, for example, public arbitrators and found in one hearing location, the arbitrator's name will be generated by NLSS, absent an identified conflict of interest, on a list for ranking by parties to an arbitration. Once the arbitrator's name is sent to the parties, even if the arbitrator is later not appointed an arbitrator for the panel, NLSS places such arbitrator at the bottom of the computerized NLSS list. Thus, an arbitrator may be listed, and thereafter rotated to the bottom of the NLSS list even if: (1) the arbitrator recuses him or herself; (2) the arbitrator is not ranked highly enough by the parties to be appointed or the arbitrator was struck; or (3) the arbitrator is ranked highly enough to serve, is contacted, has no conflict of interest or bias that would disqualify him, but is unavailable to serve.

When a three person panel will be appointed, generally two public arbitrators and one non-public arbitrator are needed. For the generation of the list of non-public arbitrators and the list of public arbitrators, the same process would be used. For the selection of the non-public arbitrators, the first five non-public arbitrators in the system will be rotated forward for the first arbitration case. However, if, for example, the case is against Firm X and the first person that NLSS generates, Arbitrator A51000, is employed by Firm X, NLSS will not select Arbitrator A51000 but will skip over him or her and will list the next person classified as a non-public arbitrator. Arbitrator A51000 will remain at the top of the internal NLSS rotating list for non-public arbitrators, and the NLSS will generate his or her name when next requested to produce the names of non-public arbitrators for a case in the same hearing location. The process for obtaining the list of public arbitrators is the same.

[23] Proposed Rule 10308(b)(4). NLSS can identify only obvious, disclosed conflicts of interest. For example, NLSS recognizes a conflict of interest when the member firm that is the respondent is also the employer of an arbitrator rotating forward in NLSS. NLSS would not list such a person on a non-public arbitrator list being generated for that case.

[24] *See* Amendment No. 3.

[25] An arbitrator is deemed to have certain subject matter expertise if he or she represents on an NASD arbitration intake form that he or she possesses it. ODR does not verify such representations.

[26] NLSS selects based upon the areas of subject matter expertise that have been coded for the NLSS. If not coded into the NLSS, ODR does not have the administrative capacity to identify arbitrators who might possess in-depth knowledge in the desired subject (e.g., bankruptcy is not a category of expertise identified in the NLSS; ''churning'' and ''suitability'' are subject matter categories that are identified.). The areas of subject matter expertise that are coded in NLSS are those that previously have been identified in arbitrator disclosure forms. NASD Regulation plans in the future to update and to amend the designated subject matter areas. At that time, NASD Regulation will make corollary changes to NLSS.

[27] The two other types of case expertise, expertise involving injunctive relief and employment issues, are used only in intra-industry arbitrations.

above.[28] The second process will be a review for conflicts of interest performed manually by ODR, which will occur after the NLSS creates a list of arbitrators, but before the list is finalized. ODR will perform a review based upon information that each arbitrator discloses to ODR and, for non-public arbitrators, additional information found in the Central Registration Depository (''CRD''). After a review of available information, ODR may remove an arbitrator based upon such disclosure.[29] If arbitrators are eliminated during this process, ODR will replace them by returning to NLSS so that the minimum number of public arbitrators, and, if applicable, non-public arbitrators, are on the list or lists that will be mailed to the parties.

After the parties receive the lists, the parties also will have the ability to review information disclosed by the potential arbitrators to determine if a conflict of interest exists. Under proposed paragraph (b)(6) of Rule 10308, for each arbitrator listed, the Director will provide the parties with the arbitrator's employment history for the past 10 years and other background information. This information may help parties to discover a conflict of interest between a party or its witnesses and the arbitrator listed and permits the parties to make more informed decisions during the process of ranking and striking the listed arbitrators. Under paragraph (b)(6), the parties may request additional information from the arbitrators; any response by an arbitrator is forwarded to all parties. If a party identifies a conflict of interest, the party's remedy is to strike the person from the list, in the process described in greater detail below.[30]

(iv) Transmittal to Parties

The Director shall send the lists to all parties approximately 30 days after the respondent's answer is due, or, if there are multiple respondents, approximately 30 days after the last answer is due. If there is a third-party claim, the Director shall send the lists approximately 30 days after the third-party respondent's answer is due or, if there are multiple third-party respondents, approximately 30 days after the last answer is due.[31] Under proposed paragraph (a)(7) of Rule 10308, ''send'' means to send by first class mail, facsimile, or any other method available and convenient to the parties and the Director, and the lists and all other transmissions between the parties and the Director shall be sent using one of these methods.

Striking, Ranking, and Appointing Arbitrators—Paragraph (c)

Generally, paragraph (c) of proposed Rule 10308 sets forth the method by which a party strikes and ranks arbitrators and the procedures ODR will use to consolidate the parties' preferences and appoint an arbitration panel. Under paragraph (c), the parties rank the arbitrators on the list according to the parties' preferences, and strike arbitrators to remove them from consideration. Proposed paragraph (c) will implement the most important feature of the list selection rule, that of allowing a party to exercise significant influence over the composition of the party's arbitration panel.

(i) *Striking and Ranking Arbitrators*

Proposed paragraph (c)(1) provides the basic structure for the parties to exercise their influence in selecting arbitrators for their arbitration proceeding. First, each claimant and each respondent may strike any one or more arbitrators from the list (or lists, if there are two lists) for any reason, including the party's concern that the arbitrator may have a conflict of interest. Second, the party ranks each arbitrator remaining on the list by assigning the arbitrator a different numerical ranking. A ''1'' rank indicates the party's first choice, a ''2'' indicates the party's second choice, and so on, until all the arbitrators are ranked.[32] When a party receives one list of public arbitrators and one list of non-public arbitrators, the party must rank arbitrators on each list separately.[33] As noted above, all claimants who file a single claim are treated as one claimant; and similar treatment is accorded to all respondents who file one answer. Multiple claimants and multiple respondents may act jointly to determine which arbitrators to strike and how to rank the remaining arbitrators on the lists in order for persons who are parties to have their preferences for arbitrators weighed appropriately.[34]

Under proposed paragraph (c)(2), each party's lists of arbitrators reflecting the party's strikes and rankings must be returned to the Director not later than twenty days after the Director's letter communicating the lists was sent. If a party does not timely return the lists, the Director shall treat the party as having retained all the arbitrators on the lists and as having no preferences. If the lists are returned but a party fails to rank an arbitrator on a list, the Director will assign the arbitrator the next lower ranking after the lowest-ranked arbitrator on that list. For example, if a party ranks arbitrators on a list containing ten public arbitrators by striking six arbitrators and ranking arbitrators A, B, and C, as ''1,'' ''2,'' and ''3,'' respectively, and fails to rank public arbitrator D, ODR will assign arbitrator D a ranking of ''4.''

If a party fails to rank more than one arbitrator on the same list or gives two or more arbitrators on the same list the same numerical ranking, then the Director shall rank the multiple, unranked arbitrators in the same order of preference that the list originally generated by NLSS reflected and transmitted to the parties for their ranking. (When NLSS generates a list, the person listed first is ranked as high or higher by NLSS selection factors than the person listed second, third, and so on. Generally, this NLSS ranking is not relevant because the ranking by the parties is the basis for appointing arbitrators. NLSS ''ranking'' only becomes relevant when the parties fail to rank, or improperly rank multiple arbitrators on a list.)[35]

(ii) Consolidating Parties' Rankings

After the claimant and respondent have returned their lists to the Director, the Director implements the parties' preferences for arbitrator selection using the process described in proposed paragraph (c)(3) of Rule 10308. Under

[28] *See* discussion regarding proposed Rule 10308(b)(4)(A) and Note 23, *supra*.

[29] At this stage of the arbitrator appointment process, ODR staff would not make telephone inquiries.

[30] Proposed Rule 10308(c)(1)(A).

[31] Proposed Rule 10308(b)(5).

[32] This language explaining the ranking was added to the rule language in proposed Rule 10308(c)(1)(B) and (C). *See* Amendment No. 3.

[33] Proposed Rule 10308(c)(1).

[34] Proposed paragraph (c)(1)(D) of Rule 10308, which addresses multiple-party concepts, has been deleted because NASD Regulation believes that it is implicit that parties may act cooperatively to rank arbitrators. *See* Amendment No. 3.

[35] In this process, when only the four factors are considered in the NLSS-list generation process (*e.g.*, arbitrator classification, hearing location code, rotation, and no identified conflicts of interest), the person who has taken part in the fewest list selection processes (*i.e.*, having a higher rotation number) would be placed higher on the NLSS-generated list than a person who has participated in more list selection processes. (*e.g.*, P, a public arbitrator in Richmond, Virginia who has participated in the list selection process six times would be listed more highly by NLSS than Z, a public arbitrator from Richmond, Virginia who has participated in the list selection process seven times, if both were generated for the same list. Therefore, if a party failed to rank both P and Z, the Director would refer to the original NLSS-generated list and rank P more highly than Z.) If additional factors are introduced, such as subject matter expertise, those persons having the greatest cluster of desired factors or characteristics would be listed most highly on the NLSS-generated lists and that ordering would be used by the Director for the default ''ranking'' process that is used only when the parties fail to rank multiple arbitrators.

proposed paragraph (c)(3), the Director, using the NLSS, creates a consolidated list of the public arbitrators, and, if non-public arbitrators are also ranked, a second consolidated list of non-public arbitrators, using a one or two-step consolidation process.

Since generally all parties who file a single claim are treated as one claimant and all respondents who file one answer are treated as one respondent, in most cases, the Director will consolidate the parties' preferences for arbitrators using a one-step process. The Director will add the consolidated rankings of the claimant and the respondent to produce a single consolidated list for the public arbitrators and, if necessary, a second consolidated list for the non-public arbitrators.[36] NLSS performs the consolidation functions.

When there are multiple claimants or respondents, the Director will use a two-step consolidation process. First, the Director will consolidate all rankings of the multiple claimants or respondents. For example, if there are two respondents, R#1 and R#2, the rankings of R#1 and R#2 are added together, resulting in one consolidated respondent ranking for each listed public arbitrator and a second consolidated respondent ranking for each listed non-public arbitrator. This first step in the two-step consolidation process may be avoided by cooperation. The parties may file a list to which the parties have jointly agreed. The first step of the consolidation process, consolidating all the preferences of multiple claimants and, separately, those of multiple respondents, prevents numerous parties on the claimant or respondent side of the case from having a greater influence in the selection of the arbitrators. By consolidating the rankings of parties on the same side, the process ensures that claimants' and respondents' choices will have the same weight in the arbitrator selection process. Second, as previously described, the NLSS will consolidate the rankings of the claimants and the respondents to produce a single consolidated list for public arbitrators and, if necessary, a second list for non-public arbitrators.[37]

NASD Regulation has eliminated the exception to the general rule for consolidation of all claimants or all respondents, which had stated that in instances where the Director determines that the interests of a claimant or a respondent (including a third party respondent) are so substantially different from the interests of other claimants or respondents, the Director may determine not to consolidate the numerical rankings of that party with the numerical rankings of the other claimants (or with the other respondents, as the case may be).[38]

Numerical ties between two or more arbitrators during consolidation will be broken by NLSS by the following principles. First, NLSS will break a tie during consolidation by preferentially ranking one arbitrator above another based upon which of the tied arbitrators has a set of rankings, that, when compared, result in the smallest numerical difference between the claimant ranking and the respondent ranking. A second principle that governs tie-breaking within NLSS is that, given an equal difference in the consolidated ranking, an arbitrator who was listed higher (as more preferred) on the list as originally generated by the NLSS and transmitted to the parties will be given a more preferred or higher ranking in order to break this type of tie.

(iii) Appointing Arbitrators

Proposed Rule 10308(c)(4) states the steps the Director will take to appoint arbitrators after consolidation occurs. If the arbitration is to be heard by one public arbitrator, the Director contacts the public arbitrator ranked highest on the public arbitrator list. If the Director were required to appoint a three-person arbitration panel, the Director would contact the next two highest ranked arbitrators to determine if they were available to serve and, if not disqualified, would appoint them. If necessary, due to the unavailability or disqualification of one of the two arbitrators, the Director would then contact the third highest ranked arbitrator, and invite him or here to serve. The Director would refer to the second list, generated according to the same principles, to determine which non-public arbitrator should be contacted first.

The contact is to determine if the arbitrator is available and, after provided the issues of the cases and the names of the parties, if the arbitrator is aware of any conflicts of interest or bias or other reason that may preclude the arbitrator from rendering an objective and impartial decision. Based upon the information that the arbitrator has previously provided, any information provided to the Director under Rule 10312,[39] and any information obtained from any other source, the Director shall determine if the arbitrator should be disqualified. If the Director determines that the arbitrator should not be disqualified and that the arbitrator is available, the Director appoints the arbitrator.[40]

NASD Regulation will establish a time frame to guide its staff when a listed arbitrator is contacted but fails to respond to ODR's inquiries regarding availability and disqualification. For example, if an arbitrator is telephoned and fails to respond, ODR will eliminate such arbitrator and contact the next listed arbitrator after an appropriate period. NASD Regulation undertakes to exercise its discretion in fairness to the parties waiting for their arbitration cases to be resolved.

(iv) Selecting a Chairperson

Under the proposal, the Director will notify the parties of the appointments and request that the parties appoint a chairperson. The parties may jointly select one of the arbitrators (including the non-public arbitrator) to be the chairperson of the panel.[41] If the parties fail to appoint a chairperson by mutual agreement within 15 days, the Director will appoint the chairperson. The Director will appoint the public arbitrator most highly ranked by the parties, as long as that person is not an attorney or other professional who has devoted 50% or more of his or her professional or business activities, within the past two years, to representing or advising public customers in adversarial proceedings concerning disputed securities or commodities transactions or related matters.[42] If the most highly ranked public arbitrator is subject to this exclusion, the Director shall appoint the other public arbitrator as chairperson, unless that person is also subject to the same exclusion. If both public arbitrators are subject to this exclusion, the Director shall appoint the most highly ranked public arbitrator as chairperson.[43]

(v) When the Consolidated List Is Insufficient

Under proposed Rule 10308(c)(4), if the Director is not able to appoint the

[36] Proposed Rule 10308(c)(3).

[37] Proposed Rule 10308(c)(3). The proposed rule also accommodates the interests of a party added to the case if the party is added before the Director has consolidated the other parties' rankings. Proposed Rule 10308(c)(6).

[38] *See* Amendment No. 4, deleting proposed Rule 10308(c)(3)(B).

[39] Current Rule 10312, also discussed below, requires an arbitrator to disclose, with respect to a particular case and the issues, parties, and witnesses in the case, any information which might preclude the arbitrator from rendering an objective and impartial determination in the case.

[40] Proposed Rule 10308(c)(4).

[41] Proposed Rule 10308(c)(5).

[42] *See* Amendment No. 4.

[43] *See* Amendment No. 4.

number of arbitrators needed for the panel using the consolidated list, the Director may appoint other arbitrators from the NLSS roster as necessary. If the Director is required to appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator who meets the criteria set forth in paragraph (a)(4)(B) or (a)(4)(C), unless the parties otherwise agree. A non-public arbitrator in proposed paragraph (a)(4)(B) is one who is retired from the securities or commodities industry; proposed paragraph (a)(4)(C) describes a non-public arbitrator who is a professional who devotes 20 percent or more of his or her professional time to clients who are engaged in any of the securities or commodities business activities described in subparagraph (a)(4). The rule requires that the Director choose a non-public arbitrator who is active and fully involved in the securities or commodities industry or related industry. When the Director appoints a non-public arbitrator in this stage of the proceeding, the parties no longer have the ability to strike.[44]

Arbitrator Disclosures and Removing Arbitrators—Paragraph (d)

Proposed Rule 10308(d)(1) provides a mechanism for the Director to disqualify an arbitrator after the arbitrator has been appointed by the Director under proposed paragraph (c)(4). As noted previously, during the period that a party is reviewing and ranking the lists of arbitrators (see paragraphs (c) (1) and (2)), a party has an unlimited right to eliminate a listed arbitrator by striking the arbitrator from the list, and may do so to eliminate an arbitrator who the party believes may not be impartial or fair, among other reasons. Proposed paragraph (d)(1) applies after the parties have exercised this unlimited right to strike, the arbitrator lists have been consolidated, the arbitrators have made disclosures to the Director under Rule 10312 regarding the specific parties, issues and witnesses in the case as discussed below, and the arbitrators have been appointed.[45]

An arbitrator has a continuing obligation under Rule 10312 of the Code to disclose to the Director any circumstances that might preclude the arbitrator from rendering an objective and impartial determination in an arbitration, including a direct or indirect financial or personal interest in the outcome of the arbitration, or any existing or past financial, business, professional, family or social relationships with a party, counsel, or representative (or, when later identified, a witness) that might affect impartiality or might reasonably create an appearance of partiality or bias. Generally, the ODR, in turn, must disclose to the parties any information the arbitrators provide.

Under paragraph (d)(1), a party or the Director may raise a disqualification issue, and the Director may disqualify an arbitrator already appointed. The Director may not make any decision to disqualify an arbitrator, however, after the commencement of the earlier of two events: (i) the first prehearing conference or (ii) the first hearing.[46] At that point or thereafter, if a party believes that an arbitrator should be disqualified, the matter must be raised before the arbitration panel. Vacancies created as a result of a disqualification or because the arbitrator is otherwise unable to or unwilling to serve[47] under proposed paragraph (d)(1), prior to the commencement of the earlier of 1) the prehearing conference or 2) the first hearing,[48] are filled by the Director by referring to the appropriate consolidated list from which the panelists were originally obtained (proposed Rule 10308(d)(3)) or, if there are no persons remaining on the consolidated list, by a person the Director selects under proposed Rule 10308(c)(4)(B). Under the proposal, the Director provides the parties information about the replacement arbitrator(s) as provided in proposed paragraph (b)(6), and the parties have the right to object to that arbitrator as provided in proposed paragraph (d)(1).[49]

Discretionary Authority—Paragraph (e)

Under paragraph (e) of Rule 10308, the Director's authority to exercise discretionary authority is stated explicitly. In paragraph (e), the Director has authority to resolve a problem that arises relating to the appointment of arbitrators or any other procedure under the rule if (i) the rule does not have an applicable provision, or (ii) the application of a specific provision in the rule would not result in a resolution of the underlying problem because the facts and circumstances are unanticipated or unusual.

Miscellaneous Related Proposed Rule Changes

Proposed Conforming Amendments

NASD Regulation is proposing conforming amendments to Rules 10104, 10309, 10310, 10311, 10312, and 10313.

NASD Regulation proposes to make parallel amendments to Rule 10104 and Rule 10309. NASD Regulation proposes to amend Rule 10104 to reflect that the specific provisions of proposed Rule 10308, rather than the general provisions of Rule 10104, regarding the composition and appointment of arbitration panels, apply to arbitrations involving public customers. Rule 10104 would not apply to a question regarding the composition and appointment of such arbitration panels unless none of the specific provisions in proposed Rule 10308 would be applicable.[50] NASD Regulation proposes the same type of amendment to Rule 10309, a similarly general provision relating to the composition of arbitration panels.

NASD Regulation proposes to amend Rule 10310 and 10311 to make both of them inapplicable to proceedings subject to Rule 10308. Under Rule 10310, NASD Regulation notifies parties of arbitrators appointed, and under Rule 10311, parties have the right to a pre-emptory challenge of an arbitrator. Because proposed Rule 10308 deals with both types of procedures, NASD Regulation proposes to amend Rules 10310 and Rule 10311 so that neither will apply to arbitration proceedings involving public customers.

NASD Regulation is proposing to amend Rule 10312 to make it consistent with proposed Rule 10308. Both Rules contain provisions regarding an arbitrator's obligation to disclose information to the Director and disqualification based upon such disclosure. The proposed changes to Rule 10312 state explicitly when the Director's authority to disqualify an arbitrator terminates, and provide an arbitrator the option to withdraw from

[44] Under the proposal, the Director provides the parties information about the arbitrator as provided in proposed paragraph (b)(6). Based upon that information, the parties have the right to object to the arbitrator as provided in proposed paragraph (d)(1) of Rule 10308. *See* Amendment No. 3. This means that although a party does not have the right to strike an arbitrator appointed under the process described in proposed (c)4)(B) of Rule 10308, a party retains the right to request that the Director consider disqualifying an arbitrator appointed pursuant to proposed Rule 10308(c)(4)(B).

[45] As noted above, disqualification issues that arise after the Director, using NLSS, has begun consolidating parties' preferred arbitrators, may be addressed by the Director directly as part of the appointment process described in paragraph (c)(4).

[46] Proposed Rule 10308(d)(2).

[47] *See* Amendment No. 3.

[48] *See* Amendment No. 3.

[49] *See* Amendment No. 3.

[50] The NASD has stated that Rule 10104 and certain other rules in the Rule 10000 Series may be amended further or rescinded when a list selection rule applicable to intra-industry arbitration proceedings is approved. NASD Regulation has filed a proposed rule change to apply the NLSS to panel selection in intra-industry arbitrations, as well as in customer arbitrations (SR–NASD–98–64) which is being noticed and granted accelerated approval simultaneously with this rule approval. *See* Securities Exchange Act Release No. 40556 (October 14, 1998).

an arbitration panel prior to disclosure of arbitrator information to the parties. A final change in Rule 10312 makes the timing of a disclosure consistent with the parallel provision in proposed Rule 10308. Specifically, under proposed Rule 10312(d), prior to the commencement of the earlier of 1) the prehearing conference or 2) the first hearing, the Director may remove an arbitrator based upon Rule 10312 information.[51] Under proposed Rule 10312(e), in the same time frame, the Director must disclose any Rule 10312 information to the parties unless the arbitrator voluntarily withdraws as soon as the arbitrator learns of any conflict, or the Director removes the arbitrator.[52] Finally, under proposed Rule 10312(f), after commencement of the earlier of the prehearing conference or the first hearing, the Director shall disclose any Rule 10312 information disclosed by an arbitrator to the parties.[53]

The proposed changes to Rule 10313 are necessary because Rule 10313 incorporates by reference certain procedures in Rule 10311. That rule, if amended, will not apply to arbitrations involving public customers. Accordingly, NASD Regulation proposes to amend the last sentence of current Rule 10313 so that, for arbitration proceedings involving public customers, a party may exercise the right to challenge a replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the challenged arbitrator's name and the basis for such challenge. NASD Regulations also proposes to amend the first sentence of Rule 10313 to clarify that if an arbitrator becomes disqualified or otherwise unable to serve after the start of the earlier of the pre-hearing conference or first hearing but prior to rendition of an award, the remaining arbitrator(s) shall continue on, unless a party objects.[54]

Proposed Amendments to Rule 10315

In the past, the first formal meeting of the arbitration panel and the parties generally was the first hearing. As the arbitration process has evolved, NASD Regulation has encouraged most arbitration panels to hold prehearing conferences. For most arbitrations currently, the first formal meeting of the arbitration panel and the parties is a prehearing telephone conference. NASD Regulation proposes to amend Rule 10315 regarding the scheduling of the first meeting to reflect the current practice.

NASD Regulation also proposes to amend from eight business days to 15 business days the period that NASD has for giving notice of the first meeting to the parties and the arbitrators. The period is being amended to conform to the 15 business day period set forth in Rule 10310, which formerly also was a period of eight business days.

Proposed Amendments to Various Rules to Correctly Identify Committee Name

The committee of NASD Regulation that addresses arbitration matters is the National Arbitration and Mediation Committee. NASD Regulation proposes to amend each rule in which the outdated term ''National Arbitration Committee'' is used by replacing the outdated term with the current committee name, the ''National Arbitration and Mediation Committee.''[55]

Date of Effectiveness

The Association intends to make the rule change effective on a date to be stated in a Notice to Members (''NTM''). Depending on the date of the Commission's approval, however, the effective date may be less than 30 days following publication of the NTM announcing the Commission's approval. When effective, the rule changes will apply to any arbitration case filed with the Association if the Association has not mailed or otherwise transmitted to the parties a notice stating the names of the arbitrators appointed to hear the arbitration.

A case will be subject to current Rule 10308 for the purpose of selecting an arbitration panel, if, before the effective date of the rule change, the Association identifies the arbitrator (in a case having one arbitrator) or the three-arbitrator panel (in a case having three arbitrators) and mails or otherwise transmits a letter or other written communication to the parties notifying the parties of the names of the arbitrators. As of the effective date, the newly adopted changes to all other rules will apply to the case (e.g., amendments to Rule 10104, Rules 10309 through 10313, and Rule 10315), as will those parts of newly adopted Rule 10308 relating to the actions or functions to be performed after a panel is appointed (initially) if such actions or functions can be performed without reference to party ranking of arbitrators. (See, e.g., proposed Rule 10308(c)(5) regarding selecting a chairperson. The parties will be allowed by agreement to select a chairperson; however if the parties did not select a chairperson by agreement, the Director will exercise authority under newly adopted Rule 10308(e) in order to select a chairperson because the Director will not have party rankings of arbitrators to rely upon and, thus, will not be able to act in accordance with certain provisions of paragraph (c)(5). A case will be subject to newly adopted Rule 10308 if, as of the rule change effective date, the Association has not mailed or otherwise transmitted a letter or other written communication to the parties notifying the parties of the names of the arbitrators appointed to hear the arbitration. In this instance, the other newly adopted rule changes will also apply to the case as of the effective date.

The Association believes that this is the most appropriate approach to provide the benefits of list selection to the greatest number of parties as quickly as possible. List selection provides the parties additional input into the arbitration proceeding; the Association believes that applying the new process for the appointment of arbitrators to certain cases filed shortly before the date of effectiveness will provide the benefits to such parties. Moreover, the Association does not believe that any party will suffer an unfair surprise if the list selection rule and the other rule changes are applied to an arbitration filed prior to the effective date. Finally, in order to implement the proposed rule change, the Association must make a number of operational changes. The administrative burdens of fully implementing the list selection process nationwide are many, and the Association believes that the benefits of implementing the new procedures rapidly and system-wide outweigh the benefits, if any, obtainable from continued use of the old system.

III. Summary of Comments

The three commenters[56] generally support the proposed rule change as an

[51] *See* Amendment No. 3.

[52] *See* Amendment No. 3.

[53] *See* Amendment No. 3. The Director does not have authority after this time period to remove an arbitrator.

[54] *See* Amendment No. 4.

[55] *See, e.g.,* Rule 10102, Rule 10103, Rule 10104 referenced specifically above, Rule 10301, and Rule 10401.

[56] A fourth comment letter was received on October 6, 1998; the comment period ended on August 20, 1998. *See* letter from Theodore G. Eppenstein (''Eppenstein''), Eppenstein & Eppenstein, to Jonathan G. Katz, Secretary, Commission, dated October 1, 1998. The issues raised by this commenter were the same as those raised by other commenters except for one issue that is not germane to this proposed rule change and one new issue. Eppenstein argues that the arbitration panel for customer arbitrations should be composed exclusively of public arbitrators. The Commission does not believe that the proposed rule change raises this issue because the composition of the three member arbitration panel for customer arbitrations currently is two public members and

improvement over the current method for selecting arbitrators, but suggest improvements to the proposed rule.[57]

The SIA believes that the Director should have the ability to remove an arbitrator until after the first pre-hearing conference, up until the start of the first hearing; the proposed rule states that the Director can remove an arbitrator up until the commencement of either the pre-hearing conference or the first hearing.[58] NASD Regulation states that it has made changes to Rule 10308(d) and a series of related rules to reflect this new time frame, in order to reflect a basic principle that an arbitration is administered and controlled by the arbitrator or the arbitration panel after the arbitrators have begun to address the issues that are the subject of the arbitration. Thus, NASD Regulation believes that as of the beginning of the first meeting among the parties and the arbitrators, it is no longer appropriate or consistent with arbitration principles for the Association to intervene in the arbitration in order to disqualify an arbitrator.[59]

The SIA also believes that the NASD should reexamine the rationale behind the automatic exclusion of any immediate family member of registered representatives or others who work in the securities industry from serving as public or non-public arbitrators.[60] The SIA argues that there is no reason that a spouse or dependent child of a securities industry professional should be presumptively adjudged to be incapable of being a capable, effective and impartial arbitrator. In addition, the SIA argues that the mechanics of the list selection method make the parties' attorneys able to deal with any perceived problems or biases, by either ranking such candidates low on their list or not ranking them at all. The SIA does not believe that the NASD, at a time when it is trying to expand and more fully train its arbitrator pool, should collectively eliminate an entire category of arbitrators based upon a perceived bias.[61] NASD Regulation responds that the exclusion of ''immediate family member'' from classification as public arbitrators is a practical, realistic view of how such persons should be classified, and reflects how most claimants would view such persons. NASD Regulation believes that if such persons were classified as public arbitrators, and then their background information (including a description of their relationship to a spouse or family member engaged in securities activities) was distributed to the parties, most claimants would routinely strike those people or request that the Director disqualify them. NASD Regulation also states that this would only benefit a small group of people desiring to serve as arbitrators, while creating a perception of unfairness, raising costs, an increasing delays.[62]

Bernstein argues that the size of the list of arbitrators given to the parties should be larger and that the number of strikes allowed each party should be smaller.[63] He argues that unlimited strikes, combined with a small list, will lead to either party being able to void a list simply by striking everyone on the list, which would give the selection authority back to the NAD.[64] Similarly, Richard P. Ryder (''Ryder''), does not believe that the proposed rule change will actually result in most arbitrators being selected by the parties themselves, but that administrative appointments will occur in a substantial number of cases because too few candidates will remain after the parties have struck the nominees on the list.[65]

NASD Regulation, although recognizing this fear, believes that the rule should be implemented as proposed and monitored to see how often the Director must appoint arbitrators not previously reviewed and ranked by the parties to a panel because one or both parties have struck every arbitrator listed.[66] NASD Regulation will revist the issue of limiting the number of strikes if the Director appoints unranked arbitrators frequently because of the parties exercising their unlimited strike rights. NASD Regulation believes that the current proposed number of arbitrators on each list provides a sufficiently large number of arbitrator choices and provides a standard that will generally be attainable.[67]

Bernstein argues that there should be a second round of list selection with a larger list if the first round fails, in order to fill any vacancies. He argues that this is more in line with the Task Force's recommendation and closer to the goals of allowing parties to choose their arbitrators and keeping the NASD out of the selection process.[68] He also argues that the NASD's concerns over the cost of a second round of list selection should be disregarded as well, in part because the costs are small compared to the savings that mandatory arbitration affords the member firms. Ryder suggests that instead of having only one round of selection, NASD Regulation should give the parties the choice between having one round and a default to staff appointment (but within the same time frame as proposed in the rule) or a second round approach but with a shorter time limit within which the parties must respond to the lists; this shorter time frame would result in more arbitrators being freed up more quickly for other simultaneous proceedings.[69] Ryder also suggests staggering first round lists in a locale where there are simultaneous cases, by allowing NASD Regulation more time to generate and send lists to parties in other cases. NASD Regulation could then take arbitrators rejected by the first arbitration and put them back into the pool for other cases. In any event, Ryder suggests that the Commission require the NASD to keep statistics on how often administrative appointments occur under the proposed system, and that the NASD should explore a practical, flexible solution to the limited

one non-public member, and is not substantively amended by this proposed rule filing. Eppenstein also argues that there should be a mandatory tolling provision for the time within which the parties have to respond and submit their arbitrator rankings in the event they wish to request additional information on the arbitrators. The Commission believes that the proposed rule change reasonably accommodates the needs of the parties both by lengthening the time for the parties to engage in due diligence from the time period in the current rule, and by specifically providing that the Director may use his or her discretion to toll the time period for the parties to return their ranked lists. *See* proposed Rule 10308(b)(6). The Commission expects NASD Regulation to monitor the operation of the list selection process carefully to see whether the proposed time frames operate appropriately.

[57] *See supra* note 4.

[58] SIA Letter. The SIA believes that the pre-hearing conference itself could expose some evident bias, or an inability or unwillingness on the part of the arbitrator to be impartial; therefore, the Director should retain the ability to remove an arbitrator until after the pre-hearing conference.

[59] *See* Amendment No. 4.

[60] SIA Letter.

[61] Scot D. Bernstein (''Bernstein'') argues that the 50% support standard used to classify a person as an immediate family member'' of a person generally engaged in the securities industry should be lowered to 10%, effectively broadening this group of persons. *See* Bernstein Letter. NASD Regulation responds that it believes the 50% standard is generally appropriate, and also notes that a person who falls below the 50% standard may be excluded later in the arbitration selection process by a party who strikes him or her or by the Director during a conflict of interest review. *See* Amendment No. 4.

[62] *See* Amendment No. 4.

[63] Bernstein suggests lists that provide no less than twelve public arbitrators and six non-public arbitrators.

[64] *See* Bernstein Letter.

[65] *See* Ryder Letter.

[66] *See* Amendment No. 4.

[67] *Id.*

[68] Bernstein argues that the NASD's concern about a limited number of arbitrators related to the large caseload is not a reason to not have a second round of selection. He states that the same number of arbitrators will be appointed to a case regardless of how they are chosen, and that the size of the available pool of arbitrators will not be affected if a second round were implemented because those arbitrators not chosen would simply rotate to the bottom of the list.

[69] *See* Ryder Letter.

supply objection to a second round list selection.

NASD Regulation responds that they will not impose a second round at this time because of the scarcity of arbitrators in certain locations, the substantially greater costs, and the significant delays in empaneling an arbitrator or an arbitration panel.[70] However, after the NASD has had some experience administering the rule, it will reconsider whether to add an additional round of list selection.[71]

Bernstein objected to the procedure in the proposal for selecting a chairperson, and suggests that the highest-ranked public arbitrator selected by the parties be the chairperson. In addition, Bernstein argues that advocates for public investors should not be excluded from serving as chair of the arbitration panel, and that a rule that disqualifies advocates for public investors from chairing arbitration panels is inconsistent with investor protection.[72] In response, NASD Regulation amended proposed Rule 10308(c)(5) to provide that the Director will appoint the highest ranked pubic arbitrator, unless that person represents or advises customers in matters relating to the securities or commodities industry for fifty percent of his or her time, in which case the Director would appoint the other public arbitrator. If both public arbitrators are subject to the exclusion, the Director will appoint the highest ranked public arbitrator.[73]

Bernstein also argues that some of the descriptive text in the proposed rule filing regarding the administration of ODR should be included in the rule language so that the NASD's interpretations cannot be changed without Commission approval.[74] NASD Regulation argues that is has stated the basic operational aspects of the rule in the rule text and it is not appropriate to describe all of the operational details relating to the NLSS software in the rule text or in the rule filing because to do so would make the rule very unclear and confusing to all but a few readers.[75] However, the Association has described in general and clear terms those aspects of the NLSS that are essential functions of the proposed list selection rule.

NASD Regulation states that the arithmetic method will be used for consolidating rankings was explained in a detailed, multi-part example. The Association does not believe that the rule text would be clearer by incorporating examples of calculations in the text. In addition, the Association has explained in detail in the rule filing its aspirations regarding providing parties with a certain number of listed arbitrators, and declines to provide an exact minimum number of arbitrators in the proposed rule because the number of available arbitrators varies from place to place.

In response to Bernstein's suggestion that under proposed Rule 10308 the Association should address conflicts that may arise based upon the past employment of an arbitrator or a party, as well as conflicts-of-interest based upon current employment, NASD Regulation points out that the rule filing indicates that the initial conflict-of-interest review performed by NLSS is limited to readily apparent conflicts of interest,[76] but that there are subsequent checks performed by the Director that include all possible relationships, including past employment that allow the Director to determine whether an arbitrator has a conflict of interest and should not be appointed or must be disqualified after appointment.[77] The Association also declines to state in proposed Rule 10308 a standard by which the Director will judge claims of an arbitrator's conflict of interest, arguing that the Director applies the facts as presented to assess whether a bias or a conflict of interest is present or may be present, and that the present Code does not contain an express standard.[78] Also, NASD Regulation states that it would inappropriately limit the ability of the Association staff to administer cases to specify how the Association must attempt to communicate with a listed arbitrator to determine if the arbitrator is available to serve on a panel. Generally, however, the Association intends to contact the arbitrators by telephone.[79]

Bernstein asks how many strikes are allocated to each party when there is more than one party on a side and their bankings are consolidated. Bernstein also argues that the proposed rule should require the NASD to publish, on its website and possibly in hard-copy form for each case in which a list of arbitrators is proposed, the following information: date; geographic location; case number; and names of arbitrators included in the list of lists of proposed arbitrators. He argues that this is necessary in order for the public to be able to verify that the rotation required by the rule is occurring. NASD Regulation declines to publish the arbitrators names in the rotation because its would create an enormous administrative burden. In addition, NASD Regulation states that the NLSS and new list selection process are subject to review internally by the Audit Committee,[80] and to SEC oversight.[81]

Bernstein argues that the reference in proposed Rule 10308(c)(4)(A) to the Directors' ability to disqualify arbitrators should cross-reference all provisions under which disqualification may occur, and as previously argued, should contain the standards for disqualification. NASD Regulation responds that the Director, the staff, and all NASD arbitrators must look to and follow ''The Arbitrators Manual'' and ''Code of Ethics for Arbitrators in Commercial Disputes'' (''Code of Ethics''), regarding the arbitrator's duty to disclose conflicts of interest, the appearance of bias, the assessment of challenges relating to an arbitrator's

[70] *See* Amendment No. 4 and Response Two.

[71] *Id.*

[72] Bernstein argues that attorneys who represent public investors are not subject to the same financial pressure on their decisions as are representatives of industry participants, yet an attorney who derives 19% of his or her income from representing industry participants is allowed to chair a panel under the proposed rule.

[73] *See supra* notes 42 and 43 and accompanying text, and Amendment No. 4.

[74] *See* Bernstein Letter. For example, he argues that: 1) the standards for exclusion from serving as an arbitrator based upon conflicts of interest as a function of current employment should be included in the rule (and that both current and former employment should be a basis for exclusion); 2) the standards that apply to a Director's rulings on for cause challenges should be included in proposed Rule 10308(d)(1); 3) the method of operation of the list selection software and the selection rules that will be used when that software cannot be used, should be a matter of public record and should be stated in the rule; 4) the standards for all determinations made by the software (geographic proximity, conflicts of interests, subject matter expertise, ranking and rotation) should be included in the rule; 5) the number of arbitrators required to be on a list should be a part of the rule; 6) the arithmetic method that the NASD will use to consolidate the rankings of parties on the same side should be explained in the text and in the rule; 7) the standards for what would constitute ''sufficiently divergent'' when a Director can decline to consolidate rankings of parties when their interests diverge sufficiently should be explained in detail; 8) the standards for when the NASD manually performs a conflict of interest check should be made public; 9) the time that prospective arbitrators will have to respond to the NASD's call should be specified in the rule; and the NASD should be obligated to attempt to reach a selected arbitrator at all available telephone and facsimile numbers for that arbitrator in the NASD's database; and 10) the rule should state that the NASD and its staff shall not communicate with the proposed arbitrators or otherwise operate in such a manner as to influence the outcome of the selection process.

[75] *See* Amendment No. 4.

[76] Such as whether the arbitrator is currently employed by, or currently has a securities account with, the respondent.

[77] *See Amendment No. 4.*

[78] The Association's treatment of divergent interests (among respondents or claimants) is previously addressed, *supra* note 38 and related text.

[79] *See* Amendment No. 4.

[80] NASD Regulation states that the Audit committee is comprised of independent Governors of the NASD Board of Governors.

[81] *See* Amendment No. 4.

opinion or bias, business or personal relationships, previous or current involvement with a party or witness, or financial interests, and an arbitrator's ethical responsibilities to determine issues of disqualification and withdrawal.[82] NASD Regulation states that every arbitrator must review and understand ''The Arbitrator's Manual'' and the Code of Ethnics as part of mandatory arbitrator training, and any time that the Director must resolve a disqualification issue, the Director will refer to these provisions.[83]

Bernstein also proposes that proposed Rules 10308(d)(2) and 10312(f) should state that after the Director's authority to disqualify an arbitrator has ceased, the panel still has that authority, as consistent with the descriptive text of the proposal.[84] NASD Regulation declines to make the amendments because the manner in which disqualification and withdrawal issues are treated is set forth in ''The Arbitrator's Manual'' and the Code of Ethics. At all times, including the period when the Director's authority to disqualify an arbitrator has ended, an arbitrator must consult ''The Arbitrator's Manual'' and the Code of Ethics, Canon II, regarding the arbitrator's duty to disclose conflicts of interest, issues of bias, and his or her ethical responsibilities to determine if withdrawal as an arbitrator is required. Under Cannon II. E., of the Code of Ethics, an arbitrator ''should withdraw'' if requested to do so by all the parties because of alleged partiality or bias. If requested to withdraw for such reasons by less than all of the parties, the arbitrator ''should withdraw'' unless ''the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly, and that withdrawal would cause unfair delay or expense to another party or would be contrary to the ends of justice.'' The Association stated that its experience is that arbitrators apply the Code of Ethics more rigorously than a strict reading requires.[85]

Bernstein believes that due diligence and expertise concerning Ponzi schemes and other illegal securities or transactions should be included as an identified area of subject matter expertise. He also believes that limited partnerships should be included in the list of ''various types of securities or other financial instruments'' in which an arbitrator may have expertise. NASD Regulation notes that the topic of due diligence is too broad and vague to be entered into NLSS as a subject matter category, and that ''underwriting'' is currently a subject matter expertise category. Also, NASD Regulation wishes to defer receiving proposals to expand the various types of expertise until a later date.

Finally, Bernstein argues that proposed Rule 10313, which currently provides for no challenge other than a for-cause challenge to replacement arbitrators, should allow for a peremptory challenge of the replacement arbitrator because the industry, which is requiring the public to ''give up the right to a judge and jury and come instead to the industry's forum,'' should prevent the appearance of impropriety.[86] NASD Regulation responds that this change is consistent with the other provisions of proposed Rule 10308. Thus, although the parties are provided an unlimited right to strike an arbitrator in the early stages of a proceeding, generally, under the new procedures, when an arbitrator is appointed later in the preceding, the parties may challenge the arbitrator for cause only. The Association agrees with Bernstein's suggestion that the replacement arbitrator the Director appoints should be obtained from an NLSS-derived ''list of one.'' To replace an arbitrator under Rule 10313, and in the other instances where the Director must appoint an arbitrator not previously ranked by the parties (*see, e.g.*, paragraphs (c)(4)(B) and (d)(3) of proposed Rule 10308), the Director will return to the NLSS and obtain a ''list of one,'' using the primary factors previously input into NLSS to generate the list of arbitrators first sent to the parties. The association does not believe it is necessary to specify in proposed Rule 10308 and proposed Rule 10313 that the Director will use NLSS in this manner to perform these rule functions.[87]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with the requirements of Section 15A(b)(6),[88] which require, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interests.[89] Specifically, the Commission believes that allowing parties greater input into the selection of the arbitrators to hear their cases will help ensure a more fair and neutral arbitration process.

The Commission believes that the NASD's list selection procedures and methodology, as proposed, provide for the protection of investors in the selection of arbitrators and will benefit all users of the arbitration program. The Commission believes that the computerized generation of the lists of arbitrators should help ensure greater confidence in the fairness and neutrality in the selection of the arbitrators, while at the same time allowing the Director the flexibility to supplement the NLSS process if necessary.[90] The Commission notes that the arbitrators will be selected by the computer using a rotation method, rather than on a random basis,[91] so that all arbitrators are placed on a selection list with the same regularity.[92] The Commission also notes that the NLSS is designed to sort arbitrators based on certain factors that should help ensure a neutral list of arbitrators who will be better suited to the particular arbitration. The NLSS sorts arbitrators based on whether an arbitrators is public or non-public, and based on hearing location, rotation, and whether any clear conflict of interest exists between a party and potential arbitrators. In addition, NLSS can also sort arbitrators by subject matter expertise, security expertise, and case expertise. The Commission believes that the subject matter, security, and case expertise categories are a reasonable

[82] ''The Arbitrator's Manual,'' (Oct. 1996 ed.), pp. 2–6, App. A. The Code of Ethics was developed jointly by the American Bar and American Arbitrator Association. *See* Amendment No. 4.

[83] *See* Amendment No. 4.

[84] In addition, Bernstein argues that the standards for removal in such cases should be the same as those that apply to for-cause challenges, and that the arbitrator against whom the challenge or recusal motion is made should not be permitted to participate in any vote or other decision regarding that issue.

[85] *See* Amendment No. 4.

[86] Bernstein also adds that the rule should specify that the replacement arbitrator will be a ''list of one'' selected by the computer (*ie.* the next arbitrator in the rotation).

[87] *See* Amendment No. 4.

[88] 15 U.S.C. 78*o*–3.

[89] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[90] At the request of a party, the Director can add a procedure that is outside the NLSS capability, but that may legitimately be considered in the selection of an arbitration panel.

[91] *See* Notice Release.

[92] The NASD states that the random selection method does not always produce perfect randomness, which could lead to some arbitrators being chosen more often than others over time.

attempt at this time to ''personalize'' an individual arbitration, and that it is not necessary for the NASD to expand upon them as it begins to implement its selection process.

The Commission believes that the list selection method provides adequate measures to identify potential or actual conflicts of interest between a party and an arbitrator, both prior to compilation of the list and selection of the arbitrators, and once an arbitrator or an arbitration panel is selected. The NLSS performs two conflict-of-interest checks. First, the NLSS checks for any obvious, disclosed conflict of interest between parties and potential arbitrators that can be identified in the NLSS database while generating the list, such as when the respondent member firm is also the employer of an arbitrator in NLSS.[93] Second, ODR will perform a manual conflict of interest review after the list is created but before it is finalized and sent to the parties.[94] The Commission believes that checking for conflicts of interest before the list is forwarded to the parties will likely eliminate arbitrators that would have been struck by a party later, and will result in those arbitrators being replaced (through the NLSS) before the lists are sent to the parties, which should help avoid limiting the parties' choices at the selection stage. While reviewing the lists, parties can review any information on the arbitrators that ODR has in its possession, including employment history for the past ten years, in order to make their own determination as to conflict of interest concerns, and may request additional information from the arbitrators under Rule 10312(b)(6). In addition, once the parties have ranked the arbitrators and the lists have been consolidated into one list, the Director performs another determination as to whether to disqualify an arbitrator.[95] If the arbitrator is not disqualified, and is available, the Director appoints the arbitrator.

The Commission also finds that the conflict of interest safeguards in place after a panel is appointed are adequate to help protect investor interests by providing that any new information on the arbitrators that may lead to a conflict of interest is disclosed to the parties, unless the arbitrator is removed or resigns. Each arbitrator has a continuing obligation under Rule 10312 to disclose any circumstances that might preclude the arbitrator from rendering an impartial and objective determination to the Director, who has the ability to remove an arbitrator up until the start of the earlier of the the pre-hearing conference or the first hearing.[96] After this point, a party must raise a disqualification matter with the arbitration panel.[97] Finally, the Director must disclose information about a replacement arbitrator appointed by the Director to the parties, who can object to the arbitrator, at which time the Director can decide to disqualify the arbitrator. To replace an arbitrator (and in other instances where the Director must appoint an unranked arbitrator), the Director will return to the NLSS to obtain a ''list of one,'' using the primary factors previously input into NLSS to generate the initial list of arbitrators sent to the parties.[98] The Commission notes that the Director and all arbitrators must review and abide by ''The Arbitrators Manual'' and the Code of Ethics regarding the arbitrator's duty to disclose conflicts of interest, the appearance of bias, the assessment of challenges relating to an arbitrator's opinion or bias, business or personal relationships, previous or current involvement with a party or a witness, or financial interests, and an arbitrator's ethical responsibilities to determine issues of disqualification or withdrawal.[99]

In addition, the Commission believes that the proposed rule change provides for sufficient public representation on each arbitration panel by requiring a majority of public arbitrators on each arbitration panel, unless all of the parties agree to a differenct panel composition. The Commission notes that the NASD staff classifies arbitrators as public or non-public based on the information it receives for that arbitrator.[100] The Commission also believes that the method for selecting a chairperson when the parties do not agree is reasonable. In response to a comment, NASD Regulation amended the process to provide that the Director will first attempt to appoint the highest ranked public arbitrator on the panel as the chairperson.[101]

[93] The Commission does not believe it is necessary for the NASD to include in the rule language the standards for exclusion from serving as an arbitrator based upon conflicts of interest as a function of current employment, or that the standards for the manual conflict of interest review need to be included in the rule language or made public. NASD Regulation has stated the basic operational aspects of the rule in the rule language and the rule filing. The addition of more detail to the text may be confusing.

[94] The Commission notes, in response to a comment, that even though the initial conflict of interest review performed by NLSS is limited to readily apparent conflicts of interest (such as current employment), the subsequent manual checks include a wider range of possible relationships, including past employment. *See* Amendment No. 4.

[95] The Director contacts each arbitrator to determine if he or she is available to serve. At this time, the Director will provide the arbitrator with the issues of the case and the names of the parties, and determine whether the arbitrator is aware of any conflict of interest or bias or other reason that may preclude the arbitrator from rendering an objective and impartial decision. Based upon the information previously provided by the arbitrator, any information provided under Rule 10312, and any information from any other source, the Director determines if the arbitrator should be disqualified. The Commission does not believe it is necessary for the NASD to specify in the rule language a response time for each arbitrator contacted, or that the NASD should be obligated to attempt to reach a selected arbitrator at all available telephone and facsimile numbers for that arbitrator. The Commission also does not believe it is necessary for NASD Regulation to specify how it shall communicate with proposed arbitrators to determine if they are available to serve.

[96] The Director must disclose this information to the parties unless the Director disqualifies the arbitrator or the arbitrator voluntarily withdraws. After the commencement of the earlier of the pre-hearing conference or the first hearing, the Director must disclose any new information on the arbitrators to the parties.

The Commission does not believe it is necessary for the NASD to include in the rule text the standards that apply to a Director's ruling on a for-cause challenge to an arbitrator already appointed, because the Director applies the facts of each situation as presented, based upon the Code of Ethics developed by the American Bar Association and American Arbitration Association, to assess whether a conflict exists or may exist. The Commission also notes that the present Code does not contain a more express standard.

[97] The Commission believes it is reasonable to limit the Director's authority to remove an arbitrator after the commencement of the earlier of the pre-hearing conference or the first hearing, to reduce party concerns about NASD Regulation's influence over particular cases, and because it is reasonable for the arbitration to be administered and controlled by the arbitrators once the arbitrators have begun to address the issues in the arbitration. Accordingly, it is reasonable for NASD Regulation to decide that, based upon NASD Regulation's characterization of its past experience with arbitrator recusals, it is no longer appropriate for the Director to be able to remove an arbitrator after the earlier of the pre-hearing conference or the first hearing. The Commission does not believe it is necessary for the NASD to state more explicity the procedures to disqualify an arbitrator in the rule text because the manner in which disqualification and withdrawal issues are treated is addressed in the Code of Ethics and ''The Arbitrators Manual.'' *See supra* note 82 and accompanying text.

[98] *See* Amendment No. 4.

[99] *See* Amendment No. 4.

[100] The Commission believes that the NASD's definition of *''immediate family member''* as a person who receives more than 50% of his or her annual income from a person generally engaged in the securities industry and its exclusion of such persons from serving as public arbitrators is a reasonable view of how such persons should be classified, so as to guard against any perceived bias or conflict of interest.

[101] *See* Amendment No. 4. The Director will chose the highest ranked public arbitrator unless that arbitrator meets the exclusion for representing certain investor interests, in which case the Director will appoint the other public arbitrator as chairperson. If both public arbitrators are subject to the exclusion, the Director will appoint the highest ranked public arbitrator as chairperson. *See supra* noted 42 and 43 and accompanying text.

The Commission believes that the ODR's guideline [102] for the minimum number of arbitrators on each list forwarded to the parties is reasonable to provide a pool of arbitrators for the parties to choose from to select an arbitration panel. The Commission notes that, for a three arbitrator panel, NASD Regulation has undertaken to provide a public list that contains at least two times as many names as the non-public list, to the extent feasible. In addition, to address possible arbitrator shortages, the Director can combine arbitrators from nearby hearing locations when necessary.[103] The Commission recognizes that there are times when the parties will strike all the names on a list and notes that one commenter expressed a concern with the number of arbitrators on each list, but believes that it is not necessary at this time to require a larger list of arbitration. The Commission notes that requiring a larger number of arbitrators on the list might not be feasible, given the limited number of arbitrators. The Commission also notes that NASD Regulation has stated it will monitor how often the Director must appoint unranked arbitrators because one or both parties have struck all the names on the list.

The Commission also believes it is reasonable to allow each party unlimited strikes because this should allow parties greater control in choosing the composition of the arbitration panel, and reducing the number of strikes could limit a party's ability to strike an arbitrator he or she does not want on the panel. The Commission recognized the possibility that a respondent and/or respondents acting together could use the unlimited strikes to strike all the arbitrators from the list, resulting in the Director choosing the panel.[104] However, the Commission believes it is reasonable at this time to implement the proposed rule change as proposed, with the number of arbitrators suggested and unlimited strikes, and notes that NASD Regulation states it will reevaluate the issue of limiting the number of strikes if it finds that the Director appoints unranked arbitrators too frequently due to the parties' exercise of their unlimited strike rights.

The Commission also finds that a one-round list selection method (as opposed to a two-round procedure as suggested by commenters) is reasonable and consistent with the Act in that it supports the goals of arbitration as a less expensive and less time-consuming method of resolving disputes, while at the same time providing a process by which parties have greater control over the selection of arbitrators. The Commission notes that although NASD Regulation initially considered a two-round, two-list selection method, it concluded that the operational burdens of administering such a process, especially given the limited number of arbitrators relative to the large caseload, would be too great. Also, NASD Regulation was concerned that a two-round, two-list selection method would significantly delay the empaneling of the arbitrators and would be too costly. The Commission also stresses that NASD Regulation will reconsider whether to add an additional round of list selection after it has gained some experience in administering the rule.

The Commission believes it is reasonable to consolidate all claimants' rankings, and all respondents' rankings, whether through all the claimants (or respondents) jointly ranking arbitrators and submitting one set of rankings, or the Director, using the NLSS, creating a consolidated list for each side. The Commission notes that the consolidation gives claimants and respondents equal weight in the rankings when the two sides are subsequently consolidated. The Commission also notes that in response to a comment that proposed Rule 10308(c)(3)(B) may have provided certain parties the potential to unfairly weight the arbitration panel, NASD Regulation amended proposed Rule 10308(c)(3) to eliminate the Director's ability to determine not to consolidate the rankings of a claimant (or respondent) with the rankings of the other claimants (or respondents) if he or she determined there interests were sufficiently divergent.[105] Also, the Commission finds that the methodology for consolidating claimants' and respondents' rankings to create one list for public and one for non-public (if necessary), and for appointing arbitrators from that list, is reasonable.[106]

In summary, the Commission notes that list selection is a new process designed to allow parties greater control over the selection of their arbitrators, and that there were different approaches that the NASD could have taken to obtain this goal. The Commission believes that the NASD has created reasonable procedures for implementing the new process that should give investors and other parties more input into the selection of the arbitration panel and which are consistent with the Act.[107] The Commission also believes the NASD has stated the basic operational principles in the rule language.

The Commission finds good cause to approve Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, Amendment No. 3 amends the actual rule language to clarify and strengthen the proposed rule change by, in part, amending the definition of ''non-public arbitrator'' to incorporate standard terminology and to add an explicit reference to government and municipal securities; by re-ordering proposed Rule 10308(b)(1) to make it more clear and to conform it to previously approved amendments to Rule 10308 and Rule 10302; by amending Rule 10308(b)(1) to clarify a party's right to change the panel composition if they all agree; to clarify in the rule language what information will be available with regard to the initial conflict of interest review by NLSS; to clarify in the rule language that the information on each arbitrator forwarded to the parties is employment information for a 10 year period and any other background information; to clarify in the rule language that a ranking of ''1'' means the most preferred arbitrator; to clarify in the rule language that when the Director must appoint an unranked arbitrator the Director will provide the parties (b)(6) information and the parties shall have the right to object to the arbitrator as provided in (d)(1); and to delete the reference in the rule to parties acting cooperatively to rank arbitrators, since that ability is implicit.

Similarly, Amendment No. 4 also amends the proposed rule change in response to comments received to strengthen the proposal by providing generally for the highest ranked public

[102] *See supra* Background and Description Section. The guidelines state that for one arbitrator, NASD Regulation should supply a public list with 3 to 5 arbitrators. For a three arbitrator panel, the NASD should supply a public list with 6 to 10 arbitrator names, and a non-public list with 3 to 5 arbitrator names.

[103] The Commission believes it is reasonable not to specify a minimum number of arbitrators in the actual rule text because the number arbitrators varies from place to place, and notes that NASD Regulation has explained its guidelines in the proposed rule change.

[104] *See* Bernstein Letter. The Commission also believes that the process for ranking arbitrators when the parties fail to rank them, or improperly rank multiple arbitrators, is reasonable.

[105] *See* Amendment No. 4.

[106] The Commission finds that NASD Regulation adequately explained in detail and with examples the method that will be used to consolidate rankings, both on each side and them both sides together, and that it is not necessary to include examples of calculations in the rule text.

[107] The Commission also finds the changes to related rules to conform those rules to the proposed changes to Rule 10308 reasonable.

arbitrator to be the chairperson of the panel, to eliminate the exception to consolidation of parties' rankings for parties with ''sufficiently divergent'' interests, and to amend the time frame in proposed Rule 10313 to align it with the time frames set forth in proposed Rule 10312 and 10315. Accordingly, because the changes in Amendment Nos. 3 and 4 are technical in nature and serve to clarify and strengthen the proposal, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment Nos. 3 and 4 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4 to the rule proposal, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–48 and should be submitted by November 12, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[108] that the proposed rule change (SR–NASD–98–48), including Amendment Nos. 3 and 4 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[109]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28321 Filed 10–21–98; 8:45 am]

BILLING CODE 8010–01–M

[108] 15 U.S.C. 78s(b)(2).

[109] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40563; File No. SR–OCC–98–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Authorizing the Designation of Sunday as a Business Day and Clarifying the Rules for Margining Exercised and Assigned Positions in Currency Options

October 15, 1998.

On June 5, 1998, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–98–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 11, 1998.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change provides OCC with the flexibility to designate Sunday as a business day for the purposes of determining the exercise settlement date for foreign currency and cross-rate foreign currency options. The rule change also clarifies the rule governing the calculation of margin with respect to positions in cross-rate foreign currency options following their exercise and assignment.

Currently, the Sunday following an expiration is deemed to be a business day for the purposes of determining the exercise settlement date for expiring foreign currency options.[3] This designation permits expiring foreign currency options to settle on the same day as the foreign currency futures contracts traded on the International Monetary Market (''IMM'') and to a lesser degree on the Philadelphia Board of Trade (''PBOT''). IMM futures contracts expire on a quarterly basis, and the coordination of exercise settlement dates among OCC-cleared options, IMM-traded futures contracts, and PBOT-traded futures contracts create hedging opportunities and settlement efficiencies for OCC's membership.

While the use of Sunday as a business day aligned the exercise settlement dates for the above-described contracts, it resulted in certain operational issues for OCC. For example, non-expiring foreign currency options that were exercised on the same date as expiring foreign currency options were settled on a different exercise settlement date than the expiring options. It is not always necessary to use Sunday as a business day for determining the settlement date for currency options. The opportunity to hedge with the IMM or PBOT futures realistically only occurs four times a year. For twenty other expirations, the benefits derived from using Sunday as a business day are not fully achieved.

The rule change allows OCC to coordinate the date on which exercise settlement occurs for expiring options exercised on Friday and non-expiring options also exercised on Friday. The rule change provides that if Sunday is used as a business day for determining the exercise settlement date of exercised expiring options, it will also be used as a business day for exercised non-expiring options. When Sunday is not designated as a business day, DVP processing will occur on Monday. OCC will notify the membership in advance of when Sunday would be used as a business day for determining an exercise settlement date.[4]

In addition, two amendments are made to Rule 602(f) concerning the calculation of margin on currency option contracts following their exercise and assignment. The first change clarifies Rule 602(f)(2)(i) to state that margin calculations are performed separately on positions in foreign currency options and cross-rate foreign currency options and that a clearing member's positions in cross-rate currency options which generate a net margin credit can be used to offset the clearing member's margin requirement arising from other positions. The second amendment conforms Rule 602 to the changes relating to the designation of Sunday as a business day.

II. Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that allowing OCC to designate Sunday as a business day will increase settlement efficiency

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40295 (July 31, 1998) 63 FR 42655.

[3] Securities Exchange Act Release No. 23781 (November 17, 1986) 51 FR 41556.

[4] Changes are made to Rules 602, 1602, 1604, 1605, 1606, 2102, 2104, 2105 and 2106 (either in the text or in the Interpretations and Policies thereto) to conform them to the proposed changes for the reasons stated above. The complete text of the proposed changes to the Rules is included in OCC's filing, which is available for inspection and copying at the Commission's public reference room and through OCC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

and limit confusion regarding when exercise settlement is to occur. In addition, the Commission believes that permitting an OCC clearing member's net margin credit from exercised cross-rate currency options to offset any other margin requirement also promotes the coordination of settlement across markets. Therefore, the Commission believes that OCC's rule change is consistent with its obligation under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–98–05) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28320 Filed 10–21–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40554; File No. SR–PHLX 98–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Floor Procedure Advice A–1 (Responsibility of Displaying Best Bid and Offer Prices Established on the Equity Floor)

October 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 13, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange Phlx submitted Amendment No. 1 on September 14, 1998.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to update and amend its Equity Floor Procedure Advice A–1 to more closely track the SEC's customer limit order display rules. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Specialists

A–1 Responsibility of Displaying Best Bid and Offer Prices Established on the Equity Floor

Primary-Listed Equities Issues on the Exchange

(i) A Specialist shall use due diligence to ensure that the best available bid price and offer price on the floor in each ''primary stock issue'' assigned to him is properly and timely displayed for dissemination purposes throughout the trading day.

Secondary—Unlisted Trading Privileges Issues

(ii) [A Specialist shall use due diligence to ensure proper and timely display of any bid or offer price of any order on the book in a ''secondary issue'' assigned to him for so long as such bid or offer is equal or superior to the consolidated best bid or offer of those disseminated by the national securities exchanges.] *Specialists are required to comply with SEC Rule 11Ac1–4 display requirements for certain customer limit orders. Specifically, under normal market conditions, specialists must immediately (but no later than 30 seconds) display the price and full size of customer limit orders (i) better than the Specialist's quote, and (ii) where the Specialist's quote is the NBBO, that add more than 10% to the size of the Specialist's quote, with certain exceptions contained in SEC Rule 11Ac1–4.*

[(iii) For the purposes of the above paragraphs, the fine schedule below will apply in any instance of any Exchange review which identifies that five percent or more of such orders have not been properly displayed in a timely fashion for the review period.]

FINE SCHEDULE

[Implemented on a three year running calendar basis]

A–1:	
1st Occurrence	[$100.00] *Written Warning*
[2nd Occurrence]	[$250.00]
2nd Occurrence and Thereafter	*Sanction is discretionary with Business Conduct Committee*
[3rd Occurrence]	[$500.00]
[4th Occurrence and Thereafter]	[Sanction is discretionary with Business Conduct Committee]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx 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. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Letter from Nandita Yagnik, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated September 10, 1998 (''Amendment No. 1''). Amendment No. 1 replaces the original rule filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Advice A–1 (''Responsibility of Displaying Best Bid and Offer Prices Established on the Equity Floor'') requires specialists to use due diligence to ensure proper and timely display of bids and offers respecting primary issues. For secondary issues, this requirement applies where the bid or offer is equal to or better than the national best bid or offer (''NBBO''). Advice A–1 pre-dates SEC Rule 11Ac1–4 [3] which imposed new display requirements for ''reported securities'' and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act. Since primary stock issues assigned to specialists on regional exchanges are not subject to this requirement, the proposed rule change would amend Advice A–1 only with respect to secondary issues that are traded pursuant to unlisted trading privileges (''UTP''). The proposed change would amend Advice A–1 to provide that the display requirement for secondary issues is the Commission's display rule, which requires specialists, subject to certain exceptions, to display not only those orders that are at or better than the NBBO, but also those that improve the specialist's quote or add 10% or more to the specialist's quote when the quote is the NBBO.[4]

Currently, Advice A–1 contains a fine schedule, which is administered pursuant to the Exchange's minor rule violation enforcement and reporting plan.[5] The proposed amendment would also delete the reference to a minimum number of occurrences and would refer violations to the Business Conduct Committee for both primary and secondary issues.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, in that it requires specialists to provide enhanced information regarding orders to the market by revising Advice A–1 to correspond to SEC Rule 11Ac1–4.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–98–24 and should be submitted by November 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28317 Filed 10–21–98; 8:45 am]

BILLING CODE 8010–01–M

[3] The limit order display rule was adopted by the SEC as part of its Order Handling Rules. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Handling Rules Adopting Release''); amended in Securities Exchange Act Release No. 38139 (January 8, 1997), 62 FR 1385 (January 10, 1997).

[4] In the Order Handling Rules Adopting Release, the Commission stated that a customer limit order should be considered *de minimis* if it is less than or equal to 10% of the displayed size associated with a specialist's bid or offer. If a customer limit order is *de minimis*, the specialist does not need to add that order to his quote. *See* Order Handling Rules Adopting Release, *supra* note 3, at not 177 and accompanying text. For this reason, the Exchange is requiring a specialist to display only those customer orders that add 10% or more to the size of the specialist's quote.

[5] The Phlx's minor rule violation enforcement and reporting plan (''minor rule plan''), codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. SEC Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary action. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

DEPARTMENT OF STATE

[Public Notice: 2909]

Agreement on Scientific and Technological Cooperation; Collaborative Projects Request

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: This announcement is a second call for collaborative projects under the Agreement on Scientific and Technological Cooperation for the purposes of encouraging and supporting cooperation between the United States and Spain. Proposals submitted will undergo peer review by both countries and will be approved or disapproved by the Joint Commission.

EFFECTIVE DATE: October 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Shauntia Rodney, Program Officer, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State—Tel # (202) 647–2245, Fax # (202) 647–2746, or

The Commission for Cultural Educational and Scientific Exchange

between the United States of America and Spain, Paseo Gral. Martinez Campos, 24, 28080 Madrid, 34–91–308–2436, or via E-Mail at *postmaster@comision*.fulbright.es, or *postmaster@comision-fulbright.org.* The Commission maintains a web-site on this and other programs at *http://www.fulbright.es/welcome.html.*

SUPPLEMENTARY INFORMATION:

Authority

This program is established under the Agreement for Scientific and Technological Cooperation between the Government of the United States and the Government of Spain.

A solicitation for this program began September 1, and will continue until the closing date of December 1, 1998. The Department of State and the Foreign Ministry of Spain announce the second call for collaborative projects under the Agreement on Scientific and Technological Cooperation, which entered into force in 1996. The purpose of the Agreement is to encourage and support scientific and technological cooperation between the United States and Spain. Grants under this project call, that are approved by the Joint Commission on Scientific and Technological Cooperation will assist with the costs for international collaboration between research teams from science agencies and universities of the two countries. Basic research costs must be funded from other sources. Costs supported will normally not exceed $30,000 in the first year; a renewal may be requested under a later project call.

Basic Terms

The funds available to the Joint Commission as described in Article VII(2) of the Agreement, are being used as follows. Approximately twenty-five percent of the funds are being used in the first year of the program, or approximately $750,000 for thirty-six grants. In the second call for proposals, approximately 40% of the funds, or about $1,200,000 will be used for new proposals and for approved renewals. The remaining funds will be used in the third year.

Costs supported include travel, at government contract rates or tourist class; per diem lodging, meals and incidentals; international mail and messenger service; minimal amounts of equipment (normally no more than $2000 would be approved), and the like. Living costs will be supported up to a maximum of $175 per day, but teams are encouraged to find less expensive options for meals and lodging for stays of more than a few days, to maximize the funds available. Normally travel should be for a minimum of a week and a maximum of a month.

The call for proposals is open until December 1, 1998; grants will be decided in April 1999. There will normally be a maximum of twelve months for use of granted funds. A mid-term report after the first six months will be the basis of an application for a renewal if one is desired. Proposals will be subject to peer review in both countries. Proposals will be submitted as a single package in both English and Spanish; U.S. principal investigators should forward their portion of the document to their Spanish counterpart, to facilitate the submission of the package to the Program Secretariat in Madrid.

Collaborative proposals are expected to have secured funding for the basic research, and preferably be already established projects in at least one of the two countries.

Priorities

Emphasis will be given by the Joint Commission in the 1998 awards to the following fields:

1. Life Sciences
1.1 Infectious and degenerative diseases, including diseases of animals
1.2 Biotechnology of plants, plant health, and integrated pest management
1.3 Food biotechnology
1.4 Molecular design in the production of pharmaceuticals
2. Environment
2.1 Biodiversity
2.2 Natural reserves and protected ecosystems
2.3 Conservation of soils and forests and problems of desertification
2.4 Integrated water management; resources, use and reuse
2.5 Combating pollution and treatment of wastes
3. Information and Communication Technology
3.1 Electronic and microelectronic technology
3.2 Advanced communication technology: satellites, mobile units, Internet II
3.3 Informatics
4. Materials Sciences
4.1 Ceramics, metals, polymers, compounds and superconductors
4.2 Advanced production technology for new materials
5. Energy and High Energy Physics
5.1 Alternate energy: Solar and Wind
5.2 Clean technologies for fossil fuels and/or alternatives
5.3 Cooperative research with U.S. High Energy Physics Labs

Applicants will indicate on the cover sheet the number of the field under which the project falls. Projects submitted outside these categories should simply be designated as ''6. Other Fields.''

Research Teams

All scientists working in research agencies of the two governments, or in universities of the two countries, are eligible to apply. Each project should have a principal investigator on the U.S. side and on the Spanish side. These should be nationals or residents of the respective countries; teams may include citizens of other countries if this is justified in the research plan. U.S. researchers are reminded that Spain requires a visa for holders of official or diplomatic passports. Spanish researchers will not normally require a special visa.

Janet Mayland,

Deputy Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 98–28291 Filed 10–21–98; 8:45 am]

BILLING CODE 4710–09–M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100a]

Implementation of WTO Recommendations Concerning the European Communities' Regime for the Importation, Sale and Distribution of Bananas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determination, request for comment.

SUMMARY: January 1, 1999 is the deadline for the European Communities' (EC) implementation of the recommendations of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC regime for the importation, sale, and distribution of bananas (banana regime). The United States Trade Representative (USTR) is seeking written comments on: (1) the measures that the EC has undertaken to apply as of January 1, 1999 to implement the WTO recommendations concerning the EC banana regime; and (2) the USTR's proposed affirmative determination under section 306(b) of the Trade Act of 1974, as amended, (Trade Act) (19 U.S.C. § 2416), that the measures fail to implement the WTO recommendations. The USTR must make the determination

under section 306(b) no later than January 31, 1999.

DATES: Written comments from interested persons are due on or before November 9, 1998.

ADDRESSES: 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel (202) 395–7305; or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the USTR initiated an investigation under section 302(b) of the Trade Act regarding the EC's regime for the importation, sale and distribution of bananas and requested public comment on the issues raised in the investigation and the determinations to be made under section 304 of the Trade Act. [60 FR 52026 of October 4, 1995]. This investigation specifically concerned EC Council Regulation No. 404/93 and related measures distorting international banana trade and discriminating against U.S. marketing companies importing bananas from Latin America, including a restrictive and discriminatory licensing scheme designed to transfer market share in the wholesale distribution sector from U.S. banana marketing firms of EC or African, Caribbean and Pacific (''ACP'') nationality.

As required under section 303 (a) of the Trade Act, the United States held consultations with the EC under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). After holding a first set of consultations with the EC on October 26, 1995, the United States and the governments of Guatemala, Honduras and Mexico decided to delay the request for a dispute settlement panel until Ecuador, the world's largest banana exporter, had completed its accession and could join the dispute settlement proceeding. Pursuant to a new request filed jointly by the governments of Ecuador, Guatemala, Honduras, Mexico and the United States (''complaining parties''), a second set of WTO consultations with the EC was held on March 14, 1996. A dispute settlement panel was established on May 8, 1996.

The WTO panel is this case circulated its report on May 22, 1997. It included numerous findings that the EC banana regime is inconsistent with the EC's WTO obligations. The EC appealed all of the panel's adverse findings, and the complaining parties cross-appealed three. On September 9, 1997, the Appellate Body issued its report confirming all the major panel findings against the EC regime, and reversing the panel report on two issues that had been decided in the EC's favor (agreeing with the complaining parties).

The WTO reports include findings that the following EC measures violate the EC's obligations under various provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and/or the General Agreement on Trade in Services (GATS): (1) the EC's discriminatory allocation of shares of its market to certain ACP countries and to certain countries signatory to the Banana Framework Agreement; (2) the EC's discriminatory rules for reallocating annual country shares in the event of a country's shortfall; (3) the EC's discriminatory distribution to EC and ACP banana distribution companies of ''Category B'' licenses to import bananas from non-EC, non-ACP countries (mainly Latin America); (4) the EC's requirements for obtaining licenses to import from Latin America, which impose burdens not imposed on imports from ACP countries; (5) the EC's distribution of licenses to ripeners in the EC, which discriminates against U.S. and Latin American firms in favor of EC firms; (6) the EC's discriminatory export certificate requirements; and (7) the EC's distribution of EC and ACP banana distribution companies of additional licenses, so-called ''hurricane licenses,'' to import from Latin America. (The complaining parties did not challenge the EC's preferential tariffs for ''traditional'' ACP bananas.)

The Appellate Body report includes the recommendation that the DSB request the EC to being its banana measures found in the Appellate Body report and in the panel report (as modified by the Appellate Body report) to be inconsistent with the GATT 1994 and the GATS into conformity with the EC's obligations under those agreements. On September 25, 1997, the DSB adopted the Appellate Body and panel reports (as modified by the Appellate Body report), including this recommendation.

At a meeting of the DSB on October 16, 1997, the EC stated that it would ''fully respect its international obligations with regard to this matter'' and would require a ''reasonable period of time to do.'' On December 17, 1997, at a WTO arbitration hearing requested by the complaining parties to determine the ''reasonable period of time'' pursuant to Article 21.3 of the DSU, the EC made it clear that the reasonable period of time it requested, i.e., until January 1, 1999, was for the purpose of implementing all the recommendations and rulings of the DSB adopted on September 25. On January 7, 1998, the WTO-appointed arbitrator circulated his determination that the period until January 1, 1999, would be the ''reasonable period of time'' for the EC to implement the DSB rulings and recommendations.

Based on the results of the WTO dispute settlement proceedings, the public comments received and appropriate consultations, the USTR on February 10, 1998 determined that certain acts, policies and practices of the EC violate, or otherwise deny benefits to which the United States is entitled under, GATT 1994 and the GATS. [63 FR 8248 of February 18, 1998]. The USTR further determined that the EC's undertaking to implement all of the rulings and recommendations of the WTO reports within the reasonable period of time established pursuant to Article 21.3 of the DSU constituted for the purposes of section 301(a)(2)(B)(i) the taking of satisfactory measures to grant the rights of the United States under the GATT 1994 and GATS. Therefore, pursuant to section 301(a)(2), the USTR terminated the investigation without taking action under section 301 of the Trade Act. The USTR stated in the termination notice that it would monitor the EC's implementation of the WTO recommendations under section 306 of the Trade Act and would take action under section 301(a) if the EC did not comply with its WTO obligations and commitments.

Section 306(a) of the Trade Act requires the USTR to monitor measures undertaken by a foreign government to provide a satisfactory resolution of a matter subject to dispute settlement proceedings to enforce the rights of the United States under a trade agreement. Section 306(b) requires the USTR to determine what further action it shall take under section 301(a) of the Trade Act if the USTR considers that a foreign country has failed to implement a recommendation made pursuant to dispute settlement proceedings under the WTO. The USTR shall make this determination no later than thirty days after the expiration of the reasonable period of time provided for such implementation under Article 21.3 of DSU. Section 305(a)(1) requires the USTR to implement such action by no later than 30 days after the date on which that determination is made.

Given that the reasonable period of time for the EC's implementation of the WTO recommendations concerning the EC banana regime expires on January 1, 1999, the USTR must make the determination required by section 306(b) no later than January 31, 1999, and, in the event of an affirmative determination, must implement further

action no later than 30 days thereafter. These time frames permit the USTR to seek recourse to the procedures for compensation and suspension of concessions provided in Article 22 of the DSU.

Monitoring EC Implementation

Following the termination of the investigation, USTR has monitored EC compliance under section 306 of the Trade Act. EC actions undertaken since January 1999, and in particular since June 26, 1998, indicate that EC compliance with its WTO obligations by January 1, 1999 is unlikely.

The EC Commission proposed amendments to its banana regime on January 14, 1998, which were then forwarded to the EC Council for its consideration. The United States and other complaining parties raised concerns about the consistency with the EC's WTO obligations of these proposals with EC Commission officials and before the DSB.

The USTR and U.S. Secretary of Agriculture subsequently asked their counterparts in the European member States to oppose the Commission proposal when it was presented to the European Agriculture Council. On June 26, 1998, however, the European Council of Agriculture Ministers agreed, with few modifications, on proposed amendments to the EC banana regime that had been approved by the European Commission on January 14, and the Agriculture Council also specified how the regulation's provisions on licensing were interpreted. The draft regulations were approved by the EC Council of Agriculture Ministers on July 20. The General Affairs Council formally approved the regulations on July 22. On July 28, 1998, amendments to Regulation 404 were published in the EC *Official Journal* (EC 1637/98; ''Regulation 1637'').

The EC Council regulation provides for the allocation of the EC market among exporting countries and for the distribution of licenses to import bananas as of January 1, 1999. A comparison of the various features of the current EC regime and the amended regime is set forth as Figure 1. On September 14, the complaining parties consulted with the advised the EC of their joint concerns about the inconsistency of the EC's adopted measures with WTO obligations. In summary, the following aspects of the adopted EC measures present particular problems:

Allocation of the EC market among supplying countries. The allocation in Regulation 1637 of the EC market among supplying countries discriminates against bananas from Latin American countries both in terms of quantities allocated and conditions of access. The quantities to be allocated bear no resemblance to the shares that would prevail in the absence of restrictions, as required by Article XIII of the GATT 1994, and unlike quantities for ACP bananas, permit no growth. Latin American banana supplying countries in which U.S. distribution companies are invested would continue to be treated less favorably than ACP banana exporting countries in that they would be required to compete with non-traditional ACP bananas for a small share of an already reduced share of the EC market. Meanwhile, traditional ACP bananas have their own quota, to which Latin American bananas do not have access. Like the current regime, the planned allocation will perpetuate the harmful effects on U.S. companies that distribute Latin American bananas in the EC of the current allocation, which has been found to violate Article XIII of the GATT 1994.

Distribution of Import Licenses. The new EC Council regulation requires the distribution of import licenses on the basis of the ''traditionals/newcomers'' method. On June 26, 1998, the EC Agriculture Council announced that this term was to be interpreted to mean that import licenses would be distributed to ''actual importers on the basis of the presentation of a utilized import license and/or, in particular in the case of new member States, equivalent proofs, where necessary,'' using ''the years 1994–96 as the initial reference period for determining operators' rights.'' The selection of a reference period during the time that a regime which is contrary to the WTO rules was in effect will perpetuate discrimination against U.S. and Latin American suppliers of wholesale trade services created by the current regime (which went into effect in 1993) that has been found to be in violation of GATS Article II and XVII.

Non-Traditional ACP Bananas. The new EC Council Regulation expands upon the tariff preferences provided to ''non-traditional'' ACP bananas; these provisions go beyond the tariff treatment considered by the WTO Appellate Body to fall within the EC's waiver for certain trade preferences required by the Lomé Convention.

Further information on the new EC banana regime is available in the USTR Reading Room in Docket WTO/DS–4.

Proposed Determination

The USTR proposes to determine, pursuant to section 306(b) of the Trade Act, that the measures the EC has undertaken to apply as of January 1, 1999 with respect to this banana regime fail to implement the WTO recommendations. Such a determination will require the USTR also to determine what further action to take under section 301(a) in the event that the EC has failed to implement the WTO recommendations by January 1, 1999. Permissible actions include: action to suspend, withdraw or prevent the application of benefits of trade agreement concessions to the EU; imposition of duties or other import restrictions on goods of the EU or fees or restrictions on services of the EU; and restriction or denial of service sector access authorizations with respect to services of the EU. The USTR intends to determine by December 15, 1998 what action to take.

Written Comments—Requirements for Submissions

Section 306(c) of the Trade Act provides that the USTR shall allow an opportunity for the presentation of views by interested parties prior to the issuance of a determination pursuant to section 306(b). Interested persons are invited to submit written comments on: (1) the measures that the EC has undertaken to apply as of January 1, 1999 to implement the WTO recommendations concerning the EC banana regime; and (2) the USTR's proposed affirmative determination under section 306(b) of the Trade Act that the measures fail to implement the WTO recommendations. Comments must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b) [55 FR 20,593] and must be filed on or before noon on Monday, November 9, 1998. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 416, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20508.

Comments will be placed in a file (Docket 301–100a) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review Docket No. 301–100a may be made by

calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Joanna K. McIntosh,

Chairman, Section 301 Committee.

FIGURE 1.—EC BANANA REGIME: CURRENT V. EC COUNCIL APPROACH

Provision	Current regime	EC council approach
Latin American TRQ of 2.53 million tons.	75 ECU/ton tariff; access at zero tariff for ''non-traditional'' ACP bananas limited to 90,000 tons.	75 ECU/ton tariff; no limit on ACP access at zero tariff.
Latin American bananas entering over the TRQ.	765 ECU/ton tariff	765 ECU/ton tariff.
ACP traditional bananas' quota of 857,700 tons.	Zero tariff, with twelve country allocations	Same; zero tariff, with no allocations yet announce.
Tariff on ''non-traditional'' ACP bananas.	Zero tariff for 90,000 tons within Latin American TRQ.	Zero tariff for unlimited tons within Latin American TRQs' ''others'' category.
ACP over-quota tariff	665 ECU/ton	565 ECU/ton.
Latin American Import Licenses	About 50% to historical importers (Latin American and U.S.) and rest to EC/ACP companies (importers/ripeners).	License-users to receive same amounts as they used in 1994–96 under illegal system.
EC Producer Price Subsidy	622.5 ECU/ton	640.3 ECU/ton.
EC funds from tariff on Latin American bananas.	185 million ECU	185 million ECU.
Review date	2002	2005.

[FR Doc. 98–28271 Filed 10–21–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Application of Legend Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause Order 98–10–15, Docket OST–98–3667.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Legend Airlines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than October 30, 1998.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–98–3667 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: October 16, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–28389 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Manufacturing Process of Premium Quality Titanium Alloy Rotating Engine Components

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of Advisory Circular (AC).

SUMMARY: This notice announces the issuance of Advisory Circular (AC), No. 33.15–1, Manufacturing Process of Premium Quality Titanium Alloy Rotating Engine Components. This AC is provides guidance and information for compliance pertaining to the materials suitability and durability requirements, symbol § 33.15, as applicable to the manufacture of titanium alloy high energy rotating parts of aircraft engines. Like all AC material, this AC is not, in itself, mandatory and does not constitute a regulation. It is issued to provide an acceptable means, but not the only means, of compliance with symbol § 33.15. While these guidelines are not mandatory, they are derived from extensive Federal Aviation Administration (FAA) and industry experience in determining compliance with the pertinent regulations.

DATES: Advisory Circular No. 33.15–1, was issued by the New England Aircraft Certification Service, Engine and Propeller Directorate on September 22, 1998.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA, 01803, telephone (781) 238–7114, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

Advisory Circulars 21–1B, 21–6A, 21–9A, 21–27, and 21.303–1A, provide a means to obtain and maintain production approvals; however, these documents do not fully cover the manufacturing processes used in the manufacture of premium quality titanium alloy forged rotating components for type certificated turbine engines. This AC, therefore, provides supplemental guidance for the establishment of manufacturing processes, in-process material and component inspections, and finished component inspections, for manufacture of premium quality titanium alloy forged rotating components, such as disks, spacers, hubs, shafts, spools and impellers, but not blades.

Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. Notice was published in the **Federal Register** on July 17, 1997 (62 FR 38338), to announce the availability of, and comment to the draft AC.

This advisory circular, published under the authority granted to the

Administrator by 49 U.S.C. 106(g), 4113, 44701–44702, 44704, provides guidance for these requirements.

Issued in Burlington, Massachusetts, on September 22, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–28326 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

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 Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 10, 1998, at 10 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6200–6204, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11), notice is hereby given of a meeting of the Executive Committee to be held on November 10, 1998, at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6200–6204, Washington, DC. 10 a.m. The agenda will include:

- Presentation of the proposed recommendation from the National Parks Overflights Working Group (tentative)
- Administrative issues

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by November 2, 1998, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

A copy of the proposed recommendation to be presented at the meeting may be obtained by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as an assistive listening device, can be made available if requested 10 calendar days before the meeting by also contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 16, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–28380 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose the revenue from a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

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

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, Connecticut Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT. 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided the State of Connecticut under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 7, 1998, the FAA determined that the application to impose the revenue from a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than January 17, 1999.

The following is a brief overview of the application.

PFC Project #: 98–07–I–00–BDL.

Level of the proposed PFC: $3.00.

Proposed Charge effective date: April 1, 1999.

Proposed charge expiration date: January 1, 2000.

Total estimated net PFC revenue: $5,376,000.

Brief description of projects: Construction of Airport Snow Equipment Storage and Maintenance Building.

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on October 9, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–28327 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–03–U–00–SYR) To Use the Revenue From a Passenger Facility Charge (PFC) at Syracuse Hancock International Airport, Syracuse, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of intent to rule on application to use a Passenger Facility Charge (PFC) at the Syracuse Hancock International Airport, Syracuse, New York.

SUMMARY: This correction modifies the approval or disapproval application date from the previously published notice.

In notice document 98–26793 beginning on page 53743 in the issue Tuesday, October 6, 1998 in the third column under **SUPPLEMENTARY INFORMATION**, change the approval or disapproval application date to December 29, 1998

FOR FURTHER INFORMATION CONTACT: Robert Levine, Project Manager, 600 Old Country Road, Suite 446, Garden City, New York 11530, (516) 227–3807.

Issued in Jamaica, New York, on October 15, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, Airports Division, Eastern Region.

[FR Doc. 98–28378 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Marion, Lake and Volusia Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the scope of work for the Environmental Impact Statement (EIS) has changed for a proposed highway project on SR 40 in Marion, Lake, and Volusia Counties, Florida. The reduced project scope involves reconstruction of SR 40 in Marion County only.

The Florida Department of Transportation is not seeking Federal funds for the project under the reduced scope of work. Therefore the FHWA will no longer be involved in this action.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Bartlett, Transportation Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida 32301, telephone: (850) 942–9598, or Mr. Jim Thorsen, District Ranger, Ocala National Forest, Seminole Ranger District, 40929–SR 19, Umatilla, Florida 32784, telephone: (352) 669–3153.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Forest Service, the U.S. Coast Guard and the Florida Department of Transportation is no longer preparing an EIS for a proposal to improve SR 40 in Marion, Lake and Volusia Counties, Florida. The proposed improvement involved the reconstruction of SR 40 from the end of the 4-lanes in Silver Springs, Marion County to US 17/92 Barberville, Volusia County, a distance of 40 miles with 27 miles within the Ocala National Forest. The project scope had been changed and involves reconstruction of SR 40 in Marion County only. FHWA will no longer be involved in the new project, nor will there be any Federal funding of the new project.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program)

Issued October 13, 1998.

James E. St. John,

Division Administrator Tallahassee.

[FR Doc. 98–28370 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS–AP–No. 3445]

Buffalo & Pittsburgh Railroad, Incorporated; Public Hearing

The Buffalo & Pittsburgh Railroad, Incorporated has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control and automatic block signal system, on the main tracks, between Ashford Junction, New York, milepost 43.3 and Riker, Pennsylvania, milepost 223.5, on the Main Line Subdivision, a distance of approximately 180.2 miles, consisting of the removal of all governing signals, 16 power-operated switches, and 3 electric switch locks within the above milepost limits.

This proceeding is identified as FRA Block Signal Application Number (BS–AP–No. 3445).

The FRA has issued a public notice seeking comments of interested parties and has conducted a field investigation in this matter. After examining the carrier's proposal, letters of protest, and field report, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. on Tuesday, November 24, 1998, in City Council Chambers, located at 16 West Scribner Avenue, DuBois, Pennsylvania. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 Code of Federal Regulations, Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on October 13, 1998.

Edward R. English,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 98–28367 Filed 10–21–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 15, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the

OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 23, 1998 to be assured of consideration.

Departmental Offices/Office of Procurement

OMB Number: 1505–0080.
Form Number: None.
Type of Review: Extension.
Title: Post-Contract Award Information.
Description: Information requested of contractors is specific to each contract and is required for Treasury to evaluate properly the progress made and/or management controls used by contractors providing supplies or services to the Government and to determine contractors' compliance with the contracts, in order to protect the Government's interest.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 5,565.
Estimated Burden Hours Per Respondent: 46 hours, 2 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 78,108 hours.

OMB Number: 1505–0081.
Form Number: None.
Type of Review: Extension.
Title: Solicitation of Proposal Information for Award of Public Contract.
Description: Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to evaluation properly the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 29,183.
Estimated Burden Hours Per Respondent: 29 hours, 29 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 860,456 hours.

OMB Number: 1505–0107.
Form Number: None.
Type of Review: Extension.
Title: Regulation on Agency Protests.
Description: Information is requested of contractors so that the Government will be able to evaluate effectively and provide prompt resolution of issues in dispute when contractors file protests.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 17.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 34 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 98–28351 Filed 10–21–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 8, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 23, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.
Form Number: IRS Forms W–8BEN, W–8ECI, W–8EXP, and W–8IMY.
Type of Review: New collection.
Title: Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (W–8BEN);

Certificate of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States (W–8ECI);

Certificate of United States Tax Withholding for Foreign Governments and Other Foreign Organizations (W–8EXP); and

Certificate of Foreign Intermediary, Foreign Partnership, and Certain U.S. Branches for United States Tax Withholding (W–8IMY)

Description: Form W–8BEN is used for certain types of income to establish that the person is a foreign person, is the beneficial owner of the income for which Form W–8BEN is being provided and, if applicable, to claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty. Form W–8ECI is used to establish that the person is a foreign person, is the beneficial owner of the income for which Form W–8ECI is being provided, and to claim that the income is effectively connected with the conduct of a trade or business within the United States. Form W–8EXP is used by a foreign government, internal organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation. The form is used by such persons to establish foreign status, to claim that the person is the beneficial owner of the income for which Form W–8EXP is given and, if applicable, to claims a reduced rate of, or exemption from, withholding. Form W–8IMY is provided to a withholding agent or payer by a foreign intermediary, foreign partnership, and certain U.S. branches to make representations regarding the status of beneficial owners or to transmit appropriate documentation to the withholding agent.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 3,180,640.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
W–8BEN	5 hr., 59 min	2 hr., 41 min	2 hr., 59 min
W–8ECI	3 hr., 35 min	2 hr., 12 min	2 hr., 23 min
W–8EXP	6 hr., 56 min.	4 hr., 37 min.	4 hr., 41 min.

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
W–8IMY	7 hr., 53 min.	3 hr., 38 min.	5 hr., 8 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 36,115,302 hours.

OMB Number: 1545–0710.

Form Number: IRS Forms 5500, 5500C/R and Schedules.

Type of Review: Revision.

Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules.

Description: The forms listed in Item 7 are Annual Information Returns filed by Employee Benefit Plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 901,400.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
5500 (initial filers)	87 hr., 3 min	9 hr., 3 min	13 hr., 40 min	48 min.
5500 (all other filers)	81 hr., 33 min	9 hr., 3 min	13 hr., 34 min	48 min.
5500-C (initial filer)	55 hr., 33 min	7 hr., 23 min	10 hr., 29 min	32 min.
5500-C (all other filers)	45 hr., 41 min	7 hr., 23 min	10 hr., 19 min	32 min.
5500-R (initial filers)	22 hr., 29 min	3 hr., 49 min	6 hr., 13 min	32 min.
5500-R (all other filers)	12 hr., 40 min	3 hr., 49 min	6 hr., 3 min	32 min.
Schedule A	17 hr., 28 min	28 min	1 hr., 42 min	16 min.
Schedule B (Part 1)	30 hr., 37 min	3 hr., 16 min	3 hr., 55 min	
Schedule B (Part 2)	15 hr., 19 min	1 hr., 23 min	1 hr., 42 min	
Schedule C	5 hr., 16 min	28 min	23 min	
Schedule E (non-leveraged ESOP)	1 hr., 12 min	12 min	12 min	
Schedule E (leveraged ESOP)	10 hr., 2 min	1 hr., 41 min	1 hr., 56 min	
Schedule F	2 hr., 52 min	30 min	34 min	
Schedule G	15 hr., 4 min	6 min	21 min	
Schedule P	1 hr., 55 min	30 min	33 min	
Schedule SSA	5 hr., 30 min	6 min	11 min	

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 27,704,510 hours.

OMB Number: 1545–1083.

Regulation Project Number: INTL–399–88 Final.

Type of Review: Extension.

Title: Treatment of Dual Consolidated Losses.

Description: Section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. The regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign country and if an agreement is attached to the income tax return of the dual resident corporation or group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 2 hours, 23 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,620 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–28352 Filed 10–21–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 16, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 23, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1318.

Regulation Project Number: REG–209545–92 NPRM (formerly INTL–19–92).

Type of Review: Extension.

Title: Earnings and Profits of Foreign Corporations.

Description: Application of the proposed regulations may result in accounting method changes which ordinarily require the filing of Form 3115. However, the proposed regulations waive this filing requirement if certain conditions are met, with the net result that no burdens are imposed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89 Final.

Type of Review: Extension.

Title: Disposition of an Interest in a Nuclear Power Plant.

Description: The regulations require that certain information be submitted as part of a request for a schedule of ruling amounts. The regulations also require certain taxpayers to file a request for a revised schedule of ruling amounts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 52.

Estimated Burden Hours Per Respondent: 2 hours, 24 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 125 hours.

OMB Number: 1545–1423.

Regulation Project Number: PS–106–91 Final.

Type of Review: Extension.

Title: State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit.

Description: The regulations provide the order in which credits are allocated from each State's credit ceiling under section 42(h)(3)(C) and the determination of which states qualify for credits from a National Pool of credits under section 42(h)(3)(D). Allocating agencies need this information to correctly allocate credits and determine National Pool eligibility.

Respondents: Business or other for-profit, Individual or households, Not-for-profit institutions, State, Local or Tribal Government

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 2 hours, 30 minutes.

Frequency of Response: Other (one time per event).

Estimated Total Reporting Burden: 275 hours.

OMB Number: 1545–1462.

Regulation Project Number: PS–268–82 Final.

Type of Review: Extension.

Title: Definitions Under Subchapter S of the Internal Revenue Code.

Description: The regulations provide definitions and special rules under Code section 1377 which affect S corporations and their shareholders.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94 Final.

Type of Review: Extension.

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

Description: The regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions of $75 or more. These regulations will affect donee organizations and individuals and entities that make payments to donee organizations.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 1,750,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,975,000 hours.

OMB Number: 1545–1471.

Regulation Project Number: REG–209626 NPRM (formerly EE–24–93).

Type of Review: Extension.

Title: Notice, Consent, and Election Requirements under Sections 411(a)(11) and 417.

Description: These regulations concern the ability to make a distribution from a qualified plan within 30 days of giving the participant a written explanation of the distribution options provided the plan administrator informs the participant of the right to have at least 30 days to consider the options.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Governments

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: .011 hours.

Frequency of Response: Other (once each year).

Estimated Total Reporting Burden: 8,333 hours.

Clearance Officer: Garrick Shear (202) 622–3869. Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–28353 Filed 10–21–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 16, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 23, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1318.

Form Number: IRS Form 6627.

Type of Review: Extension.

Title: Environmental Taxes.

Description: Form 6627 is attached to Form 720 to compute and collect tax on chemicals, imported chemical substances, and ozone-depleting chemicals.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,610.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	5 hr., 1 min.
Learning about the law or the form.	6 min.
Preparing and sending the form to the IRS.	11 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 5,172 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service,

Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–28354 Filed 10–21–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 1998.

Last name	First name	Middle name
ADANKUS	VALDAS	V.
AHN	RONALD	EUI
AMANN, NEE MOHR	GABRIELE	
ARNOLD	YUKIKO	TERESA
ATTARD	AMY	THERESA
BAKER	BEATRIX	HELEN
BEAULIEU JR.	RICHARD	DAMIEN
BECKER	MICHAELA	
BILFINGER	INGEBORG	E.
BOONDAS	MARIA.	
BOTTYGIEG	TANYA	ROSE
BROWDER	WILLIAM	FELIX
BROWN	EWART	FREDERICK
BUCK	DIANA	DAVIS
CAINGCOY	REYNALDO	F.
CAVIZO	JEE	SON
CHOI	HELEN	MI
CHOI	YONGTAK	
CHOI	SOON	HIE
CHOI	JUNG	SOOK
CHOPOT, NEE HALLSTENSSON	AMME	MAIJA-MARIA
CHUN	IN	AH
CHUNG	EUGENE	JONGPIL
COLE	BLANCHE	
CONSTANTAKIS	CYNTHIA	AMELIA
CORDER	SEOK	SOON
DE BRIAILLES	CAMILLA	CHANDON
DELEAMONT	FRANCIS	MICHEL
DUNCAN	BENJAMIN	DILLARD
EAKINS	KENNETH	ERNEST
EICHENBERGER	HANS	P.
ELEYN	ANGELA	CONSTANCE
ESTEVE	ROSA	MARIE C.
FERGUSON	JAMES	DONALD
FISHMAN	ALLENE	REY
FISHMAN	IRA	NEAL
FLAM	ROBERT	NED
FOLEY	GABRIELA	HEDWIG
FREEDLINE	SUNAE	
FRIEND	WILMA	JEAN
GABITASS	DIANNE	LINSLEY
GASTON	ERIC	FRANK
GOH	LI	YEN
GRAHAM-FLOISTAD	ELIZABETH	
GRANT	JOCELYN	CAROL
GRECH	KEVIN	
HAFFTEN	MI	CHA
HART	JOHN	WILLIAM
HEIDEN	BOWMAN	JOHN
HELLER	AMY	
HERSEY	DAVID	KENNETH
HO	ROBERT	YAU-CHUNG
HO	KEVIN	YAU-KWONG
HOWE	JAMES	TARSICIUS
HU	JENNIE	CHENG-YI
HUTCHINGS	WILLIAM	PRESTON
HWANG	EUNICE	H.
JANG	YOUNG	SIK
JEBSEN	BJORN	
JI	GRACE	
KECALOVIC	SABINA	

Last name	First name	Middle name
KELLY	ALVA	KATHLEEN
KIKUCHI	MICHIYO	TOMMY
KIM	SUNG	KWAN
KIM	HO	YONG
KIM	SE	YOUNG
KIRK	TERRENCE	KENT
KONUMA	SHINICHI	
KUNZE	DENNIS	ALAN
LAVANCEAU	FLORENCE	PEREIRA
LEE	MYONGSON	
LEE	WILSON	JAIHWAN
LEE	CHONG	IN
LENK	ARTHUR	HOWARD
LEVIN	PHILIP	
LIVANOS	STAVROS	GEORGE
LOUGHLIN	JOHN	JOSEPH
MARCH	ROSEMARIE	ELIZABETH
MARLIN	HILDA	GERARDA
MATYSEN-GERST	MARK	ANTONY
MAUGHAN	BARBARA	BARR
MAUST	NINA	TERESSA
MCCUTCHAN-LIEBCEN	MILLIE	KATHRYN
MELERA	ATTILIO	
MITCHELL	KAJ	ERIK
MORCK	MARTIN	
MORENO	LUIS	FERNANDO
MUELLER	EGBERT	HANS-JOSEF
MUNSTER-NEE ENEA	CATHERINE	PAULA
MURPHY	ANGELA	MARIE
NILSEN	NANCY	
NORDEMANN	HELENE	ELISABETH
NOSAWA	KIICHIRO	
NURSE	ETHELMAE	VIOLA
NUTTING	RONALD	WILLIAM
OGDEN	LELA	KEMPE
OH	JANE	C.
ONG	ANDREA	SUE
PARK	JOON	CHUL
PINTO DE SILVA	PEDRO	GONCALVES
PORTELLI	CHRISTOPHER	GUZI
PRICE	ALESSANDRA	MONICA
RANDOLPH	JOHN	PAUL
RHEE	TONG-CHIN	
RHEE	VIVIAN	YE SOOK
RHEE	ROBERTA	BCK
RICHARDSON	RONALD	WAYNE
RICHARDSON	LOIS	ANN
ROBERTSON	MARK	ALEXANDER
ROGERS	DOYLE	NOLAND
ROHN	ROBERT	MURRAY
ROSE	MARJORY	CAROL
ROSS	BEVERLY	ANN
SAILER	ELMER	FREDERICK
SANCHEZ	RUBEN	
SAUNDERS	MITZI	LUCILLE
SCELLERUP	OSMUND	
SCHNEEBELI	JEAN	PIERRE
SCHOENE	KATHRYN	MAE HOLT NEE
SIM	HENRY	K.
SIMMONDS	JAMES	DUDLEY
SIN	YOUNG	HO
SINGH	KASHMIR	
SMITH	ROBERT	FRANCIS
ST. GERMAIN	PHILLIPP	PIERRE
STAEHELIN	MARGUERITE	M.
STARKEY	FRANCESCA	
STEVENS-JONSTON	JANE.	
STRENC	ERIN	GREGORY
SUNWOO	DENNIS	YOU
SVENSEN	GEIR	
SVENSEN	OYVIND	
TABONE	LOUISE	
TONNESEN	HARALD	IVAR
UNITT	CYNTIA	ANN

Last name	First name	Middle name
UYEDA	WARREN	SAKAYE
VAZ	DAVID	BRUCE
VELAYO	ALFRED	A.
VELLA	STEPHANIE	ROSE
VON BERGEN	GAIL	ANN
WALLACE	DESIREE	ELIZABETH
WARMAN	NINA	
WATARI	KENSAKU	PAO
WHITLOCK	CLIFFORD	JAMES
WINTELER	DANIEL	JOHN
YAMADA	ASAYO	
YI	DONG	JOON
YOO	WONHI	
YOO	YONG	KYUM
YUN	HYUNGIN	
ZERAFA	LORRAINE	MARIE

Approved: October 8, 1998.

Doug Rogers,

Chief Special Projects & Support Branch, International District.

[FR Doc. 98–28284 Filed 10–21–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Fulbright Senior Scholar Program

NOTICE: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Pursuant to its grant guidelines established cooperatively with the Congress, ''The Bureau seeks to promote competition and balance in its discretionary grant-making and strives to avoid exclusivity.'' Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide administrative and program services for the Fulbright Senior Scholar Program in Fiscal Year 2000. In this request for Proposals, the U.S. Information Agency is placing the administrative *cooperative agreement award* for the Fulbright Senior Scholar Program in competition for the first time in the 52-year history of the Program. Deadline for receipt of proposals is February 8, 1999. The cooperative agreement will begin o/a October 1, 1999.

Program Information

Overview

The Fulbright Program was created by the U.S. Congress at the end of World War II to exchange U.S. and foreign students and scholars, providing them with the opportunity to experience firsthand the political, economic and cultural institutions and societies in each other's countries. In the intervening years, the Fulbright Program has evolved into the premier educational exchange program sponsored by the people of the United States through their federal government, and thus an important element in the conduct of U.S. foreign affairs. The Fulbright Program, which now extends to approximately 140 foreign countries and involves 5,000 participants overall every year, has helped to form and inform tens of thousands of the world's leaders in every academic and professional field. The Senior Scholar portion of the Fulbright Program will engage approximately 1500 scholars and professionals in FY 1999.

The hallmark of the Fulbright Program is binationalism. The United States and foreign governments, educational and other public and private institutions are all partners in this enterprise. In many countries of the world, financial contributions from governments or public/private sources match or exceed those of the United States. Because of its binational nature, the profile of the Fulbright Program worldwide reflects a range of objectives and interests.

The Fulbright Program's grant-making authority is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interest, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The Fulbright Program is funded through annual Congressional appropriations to USIA and receives significant financial support from partner governments and private donors worldwide.

In July 1997, a distinguished group of private U.S. and international professionals organized as the Steering Committee on the Future of the Fulbright Educational Exchange Program, under the auspices of the National Humanities Center, carried out a comprehensive evaluation of all of the components of the Fulbright Program, issuing a formal report entitled ''Fulbright at Fifty'' (available via internet at www.nhc.rpt.nc.us:8080 or in hard copy as a part of the Solicitation Package). The Steering Committee's report reaffirmed the importance of the Fulbright Program, concluding that it remains ''a vital and successful means to address the current issues facing established and emerging nations in the post-Cold War era.'' With specific reference to the Fulbright Senior Scholar Program the Steering Committee's report made several suggestions that were drawn on by USIA in the preparation of this Request for Proposals.

Fulbright Senior Scholar Program

For more than fifty years, the Fulbright Senior Scholar Program has offered grants for college and university faculty, as well as for non-academic professionals (such as lawyers and journalists) and independent scholars, to lecture and conduct research abroad. Thousands of U.S. and foreign scholars and professionals have participated since the Fulbright Program's inception. In FY 2000, the Fulbright Senior Scholar Program will send abroad approximately 750 U.S. scholars and professionals to lecture and conduct

research and will bring to this country approximately 800 grantees for similar activities.

Responsibility for the management of the Fulbright Senior Scholar Program is currently shared among the U.S. Information Agency in Washington, fifty-one bilateral Fulbright Commissions and ninety U.S. Information Service (USIS) posts (the overseas network of USIA), and a cooperating private sector agency in the United States. Overall policy guidelines for the Senior Scholar Program are determined by the Presidentially appointed J. William Fulbright Foreign Scholarship Board (JWFFSB).

Under the Board's auspices, U.S. citizens are awarded grants each year through a merit-based, competitive process to teach undergraduate or graduate courses, collaborate with foreign colleagues on projects, pursue individual research, conduct seminars, consult with government ministries and educational institutions, advise on curriculum development, and guest lecture at other universities. Grant opportunities for U.S. scholars are determined overseas by binational Fulbright Commissions and USIS posts in coordination with USIA in Washington.

Similarly, visiting scholars and professionals travel to the U.S. each year for research, teaching and guest lecturing. Grantees for this Program are chosen through open, merit-based competitions in each country, which are conducted by the Fulbright Commission and, in the absence of a Commission, by USIS posts. Through the Scholar-in-Residence component of the Senior Scholar Program, USIA brings scholars and professionals to U.S. campuses that do not often host foreign visiting scholars. These campuses are selected through a competition managed by the cooperating agency.

Special project activities involving U.S. and foreign scholars include the NATO program, Fulbright German Studies Seminar, U.S./German International Educational Exchange of Administrators, Japanese International Education Exchange Administrators and the Southeast Asia Summer Studies Institutes.

Though the majority of grants under the Fulbright Senior Scholar Program are and will continue to be individual awards for lecturing and research for a semester or one-year period, the Program encompasses other scholarly activities consistent with Fulbright principles. Current examples include shorter-term awards for distinguished senior scholars to lecture abroad; serial grants for multi-year exchange programs; and professional exchanges in such fields as law and journalism.

Eligibility Guidelines

Public and private non-profit organizations with at least four years of experience in conducting international exchange programs and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to provide administrative and program services for the Fulbright Senior Scholar Program in Fiscal Year 2000.

Because of its binational character, the Fulbright Program is both programmatically and administratively complex. It must accommodate a variety of circumstance in every geographic region of the world and be responsive to and supportive of many different constituencies in the United States and abroad, each with its own set of goals and concerns. At the same time, the integrity of the Program requires that it maintain the highest and most consistent standards of academic and professional quality in the selecting of candidates and implementation of projects as well as a single worldwide identity. USIA has therefore determine that the overall coherence and quality of Fulbright exchanges can be sustained only through a unified approach to program administration. Applicants—whether single organizations or consortia—must therefore present a plan for administration of the Program worldwide.

A single organization may apply to administer the entire Fulbright Senior Scholar Program. Alternatively, organizations may apply as a consortium, using subcontract arrangements, with each partner having a specialized regional, exchange, or other kinds of expertise; in this arrangement, one organization should be designated to be the recipient of the cooperative agreement award. Applications proposing administration of the Program by a consortium should provide a detailed description of arrangements for cooperative work among the partners and between the partners and the U.S. and overseas academic communities, bilateral commissions and other entities responsible for the Fulbright Program to ensure consistent Program quality.

Organizations contemplating applying for this award may wish to consult the Steering Committee Report (July 1997), ''Fulbright at Fifty,'' also referred to in the opening paragraphs of this RFP, which makes a number of thoughtful recommendations about the program. The Agency views this open competitions as as important opportunity to elicit program ideas to support the Report's objectives and will carefully consider the variety of ideas that this competition will elicit.

Application Guidelines

USIA will work cooperatively and closely with the recipient of this cooperative agreement award and will maintain a regular dialogue on administrative issues and questions as they arise over the duration of the award. Contingent upon satisfactory performance based on annual reviews, USIA intends to renew this award each year for a period of not less than four additional years. USIA reserves the right to renew the award beyond that period.

The recipient of this cooperative agreement award will be responsible, under USIA supervision, for the following activities beginning in FY 2000: program planning; publicity; receipt of applications; applicant screening and nomination; post-nomination services; fiscal management and program monitoring and reporting. Responsibilities under the terms of the FY 2000 agreement will not include monitoring of the FY 1999 (or earlier) scholars. The FY 1999 cooperative agreement award will support that activity.

Program Planning: Applicants should, as part of the proposal, submit a detailed plan for administration of both the U.S. and Foreign Senior Scholar Programs. The plan should include the following: strategies for recruitment of U.S. scholars; planning for the placement of visiting foreign scholars at U.S. institutions (Note: some foreign scholars are self-placed); plans for tracking and monitoring of grantees; and plans for the orientation of U.S. grantees and enrichment activities for foreign grantees. The description of recruitment strategies should address the applicant's capacity to respond with flexibility to unanticipated needs and its ability to develop innovative models of grant awards. Proposals should include plans for enhancing the visibility for the Senior Scholar Program and broadening engagement with the U.S. and overseas academic communities, and may include other innovative activities, all in cooperation with USIA and other overseas administrative partners, as appropriate.

In addition, applicants may propose, on a pilot basis and consistent with J. William Fulbright Foreign Scholarship Board guidelines, new program models such as projects in which U.S. and foreign experts consult abroad on educational reform and curriculum development; collaborative research projects involving scholars from multiple countries or regions; and

awards to institutions linking faculty from institutions in the U.S. and abroad; or other innovative projects which would enhance the traditional Fulbright model. The proposals must conform with USIA requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are always subject to the availability of funds.

Publicity and Applications: The recipient of the grant award will be responsible for the preparation and distribution of an ''awards booklet'' announcing grant opportunities, application packets and general program announcements, annual directories of scholars, and flyers to publicize the program. Proposals should address written and electronic communication, professional networking and other means which will be used to enhance recruitment efforts. The award recipient will be responsible for establishing and maintaining a Website for the Senior Scholar Program with appropriate links to USIA and binational commissions overseas. Publicity and outreach efforts should include special emphasis on recruitment of those currently underrepresented in the Fulbright program, including non-academic professionals in fields consistent with broad program goals such as journalism and law, people with disabilities and racial and ethnic minorities.

Screening and Selection Process: The recipient of the cooperative agreement award will: provide and accept applications from U.S. program applicants; provide appropriate notification to applicants of their status on an on-going basis; and pre-screen for eligibility all U.S. applicants. Suggested procedures should take into account the goal of USIA to convert from paper-based processing to electronic applications. The award recipient will be responsible for convening scholarly/professional peer review committees to screen U.S. applications to determine which among them will be recommended to U.S. Information Service posts and Fulbright Commissions overseas and to the J. William Fulbright Foreign Scholarship Board. In addition to coordinating the assessment of applicants' scholarly and professional credentials, the award recipient will also develop procedures to evaluate applicants' motivation, cross-cultural sensitivity and flexibility to ensure a successful exchange experience.

The award recipient will also screen and place candidates for the following special countries and programs: Africa professional and research scholars, Southeast Asia Summer Studies Institute, Persian Gulf Review, and the Scholar-in-Residence program. Additional information on these programs is included in the Solicitation Package.

Post-Nomination Services: The award recipient will be responsible for the following services for U.S. grantees: prepare letters for the J. William Fulbright Foreign Scholarship Board informing successful candidates of their selection; prepare letters for all candidates not selected or in alternate status; prepare grant award packages for candidates going to countries where the program is administered by USIS and to certain Commission countries; respond to queries from grantees; assist with pre-departure orientation for grantees going to China, Africa, the NIS, Eastern Europe and the Baltics; maintain data on participants; review medical forms and identify health problems; electronically enroll some grantees in health insurance; monitor and provide grantee reports; prepare recognition certificates for all grantees; and assist with emergencies.

The award recipient will be responsible for the following services for foreign grantees: prepare awards packages for foreign scholars and professionals from non-Commission and approximately twenty Commission countries; confirm the U.S. affiliation of ''self-placed'' foreign scholars from certain Commission countries; arrange enrichment seminars, guest lecturing and other activities; maintain data on participants; review medical forms and identify health problems; electronically enroll some grantees in health insurance; monitor and prepare grantee reports; prepare recognition certificates for all grantees; serve as ''alternate responsible office'' for issuance of IAP–66 forms and submit appropriate annual reports on the use of IAP–66 authority; and assist with emergencies.

Fiscal Management and Program Reporting: The cooperative agreement award recipient will: manage grantee stipend payments, including tax withholding for foreign grantees, non-Commission and certain Commission countries; provide quarterly reports on actual and projected expenditures; transmit electronically program information for inclusion in Congressional correspondence and in USIA's Exchange Visitor Database and other reports; provide statistical, insurance and other ad hoc periodic reports; and monitor and audit internal functions and systems in accordance with U.S. Government and USIA guidelines.

Budget Guidelines

A comprehensive line item administrative budget must be submitted with the proposal by the deadline. It is anticipated that funding for the cooperative agreement award for program administration will be approximately $4.5 million. In addition, a program budget totaling approximately $28 million for the global Fulbright Senior Scholar Program will be transferred to the recipient of the award in quarterly installments. As result of this competition, if the cooperative agreement is awarded to an organization not previously associated with the Fulbright Senior Scholar Program, the amount of the FY 2000 award will be adjusted downward to reflect a reduced level of administrative responsibilities in FY 2000. (The FY 1999 cooperative agreement awardee would continue to monitor and provide support for FY 1999 and earlier grantees.) Renewal awards to the FY 2000 awardee in subsequent years would be at levels commensurate with full levels of administrative responsibility.

Announcement Title and Number

All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AE–00–01.

FOR FURTHER INFORMATION, CONTACT: Ms. Rosalind Swenson, Office of Academic Program, Academic Exchanges Division, E/AE, Room 234, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, phone: (202) 619–4360, fax: (202) 401–5914; email: rswenson @usia.gov to request a Solicitation package containing more detailed information. The package will include all required application forms, standard guildelines for preparing a proposal, including specific criteria for preparation of the proposal budget and materials describing the special programs mentioned above.

All inquiries about the Request for Proposals or any aspect of the Fulbright Senior Scholar Program should be submitted in writing to Ms. Swenson. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Any questions or requests for information that applicants wish to make to overseas Fulbright Commissions or USIS post also should be submitted in writing to Ms. Swenson for transmission to those overseas offices.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on February 8, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow in instructions in the Solicitation Package. The original and *15* copies of the application should be sent to: U.S. Information Agency, Ref.: E/AE–00–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adher to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposals. Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunity for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process

USIA will acknowledge receipt of all proposals and will review them first for technically eligibility. Proposals must conform with Agency requirements and guidelines outlined in the Solicitation Package. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the solicitation packet. Eligible proposals will undergo further advisory professional revie at USIA which may include the use of advisory external consultants. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA. All programs and activities are subject to the availability of funds. Final technical authority for assistance awards resides with the USIA grants office.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not bee accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http:www.itpolicy,gsa.gov.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered.

1. Quality: Proposals should display an understanding of and respect for the goals and distinguished traditions of the Fulbright Program, as reflected in the requirements and priorities of this RFP. In their approach to program management, including the recruitment of scholars, proposals should demonstrate a commitment to excellence and creativity, including innovative collaborations with appropriate academic and professional partners.

2. Program Planning: Proposals should respond to the planning requirements outlined in the RFP. Planning should demonstrate substantive rigor. A detailed agenda and work plan, including a timeline, should demonstrate feasibility and the applicant's logistical capacity to implement the Program.

3. Ability to Achieve Program Objectives: Proposals should demonstrate clearly how the applicant will fulfill the Program's objectives and implement plans, while demonstrating innovation and a commitment to academic excellence. Proposals should demonstrate a capacity for flexibility in the management of the Program.

4. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve Program goals. Applicants should demonstrate established links to the scholarly and professional communities in the U.S. and knowledge of other overseas educational environment, particularly an awareness of conditions in societies and educational institutions outside the United States as they apply to academic and professional exchange programs. Applicants should also demonstrate their capacity to provide an information management; database system that meets Program requirements, is compatible with USIA's systems and, in general, will advance the Fulbright Senior Scholar Program's ongoing conversion of paper-based processing to electronic applications and data storage.

5. Institutional Performance: Proposals should demonstrate an institutional record of managing successful exchange programs including: significant experience in developing and administering international exchange programs, sound fiscal management, and full compliance with all reporting requirements for past Agency cooperative agreement awards as determined by USIA's Office of Contracts. In its review of proposals, USIA will consider the past performance of Agency award recipients

and the demonstrated potential of organizations which have not previously received USIA awards.

6. Cost-effectiveness: Overhead and administrative components including salaries should be economical while adequate and appropriate to provide the required services. Proposals should document plans to realize cost-savings and other efficiencies through the use of technology, administrative streamlining and other management techniques.

7. Cost-sharing: Proposals should maximize cost-sharing. Preference will be given to proposals which demonstrate innovative approaches to leveraging of funds, fund-raising and other sharing of costs.

8. Support of Diversity: Proposals should demonstrate the applicant's awareness and understanding of diversity and a commitment to its achievement through individual grant awards and institutional participation and in other ways in both administrative and programmatic aspects of the Fulbright program.

9. Evaluation: The grant recipient should anticipate working closely with USIA to evaluate the program consistent with requirements of the Government Performance and Results Act.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: October 16, 1998.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–28288 Filed 10–21–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0427]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assess the health care disability compensation or rehabilitation needs of former Prisoners of War (POW).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 21, 1998.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0427'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Former POW Medical History, VA Form 10–0048.

OMB Control Number: 2900–0427.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information is obtained from former POWs to assess the medical care needs of these veterans. The information will be used to determine the present and future needs of POWs in the areas of disability compensation, health care and rehabilitation.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 750 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–28295 Filed 10–21–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0496]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to authorize payment of Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before December 21, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0496'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Claim for Veterans Mortgage Life Insurance, VA Form 29–0549.

OMB Control Number: 2900–0496.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the mortgage holder to claim the proceeds of Veterans Mortgage Life Insurance and to provide the information needed to authorize payment of the insurance. The information requested is required by law, Title 38, U.S.C., Section 2106, and is used by VA to process the mortgage holder's claim.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Dated: August 14, 1998.

By direction of the Secretary

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–28296 Filed 10–21–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 8–98

Question Presented

a. Does 38 CFR 3.317 preclude compensation for an illness manifested by symptoms that could, in some circumstances, be attributable to a known clinical diagnosis, even if no such diagnosis has been made with respect to the individual seeking compensation?

b. May the Department of Veterans Affairs (VA) pay compensation under 38 U.S.C. 1117 for disability manifested by symptoms that either elude diagnosis or are attributed to a poorly-defined disease such as chronic fatigue syndrome or fibromyalgia?

Held

a. Compensation may be paid under 38 CFR 3.317 for disability which cannot, based on the facts of the particular veteran's case, be attributed to any known clinical diagnosis. The fact that the signs or symptoms exhibited by the veteran could conceivably be attributed to a known clinical diagnosis under other circumstances not presented in the particular veteran's case does not preclude compensation under section 3.317.

b. Section 1117(a) of title 38, United States Code, authorizes service connection on a presumptive basis only for disability arising in Persian Gulf veterans due to ''undiagnosed illness'' and may not be construed to authorize presumptive service connection for any diagnosed illness, regardless of whether the diagnosis may be characterized as poorly defined.

Effective Date: August 3, 1998.

VAOPGCPREC 9–98

Question Presented

1. When a knee disorder is rated under Diagnostic Code (DC) 5257 (instability of the knee), must the claimant have compensable limitation of motion under DC 5260 or DC 5261 in order to obtain a separate rating for arthritis?

2. Must 38 CFR 4.40, 4.45, and 4.59 be considered when assigning an evaluation for degenerative or traumatic arthritis under DC 5003 or DC 5010, and if so, how?

3. When a disability is rated under a specific diagnostic code that does not appear to involve limitation of motion, must 38 CFR 4.40, 4.45, and 4.59 be considered to determine the applicability of another diagnostic code that does involve limitation of motion?

4. What determines whether a particular diagnostic code is predicated on loss of range of motion so that sections 4.40 and 4.45 apply?

5. Are DC 5259 (removal of the semilunar cartilage) and DC 5284 (foot injuries) based on loss of range of motion, requiring consideration of sections 4.40 and 4.45?

Held

1. For a knee disability rated under DC 5257 to warrant a separate rating for arthritis based on X-ray findings and limitation of motion, limitation of motion under DC 5260 or DC 5261 need not be compensable but must at least meet the criteria for a zero-percent rating. A separate rating for arthritis could also be based on X-ray findings and painful motion under 38 CFR 4.59.

2. The provisions of 38 CFR 4.40, 4.45, and 4.59 must be considered in assigning an evaluation for degenerative or traumatic arthritis under DC 5003 or DC 5010. Rating personnel must consider functional loss and clearly explain the impact of pain upon the disability.

3. If a musculoskeletal disability is rated under a specific diagnostic code that does not involve limitation of motion and another diagnostic code based on limitation of motion may be applicable, the latter diagnostic code must be considered in light of sections 4.40, 4.45, and 4.59.

4. The medical nature of the particular disability to be rated under a given diagnostic code determines whether the diagnostic code is predicated on loss of range of motion. Reference should be made to appropriate medical authorities.

5. DC 5259 requires consideration of sections 4.40 and 4.45 because removal of the semilunar cartilage may result in complications producing loss of motion. Depending on the nature of the foot injury, DC 5284 may involve limitation of motion and therefore require consideration under sections 4.40 and 4.45.

Effective Date: August 14, 1998.

VAOPGCPREC 10–98

Question Presented

a. Does the condition in 38 U.S.C. 5310(b)(1) that a deceased veteran's surviving spouse not be entitled to death benefits under 38 U.S.C. ch. 11, 13, or 15 for the month of the veteran's death require a decision on the merits of whether the surviving spouse is entitled to death benefits or may VA consider the condition satisfied based on the lack of a claim by the surviving spouse for death benefits?

b. May a veteran's surviving spouse apply for only the benefit provided by 38 U.S.C. 5310(b)? If so, may he or she use VA Form 21–534 for such a claim?

c. If a claimant uses VA Form 21–534 to claim only the benefit provided by 38 U.S.C. 5310(b), must VA also treat the claim as one for dependency and indemnity compensation, death pension, and accrued benefits? What effect does Isenhart v. Derwinski, 3 Vet. App. 177 (1992), have on using VA Form 21–534?

d. If a veteran's surviving spouse is awarded the benefit provided under 38 U.S.C. 5310(b) and later establishes entitlement to death benefits for the month of the veteran's death at a rate higher than the veteran would have received in compensation or pension for that month if he or she had not died, is the surviving spouse still entitled to the section 5310(b) benefit? What, if any, effect do 38 U.S.C. 5111(c) and 38 CFR 3.20(b) and 3.31 have?

Held

a. Subsection (b) of section 5310, title 38, United States Code, as added by section 506 of the Veterans' Benefits Improvements Act of 1996, Pub. L. 104–275, § 506, 110 Stat. 3322, 3343, provides a benefit for the month of a veteran's death if the veteran's surviving spouse is not entitled to death compensation, dependency of indemnity compensation, or death pension for the month of death. It would be reasonable to interpret the condition of nonentitlement to death benefits as being satisfied by the lack of any claim for death benefits filed by the surviving spouse or by a decision on the merits on the question of whether the surviving spouse is entitled to death benefits for the month of death. Whichever interpretation the Department of Veterans Affairs chooses to adopt, it should be adopted through properly issued regulations.

b. A surviving spouse may apply for only the benefit provided by 38 U.S.C. 5310(b) and may do so using any form VA prescribes for the purpose of applying for that benefit. The form to be used should be prescribed by issuing an appropriate regulation.

c. If, in accordance with VA's prescription, a surviving spouse uses VA Form 21–534, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation If Applicable), to apply for only the benefit provided by 38 U.S.C. 5310(b), VA need not consider the claim as one for dependency and indemnity compensation, death pension, or accrued benefits.

d. The establishment of entitlement to death benefits for the month of death by surviving spouse who has already been paid the benefit provided by 38 U.S.C. 5310(b) negates the entitlement to the section 5310(b) benefit. If the surviving spouse is entitled to death benefits for the month of death at a rate higher than the rate of compensation or pension the veteran would have received for that month but for his or her death, 38 U.S.C. 5111(c)(1) and 38 CFR 3.20(b) and 3.31 prohibit payment on the death benefits award for any period before the first day of the month following the calendar month of death.

Effective Date: September 8, 1998.

VAOPGCPREC 11–98

Question Presented

May a veteran with a catastrophic, nonservice-connected disability, whose income is above the means test threshold and who would otherwise be enrolled in priority group 7, be placed in priority group 4 in VA's patient enrollment system on the basis of his or her catastrophic disability?

Held

The rules of statutory construction and associated case law support enrolling all catastrophically disabled veterans in enrollment category four, as directed by section 1705(a)(4), regardless of whether the veterans are mandatory or discretionary veterans for purposes of section 1710(a).

Effective Date: September 17, 1998.

VAOPGCPREC 12–98

Question Presented

a. What is the effective date for an award of increased disability compensation pursuant to 38 CFR 3.400(o)(2) where a veteran files a claim for increased rating alleging an increase in disability within one year prior to receipt by the Department of Veterans Affairs (VA) of the claim and a VA examination subsequently substantiates an increase in disability?

b. Is 38 CFR 3.400(q)(1)(i) applicable to a claim for an increased rating which is based upon new and material evidence received within the appeal period or prior to an appellate decision, and if so, what is the effective date for an award of increased compensation pursuant to section 3.400(q)(1)(i)?

Held

a. Pursuant to 38 U.S.C. 5110(b)(2) and 38 CFR 3.400(o)(2), where a veteran files a claim for increased rating alleging an increase in disability within one year prior to receipt by VA of the claim and a VA examination or other medical evidence subsequently substantiates an increase in disability, the effective date of the award of increased disability compensation is the date as of which it is ascertainable based on all of the evidence of record that the increase occurred.

b.(1) Section 3.400(q)(1)(i) of title 38, Code of Federal Regulations, is

applicable to a claim for increased rating based upon new and material evidence submitted prior to expiration of the appeal period or before an appellate decision is issued.

b.(2) When new and material evidence is submitted within the appeal period or prior to an appellate decision with regard to a claim for increased rating, the effective date for any increased rating is the date on which the facts establish the increase in disability occurred or the date of the original claim for increase, whichever is later. However, if the facts establish that a veteran's disability increased within one year prior to receipt by VA of the original claim for increased rating, the effective date of the increase is the date on which the increase in disability occurred.

Effective Date: September 23, 1998.

VAOPGCPREC 13–98

Question Presented

Does a surviving spouse who regains eligibility for dependency and indemnity compensation (DIC) under 38 U.S.C. 1311(e) as added by section 8207 of the Transportation Equity Act for the 21st Century also regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits?

Held

A surviving spouse who regains eligibility for dependency and indemnity compensation under 38 U.S.C. 1311(e), as added by section 8207 of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, § 8207, 112 Stat. 107, 495 (1998), either upon the termination of remarriage by death, divorce, or annulment, or upon the cessation of living with another person and holding himself or herself out openly to the public as that person's spouse, does not regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits.

Effective Date: September 23, 1998.

VAOPGCPREC 14–98

Question Presented

a(1). Does 38 U.S.C. 1112(a) establish a presumption of aggravation for a chronic disease which existed prior to service but was first shown to a compensable degree within the presumptive period following service?

a(2). If it does, must the incremental degree of disability allegedly resulting from aggravation first shown during the presumptive period be itself compensable, or may aggravation be found by combining the degree of preservice disability with the degree of disability first presented during the presumptive period?

b. Is it lawful for an employee of the Board of Veterans' Affairs (Board) to remove, temporarily or permanently, an opinion of a Board medical advisor from a veteran's claims folder? As an alternative, could the Board cover such an opinion in the claims folder with opaque paper?

c. Is the Board required to provide directly to a represented veteran a copy of an opinion from an independent medical expert?

Held

a. Section 1112(a) of title 38, United States Code, does not establish a presumption of aggravation for a chronic disease which existed prior to service but was first shown to a compensable degree within the presumptive period following service.

b. Where the Board of Veterans' Appeals (Board) determines that it would be potentially prejudicial to a claimant for an independent medical expert to consider a Board medical advisor opinion which is in the claims file, the Board may temporarily remove that document from the claims file or temporarily cover the document with opaque paper prior to forwarding the file to the independent medical expert. Such action would not, in our view, violate 38 U.S.C. 7104(a) (requiring Board decisions to be based on the entire record) or 18 U.S.C. 2071 (prohibiting removal or concealment of Government records). If it is determined that the Board is precluded from relying upon a Board medical advisor opinion due to the potential for prejudice to the claimant, the Board may permanently remove the opinion from the claims folder without violating 38 U.S.C. 7104(a). Such removal would not, in our view, be unlawful under 18 U.S.C. 2071 as violative of title 38 requirements. If a claimant requests that a Board medical advisor opinion be permanently removed from his or her claims file, the Board may permanently remove the opinion pursuant to 5 U.S.C. 552a(d)(2) (permitting amendment of agency records that are not accurate, relevant, timely, or complete), and such action would not, in our view, violate 18 U.S.C. 2071.

c. The Board of Veterans' Appeals is not required to transmit a copy of an independent medical expert opinion directly to a represented claimant. Providing the opinion to the claimant's representative, in accordance with 38 CFR 20.903, satisfies the requirement in 38 USC 7109(c) that the Board furnish the claimant with a copy of the opinion.

Effective Date: October 2, 1998.

By Direction of the Secretary.

John H. Thompson,

Acting General Counsel.

[FR Doc. 98–28294 Filed 10–21–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on November 16th through 18th, 1998, at the Department of Veterans Affairs, Ralph H. Johnson VA Medical Center, 109 Bee Street, Charleston, South Carolina, 29401. On November 16th, the meeting will be held in Room A139 (Auditorium), and on both November 17th and 18th in Room A527. Each day the meeting will convene at 8:30 a.m. and end at 4:30 p.m. The meeting is open to the public.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The agenda for November 16th will include an introduction of committee members and dignitaries, general discussions, and a period for POW veterans and/or the public to address the committee. The agenda on November 17th will include general business, discussion of successes of medical providers seminars and presentation of proposal for continuation of such seminars by a representative from the VA Employee Education Center, Birmingham, Alabama. The Committee will discuss and review the Veterans Services Officer training/certification project, ''Decision Review Officers'' pilot project, Dependency and Indemnity Compensation Project, status of Committee's recommendations made to the Secretary on ways to help VA improve services to our POW community, and establishment of POW Advisory Groups at local VA medical centers. The Committee has invited medical professionals from VA field activities (those who work with Ex-POW veterans) and medical professionals

from the National Institute of Health and from the Naval Aero Medical Institute, Pensacola, Florida, for their input to the Committee. On November 18th, there will be a discussion by a panel of experts on stroke research concerning the POW veteran. Committee members will review and analyze the comments that had been discussed throughout the meeting for the purpose of assisting and compiling a final report to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee, at least 5 business days prior to the meeting, in writing only, to Mr. Robert J. Epley, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420. A report of the meeting and roster of Committee members may be obtained from Mr. Epley.

By Direction of the Secretary.

Dated: October 13, 1998.

Heyward Bannister,

Committee Management.

[FR Doc. 98–28297 Filed 10–21–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 204

Thursday, October 22, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6175–8]

RIN 2060–AF29

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutants Emissions From Ferroalloys Production

Correction

In proposed rule document 98–27406 appearing on page 54646 in the issue of Tuesday, October 13, 1998, make the following correction:

On page 54646, in the first column, in the **DATES** section, ''October 4, 1998'' should read ''November 4, 1998''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40034; File No. SR–NSCC–98–3]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change That Establishes Additional Procedures for Class A Surveillance of Certain Settling Members and Permits the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

Correction

In notice document 98–14675 beginning on page 30277 in the issue of Wednesday, June 3, 1998, make the following correction:

On page 30277, in the third column, in the last line from the bottom, preceding footnotes, ''1998'' should read ''1999''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–43]

Modification of Class E Airspace; Two Harbors, MN

Correction

In rule document 98–27722, beginning on page 55331, in the issue of Thursday, October 15, 1998, make the following correction:

§ 71.1 [Corrected]

On page 55332, in the second column, in the seventh line from the bottom, ''7.2 miles'' should read ''7.4 miles''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[ND–001–0002a & ND–001–0004a; FRL–6150–6]

Clean Air Act Approval and Promulgation of State Implementation Plan for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

Correction

In the issue of Tuesday, September 15, 1998, on page 49382, in the correction of rule document 98–22899, in § 60.4(c), the table should read as follows:

§ 60.4 [Corrected]

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	CO	MT[1]	ND	SD[1]	UT[1]	WY
* * *	*	*	*	*		*
WWW ..... Municipal Solid Waste Landfills			*		*	
* * *	*	*	*	*		*

(*) Indicates approval of State regulation.
(1) Indicates approval of New Source Performance as part of the State Implementation Plan (SIP).

BILLING CODE 1505–01–D

federal register

Thursday
October 22, 1998

Part II

Environmental Protection Agency

40 CFR Parts 264, 265, 270, and 271

Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL–6178–7]

RIN 2050–AD55

Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the regulations under the Resource Conservation and Recovery Act (RCRA) in two areas. First, the Agency is modifying the requirement for a post-closure permit, to allow EPA and the authorized States to use a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. As a result of this rule, regulators have the flexibility to use alternate mechanisms under a variety of authorities to address these requirements, based on the particular needs at the facility.

Second, for all facilities, the Agency is amending the regulations governing closure of land-based units that have released hazardous constituents, to allow certain units to be addressed through the corrective action program. As a result of this rule, EPA and the authorized States will have discretion to use corrective action requirements, rather than closure requirements, to address the regulated units. This flexibility will reduce the potential for confusion and inefficiency created by the application of two different regulatory requirements.

Finally, the Agency is specifying the Part B information submission requirements for facilities that receive post-closure permits.

DATES: This rule is effective October 22, 1998.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–PCPF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Barbara Foster, Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 401 M St. SW, Washington DC 20460, (703–308–7057), foster.barbara@epamail.epa.gov

SUPPLEMENTARY INFORMATION: The index and the following supporting materials are available on the Internet: Economic Assessment. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/osw/hazwaste.htm#closure
FTP: ftp.epa.gov
Login: anonymous
Password: *foster.barbara@epamail.epa.gov*
Files are located in /pub/epaoswer

Preamble Outline

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I. Authority

These regulations are promulgated under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Background Information

A. Overview of RCRA Permit Authorities

Section 3004 of the Resource Conservation Recovery Act (RCRA) requires the Administrator of EPA to

develop regulations applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities, as necessary to protect human health and the environment. Section 3005 requires the EPA Administrator to promulgate regulations requiring each person owning or operating a treatment, storage, or disposal facility to have a permit, and to establish requirements for permit applications. Recognizing that the Agency would require a period of time to issue permits to all facilities, Congress provided, under section 3005(e) of RCRA, that qualifying owners and operators could obtain ''interim status'' and be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of continuing hazardous waste management operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued numerous regulations to implement RCRA requirements for hazardous waste management facilities. These include the standards of 40 CFR Part 264 (which apply to hazardous waste management units at facilities that have been issued RCRA permits), Part 265 (which apply to hazardous waste management units at interim status facilities), and Part 270 (which provide standards for permit issuance).

1. Closure and Post-Closure Care

The closure regulations at 40 CFR Parts 264 and 265 Subpart G require owners and operators of hazardous waste management units to close these units in a manner that is protective of human health and the environment and that minimizes the post-closure releases to the environment. These regulations also establish procedures for closure: they require owners and operators to submit closure plans to the Agency for their hazardous waste management units, and they require Agency approval of those closure plans.

In addition, Parts 264 and 265 establish specific requirements for closure of different types of units. Under Parts 264 and 265 Subpart N, owners and operators of landfills are required to cover the unit with an impermeable cap designed to minimize infiltration of liquid into the unit; then owners or operators must conduct post-closure care (including maintenance of the cap and groundwater monitoring). Under Subparts K and L of Parts 264 and 265, owners and operators of surface impoundments and waste piles must either remove or decontaminate all hazardous waste and constituents from the unit, or leave waste in place, install a final cover over the unit, and conduct post-closure care. Closure of land treatment facilities must be conducted in accordance with closure and post-closure care procedures of §§ 264.280 and 265.280. As part of the closure plan approval process, the Agency has the authority to require owners and operators to remove some or all of the waste from any type of unit at the time of closure, if doing so is necessary for the closure to meet the performance standard of § 264.111 or § 265.111.

Under Subparts I and J of Parts 264 and 265, owners and operators of non-land based units (e.g., tanks and containers) are required to remove or decontaminate all soils, structures, and equipment at closure. Owners and operators of tanks who are unable to do so must close the unit as a landfill and conduct post-closure care (see, for example, § 265.197(b)).

Where post-closure care is required, owners and operators must comply with the requirements of §§ 264.117–120 or §§ 265.117–120. These provisions establish a post-closure plan approval process, similar to the closure plan approval process, and requirements for maintenance of the RCRA cap during the post-closure care period. Facilities also must comply with the groundwater requirements of Part 264 or Part 265 Subpart F during the same period.

2. Subpart F

The requirements of Parts 264 and 265, Subpart F apply to ''regulated units,'' defined in § 264.90(a)(2) as any landfill, surface impoundment, waste pile, or land treatment unit that received hazardous waste after July 26, 1982 or that certified closure after July 26, 1983. While the standards of Parts 264 and 265, Subparts G (closure and post-closure care) and H (financial assurance) are equivalent for permitted and interim status facilities, Part 265 groundwater monitoring requirements for interim status land disposal units are less comprehensive than those established under the Part 264, Subpart F standards for permitted facilities. Whereas Part 265 sets minimum standards for the installation of detection monitoring wells (e.g., one upgradient and three downgradient wells), Part 264 establishes broader standards for establishing a more comprehensive monitoring system to ensure early detection of any releases of hazardous constituents. The specific details of the system are worked out through the permitting process. Consequently, compliance with Part 264 standards usually results in a more extensive network of monitoring wells. Similarly, Part 265 specifies a limited set of indicator parameters that must be monitored, while Part 264 establishes a more comprehensive approach under which the owner or operator is required to design a monitoring program around site-specific indicator parameters. As a result, monitoring systems designed in accordance with Part 264 standards are specifically tailored to the constituents of concern at each individual site. Additionally, Part 264 compliance monitoring standards are more comprehensive than Part 265 standards both in terms of monitoring frequency and the range of constituents that must be monitored. Finally, the Part 264, Subpart F regulations provide for corrective action for releases to groundwater whereas the Part 265, Subpart F regulations do not.

B. Overview of HSWA Corrective Action Authorities

In the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA, Congress expanded EPA's authority to address releases from all solid waste management units (SWMUs) at hazardous waste management facilities. Section 3004(u) of HSWA required that any permit issued under section 3005(c) of RCRA to a treatment, storage, or disposal facility after November 8, 1984, address corrective action for releases of hazardous wastes or hazardous constituents from any SWMU at the facility. Section 3004(v) authorized EPA to require corrective action beyond the facility boundary where appropriate. Section 3008(h) provided EPA with authority to issue administrative orders or bring court action to require corrective action or other measures, as appropriate, when there is or has been a release of hazardous waste or, (under EPA's interpretation) of hazardous constituents from a facility authorized to operate under section 3005(e).

In a December 16, 1985 memorandum entitled *Interpretation of Section 3008(h) of the Solid Waste Disposal Act,* EPA interpreted section 3008(h) to apply not only to facilities that met the requirement for obtaining interim status, but also to facilities that were subject to but did not fully comply with the requirements for interim status, as well as to facilities that lost interim status pursuant to 40 CFR Part 124 or sections 3005(c) or 3005(e)(2) of RCRA. Later, in an August 10, 1989 memorandum entitled *Coordination of Corrective Action Through Permits and Orders* (OSWER Directive 9502.1989(04)), EPA clarified that interpretation by stating that a section 3008(h) order cannot be issued to a facility after final disposition of the permit application.

In practice, the corrective action process is highly site-specific, and involves direct oversight by the reviewing Agency. Unlike the closure process, which provides two options (closure with waste in place and closure by complete removal and decontamination), the corrective action process provides considerable flexibility to the Agency to decide on remedies that reflect the conditions and the complexities of each facility. For example, depending on the site-specific circumstances, remedies may attain media cleanup standards through various combinations of removal, treatment, engineering, and institutional controls.

EPA has codified corrective action requirements at §§ 264.101, 264.552, and 264.553, and currently implements these requirements through the permitting process. EPA also implements corrective action by issuing corrective action orders under section 3008(h) of RCRA. In addition, to facilitate the corrective action process, EPA proposed more extensive corrective action regulations on July 27, 1990, under a new Part 264 Subpart S (*see* 55 FR 30798). The July 27, 1990 Subpart S proposal set forth EPA's interpretation of the statutory requirements at that time. Later, EPA promulgated several sections of that proposal related to temporary units, corrective action management units, and the definition of ''facility'' (*see* 58 FR 8658, February 16, 1993).

On May 1, 1996, the Agency issued a **Federal Register** notice (61 FR 19432) defining the goals of the corrective action program, and providing guidance on its implementation. The notice also announced the Agency's Corrective Action Initiative and soliciting comment on issues related to the corrective action program. This initiative is a reevaluation effort to identify and implement improvements to the corrective action program, and to focus that program more clearly on environmental results. The notice specified five goals of the Corrective Action Initiative: (1) to create a consistent, holistic approach to cleanup at RCRA facilities; (2) to establish protective, practical cleanup expectations; (3) to shift more of the responsibilities for achieving cleanup goals to the regulated community; (4) to focus on opportunities to streamline and reduce costs; and (5) to enhance opportunities for timely, meaningful public participation.

C. Overview of Proposed Rule

1. Elements of the Proposal That Are Promulgated in This Final Rule

a. Post-closure care under alternatives to permits. The regulations promulgated in this rule were proposed by the Agency on November 8, 1994 (see Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Authority (59 FR 55778)). That proposal was designed to give EPA and the authorized States greater flexibility in remediating RCRA facilities by modifying the regulations in several areas.

First, EPA proposed to allow EPA and authorized States to use a variety of legal authorities when addressing facilities that require post-closure care. Under the proposal, the Agency would continue to impose the same substantive groundwater, post-closure care, and corrective action requirements as it would under a permit, and would provide for adequate public participation.

The Agency proposed this change to provide regulators the necessary flexibility to use the best regulatory approach in addressing these sites. Prior to today's rule, section 270.1 required owners and operators of landfills, waste piles, surface impoundments, or land treatment units that received waste after July 26, 1982, or that ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983, to obtain post-closure permits (unless they demonstrated that they met the § 270.1 requirements for closure by removal).

In the case of operating land disposal facilities, the RCRA permit, when first issued, incorporates the closure plan and applicable post-closure provisions. These post-closure conditions become effective after the facility ceases to manage hazardous waste and the closure plan has been implemented. The permit, when issued, also requires compliance with Part 264 Subpart F groundwater monitoring standards. Permits issued after November, 1984 also would impose the facility-wide corrective action requirements of RCRA section 3004(u), if necessary.

For interim status facilities that close without obtaining an operating permit, the requirement for a post-closure permit (typically issued after completion of closure) performed an important regulatory function. First, to secure a permit, the facility had to meet the permit application requirements of Part 270, which require extensive information on the hydrogeologic characteristics of the site and extent of any groundwater contamination. Second, once the post-closure permit was issued, the facility became subject to the standards of Part 264 rather than Part 265, most significantly to the site-specific groundwater monitoring requirements of Part 264 Subpart F. Third, the post-closure permit imposed facility-wide corrective action to satisfy the requirements of section 3004(u). Finally, the public involvement procedures of the permitting process assure that the public is informed of and has an opportunity to comment on permit conditions.

The requirement for post-closure permits was promulgated in 1982. At the time, the Agency believed that permits would be the most effective means to develop site-specific groundwater monitoring programs tailored to individual waste management facilities (see 47 FR 32366, July 26, 1982). Since that time, the Agency and the authorized States have issued hundreds of permits to closed and closing interim status facilities. In the course of issuing these permits, EPA and the States have encountered many facilities where post-closure permit issuance proved difficult or, in some cases, impossible. Generally, the Regions and States have encountered two major difficulties when issuing post-closure permits. First, some facilities chose to close, or are forced to close, because they cannot comply with Part 265 standards—particularly, groundwater monitoring and financial assurance. If a facility cannot meet these requirements, EPA cannot issue a permit to it because section 3005(c) of RCRA requires facilities to be in compliance with applicable requirements at the time of permit issuance. Second, owners or operators often have little incentive to seek a post-closure permit. Without a strong incentive on the part of the facility owner or operator to provide a complete application, the permitting process can be significantly protracted.

To address environmental risk at facilities such as those described above, Regions and States have frequently utilized legal authorities other than permits. Use of enforcement actions enables the Agency to place these facilities on a schedule of compliance for meeting financial assurance and/or groundwater monitoring requirements over a period of time. And, even where enforcement actions cannot bring about full regulatory compliance (e.g., where the owner or operator cannot secure financial assurance), they enable the

Agency to prescribe actions to address the most significant environmental risks at the facility. For example, EPA has often issued corrective action orders under the authority of section 3008(h) to address releases from regulated units and/or other SWMUs at these facilities. In other cases, Federal or State Superfund authorities have been used to address cleanup at sites. However, prior to this rule, EPA or the State was still required to issue a post-closure permit even where the environmental risks associated with the facility were addressed through other authorities.

EPA is promulgating, with minor revisions, those provisions of the November 8, 1994 proposal that remove the requirement to issue post-closure permits at each facility, and allow post-closure care requirements to be imposed using either permits or approved alternate authorities. Those provisions are promulgated in this rule in §§ 265.121, 270.1(c), and 271.16, and are discussed in sections III.A. and III.B. below.

b. Remediation requirements for land-based units with releases to the environment. The November 8, 1994 proposal also solicited comment on several issues related to the regulatory distinction between regulated units and SWMUs.

In 1982, when the regulatory structure for closure was established, the Agency had little experience with closure of RCRA regulated units. Since 1982, the Agency and authorized States have approved hundreds of closure plans, and overseen the closure activities taking place under those plans. It has become evident that closure of these units is frequently more complex than EPA envisioned in 1982. In many cases, particularly with unlined land-based units, the unit has released hazardous waste and constituents into the surrounding soils and groundwater. In some cases, the unit may be located near SWMUs or areas of concern that also have released hazardous constituents to the environment. As a result, the cleanup of similar releases may be subject to two different sets of standards and two different sets of procedures. EPA is concerned that this dual regulatory structure may unnecessarily impede cleanups.

In the November 8, 1994 proposal, the Agency addressed this issue by requesting comment on giving discretion to the Agency or the authorized State to impose requirements developed for corrective action in lieu of the requirements of Subparts F (groundwater), G (closure and post-closure), and H (financial assurance) at certain regulated units. After reviewing the comments, which largely supported the concept, EPA has decided to promulgate provisions providing that discretion for certain regulated units, both permitted and interim status, that appear to have released to the environment, if SWMUs also appear to have contributed to the same release. Those provisions are promulgated in this rule in §§ 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d), and 265.140(d), and are discussed in sections III.A. and III.C. below.

c. Post-closure permit information submission requirements. In the November 8, 1994 rule, EPA proposed to add a new § 270.27 to identify that subset of the Part B application information that must be submitted for post-closure permits. Under that provision, an owner or operator seeking a post-closure permit would have to submit only that information specifically required for post-closure permits under that section, unless otherwise directed by the Regional Administrator. Under the proposal, the information required under § 270.27 would be submitted upon request by the Regional Administrator.

Proposed § 270.27 is promulgated in § 270.28 of this final rule.

2. Elements of the Proposal That Are not Promulgated in This Final Rule

a. State equivalent—corrective action enforcement authority for interim status facilities. The November 8, 1994 proposal also would have required States to adopt enforcement authority equivalent to section 3008(h) corrective action authority as part of their authorized program. Though many commenters supported this portion of the proposal, many State commenters strongly objected to it for several reasons.

Although EPA has the authority to require authorized States to have adequate enforcement programs, the Agency, after considering public comment, has decided not to proceed at this time with the requirement that States adopt section 3008(h)-equivalent authority as part of their authorized enforcement program. EPA believes the States raised significant issues that would need to be resolved prior to promulgation. This is not a final decision on this issue—the Agency may determine at a future date to adopt such a requirement.

EPA notes that States seeking authorization to issue enforceable documents in lieu of post-closure permits will need to submit their alternative legal authorities to EPA for review. As part of that review, EPA will determine whether the State authorities are broad enough to impose facility-wide corrective action at interim status facilities. Submission of these alternative authorities will be required only for States seeking authorization for this rule. It will not be required of all States.

b. Timeframes for closure. The November 8, 1994 proposal requested comment on whether the Agency should make modifications to the closure process, in particular, to the timeframes for closure. The Agency recognized that the current timeframes may, in some cases, not be adequate where the closure is really a cleanup activity, rather than the more straightforward capping or waste removal activities contemplated in 1982.

Though public comment generally agreed that the closure timeframes are not adequate, the Agency is not promulgating this provision of the November 8, 1994 proposal at this time. EPA, however, is promulgating a rule that will allow overseeing agencies to replace closure requirements—including closure timeframes—with requirements developed under corrective action, at some facilities. EPA expects that these revisions will allow site-specific flexibility for timeframes for some of the complex closures, thereby providing, in part, the relief intended by the proposal.

III. Section-by-Section Analysis and Response to Comment

A. Overview of Final Rule

1. Post-Closure Care Under Alternatives to Permits

This final rule creates an optional, new procedural mechanism for imposing requirements on units or facilities that closed without obtaining a permit. It ensures that these units have to meet the same substantive requirements that apply to units receiving post-closure permits.

The post-closure requirements for permitted facilities in Part 264 are more extensive than the analogous Part 265 interim status requirements in three areas: (1) the requirements for submission of information under Part 270; (2) Part 264 Subpart F requirements for groundwater management and corrective action for releases to groundwater; and (3) facility-wide corrective action requirements for releases from SWMUs under § 264.101. To impose equivalent requirements at interim status facilities, EPA or an authorized State must issue an enforceable document that performs many of the functions of a permit. Thus, the enforceable document must impose: (1) the requirements of new

§ 265.121(a)(1), which imposes information requirements that are relevant to closed facilities needing permits only for post-closure care; (2) the requirements of new § 265.121(a)(3), which applies Part 264 groundwater standards to the regulated unit; and (3) the requirements of new § 265.121(a)(2), which imposes facility-wide corrective action consistent with § 264.101.

The remaining requirements that apply during the post-closure care period relate to the maintenance of the closed unit and financial responsibility. The permitting and interim status standards for these requirements are virtually identical. Consequently, these requirements need not be addressed in the enforceable alternative to the permit—rather, the relevant portions of Part 265 Subparts G and H will continue to apply. Post-closure care requirements will normally continue to be set out in the facility's approved closure plan. Financial responsibility requirements are self-implementing. (Of course, EPA or an authorized State may chose to incorporate the Part 265 requirements for post-closure care and financial responsibility into an enforceable document, if they wish.)

The new, non-permit mechanisms provide opportunities for public participation, which differ somewhat from those set out in the permit issuance and modification procedures of Parts 124 and 270. EPA's new requirements reflect the Agency's efforts to provide as much public participation as possible, but also reflect the Agency's awareness that most of the alternate mechanisms used to address corrective action will be enforcement orders.

The current procedures for issuing post-closure permits first provide an opportunity for public comment at the time the permit is issued. This typically means that the public is able to comment on the plan for investigating suspected releases at the facility. Permit modification procedures then provide opportunities to comment at the time the permit authority selects a remedy for the facility. They also provide an opportunity to comment when the permit authority concludes that corrective action is complete. Under the Federal rules used by EPA, opportunities to file administrative appeals are available after each of these steps. (EPA, however, does not require States to provide for administrative appeals of permits).

The new public participation requirements for enforceable documents are codified at § 265.121(b). They require the overseeing agency to provide public notice and an opportunity to comment: (1) when the Agency becomes involved in a remediation at the facility as a regulatory or enforcement matter; (2) on the proposed remedy and the assumptions upon which the remedy is based; and (3) prior to making the final decision that remedial action is complete at the facility. They do not require either EPA or the States to provide opportunities for administrative appeals. EPA recognizes that, at least at the Federal level, this changes the opportunities for public involvement in the requirements that will govern closed hazardous waste facilities. EPA believes these requirements equal, and in some respect exceed, the current permitting requirements for public participation. On the other hand, the new requirements do not require an opportunity for administrative appeal. While this approach to a certain extent lessens the public's opportunity to challenge a decision, EPA believes that rights to administrative appeals (which can be exercised by a regulated facility as well as the public) are inappropriate in an enforcement context.

The final rule defines ''enforceable document'' at § 270.1(c)(7). Generally, Federal orders under section 3008(h) of RCRA and section 106 of CERCLA will fall within this definition and be eligible, as well as State orders issued under authorities reviewed and approved by EPA. Fund-financed actions under section 104 of CERCLA also will be eligible. Closure and post-closure plans, and State enforcement authorities analogous to RCRA section 3008(a) enforcement authority also will be appropriate mechanisms.

Table 1 summarizes these requirements.

TABLE 1.—ENFORCEABLE DOCUMENTS IN LIEU OF POST-CLOSURE PERMITS

Subject	Regulations for permits	Regulations for enforceable documents
Facility Information	§ 270.28	§ 270.28 (*see* § 265.121)
Groundwater Protection	Part 264, Subpart F*	Part 264, Subpart F (*see* § 265.121)*
Corrective Action	§ 264.101	§ 264.101 (*see* § 265.121)
Public Participation	Parts 124 and 270	§ 265.121
Financial Responsibility	Part 264, Subpart H*	Part 265, Subpart H*
Post-Closure Care of Regulated Unit	Part 264, Subpart G*	Part 265, Subpart G*

*For certain land-based units suspected of contributing to releases to the environment, these requirements may be replaced by site-specific requirements developed under corrective action. *See* new §§ 264.90(f), 264,110(c), 264.140(d), 265.90(f), 265.110(d), and 265.140(d) of this final rule.

2. Remediation Requirements for Land-Based Units With Releases to the Environment

The second portion of this final rule provides flexibility to regulators in another area of the RCRA regulations. As described above, two different sets of RCRA requirements arguably apply to a single release if both regulated units and SWMUs have contributed to the release. This rule provides flexibility to harmonize the two sets of requirements by substituting corrective action requirements for requirements for regulated units set out in Part 264 (for permitted facilities) or Part 265 (for interim status facilities). These optional, new provisions are available to regulators at a broad range of RCRA facilities, including, but not limited to, those covered by the change to post-closure permitting described above.

This portion of the rule provides EPA and authorized States with discretion to prescribe alternative groundwater monitoring, closure and post-closure, and financial responsibility standards at both operating and closed facilities, where EPA (or a State) finds that a release of hazardous waste or hazardous constituents has occurred, and both a regulated unit and one or more SWMUs

(or areas of concern [1]) are likely to have contributed to the release.

For permitted facilities, the alternative standards will be issued in the permit (or issued in an enforceable document (as defined in § 270.1(c)(7))), which is referenced in the permit). EPA and authorized States may develop the cleanup requirements for the regulated unit and SWMUs under non-permit authorities, such as CERCLA or a State superfund statute, but they must incorporate them into the permit, or incorporate them into an enforceable document, which is referenced in the permit.

For interim status facilities, EPA or States authorized to implement this portion of this final rule must impose alternative closure, groundwater monitoring, and/or financial responsibility standards for interim status facilities in an enforceable document. ''Enforceable documents'' for this rule include RCRA section 3008(h) orders, actions under sections 104 or 106 of CERCLA, or State actions under authorities reviewed and approved by EPA as described below. If EPA or an authorized State issues alternative closure standards, the facility's closure plan and/or post-closure plan must be amended to set forth the alternative provisions, or to reference the enforceable document that sets forth those provision.

3. Post-Closure Part B Permit Information Submission Requirements

To ensure substantive equivalency of authorities used in lieu of post-closure permits, this final rule requires owners and operators to submit the same information specifically required for post-closure permits, upon request by the Agency, when an alternative authority is used in lieu of a post-closure permit. Section 265.121(a)(1) requires owners and operators obtaining enforceable documents in lieu of post-closure permits to submit the information required in § 270.28.

Section 270.28,[2] which is promulgated in this final rule, establishes information submission requirements for post-closure permits. As is discussed in detail in section III.D. of this preamble, § 270.28 specifies information that the Regional Administrator will request to issue a post-closure permit, and requires owners and operators to submit that information. It includes information the Agency believes will be important for all post-closure permits, that is, groundwater characterization and monitoring data, information related to long-term care of the regulated unit and monitoring systems, and information on SWMUs and possible releases. In addition, recognizing that additional information may be needed on a site-specific basis, § 270.28 also allows the Regional Administrator to require any of the Part B information specified in §§ 270.17, 270.18, 270.20, and 270.21. Section 265.121(a)(1) adopts this approach for alternative mechanisms as well.

B. Post-Closure Care Under Alternatives to Permits

1. Use of Alternative Mechanisms To Address Post-Closure Care (§ 270.1(c))

a. Detailed discussion of final rule. Section 270.1(c), amended by this rule, requires owners and operators closing unpermitted regulated units with waste in place either to: (1) obtain a post-closure permit, or (2) comply with the alternative post-closure requirements of § 270.1(c)(7). Prior to this rule, owners and operators of regulated units requiring post-closure care had to obtain permits for the post-closure period. This rule, by allowing another alternative to post-closure permitting, provides regulators with flexibility to address the post-closure period at RCRA facilities using a variety of legal authorities, including enforcement mechanisms.

Facilities that close with waste in place, without obtaining a permit, and then use non-permit mechanisms in lieu of a permit to address post-closure responsibilities, will have to meet three important requirements that apply to facilities that receive permits: (1) the more extensive groundwater monitoring required under Part 264, as they apply to regulated units; (2) certain requirements for information about the facility found in Part 270 that enable the overseeing agency to implement the Part 264 monitoring requirements; and (3) facility-wide corrective action for SWMUs as required under § 264.101. These requirements are set out in new § 265.121, which applies to interim status facilities requiring post-closure care.

EPA and States authorized for this rule must impose these requirements in enforceable documents, as defined in § 270.1(c)(7) of this rule, if they are being issued in lieu of permits. Federal enforcement orders issued under sections 3008(a) and 3008(h) qualify as enforceable documents. Post-closure plans issued by EPA under § 265.118, which are enforceable under section 3008(a), also will qualify. Orders issued under section 106 of CERCLA will also be eligible, as will decision documents describing response actions under CERCLA section 104. Although response actions under section 104 are often carried out by EPA using monies from the Superfund, rather than by responsible parties under orders, it is reasonable to rely on them because EPA is responsible for carrying out the cleanup work. EPA does not intend this rule to revise the existing policy to defer from listing on Superfund's National Priorities List (NPL) those facilities that are subject to RCRA corrective action. However, since the policy permits the listing of some RCRA facilities on the NPL (such as bankrupt or recalcitrant facilities), some of the facilities subject to this rule may also be eligible for cleanup under CERCLA section 104, and EPA (or an authorized State) may wish to rely on the CERCLA action to discharge the facility's cleanup responsibilities.

States obtaining authorization for this rule will be able to use enforceable cleanup orders similar to EPA's section 3008(h) orders, as well as State superfund authorities. EPA has not yet formally reviewed these State cleanup authorities, so it will require States that wish to use them to submit them for review as part of the State authorization process. EPA will determine whether they provide: (1) the substantive requirement of adequate authority to compel cleanup of all releases from SWMUs within a facility's boundary, as needed to protect human health and the environment (*see* new § 265.121(a)(2)), and (2) procedural requirements to ensure compliance (i.e., adequate penalty and injunctive authority to address failures to comply)(*see* new § 271.16(e)). EPA does not anticipate that plans for truly ''voluntary'' cleanups will meet the enforceability requirement, although it is willing to look at mechanisms called ''voluntary'' plans or agreements to determine whether the State has adequate authority to compel compliance. (EPA emphasizes that this rule does not preclude the use of State ''voluntary'' authorities to address cleanup at RCRA facilities and, indeed, EPA encourages their use under the appropriate circumstances. Nor does it affect the ability of EPA Regions to enter into memoranda of agreement or other mechanisms promoting the use of State voluntary programs at RCRA facilities, where appropriate. This rule only

[1] Area of concern means any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration (*see* final RCRA section 3008(h) Model Consent Order, December 15, 1993).

[2] This provision was promulgated as § 270.72.

addresses the question of whether the State uses these authorities to satisfy the post-closure permit obligation.)

EPA expects that, in some cases, the overseeing agency or agencies will choose to use more than one mechanism to ensure that the substantive post-closure requirements in new § 265.121 are imposed. For example, if EPA were addressing a facility with releases at SWMUs and a regulated unit with no release, it could issue a section 3008(h) order to address the releases from the SWMUs. EPA, however, might decide that such an order would not be the most effective means of imposing long-term groundwater monitoring requirements for the non-leaking regulated unit. The new requirements could be imposed on the regulated unit in a revised interim status post-closure plan. Alternatively, EPA could issue a section 3008(a) order to enforce the new requirements (codified in this rule at § 265.121). Sometimes, multiple agencies may be involved. For example, a State that does not have a cleanup order authority could revise an interim status post-closure plan (or issue a State enforcement order analogous to section 3008(a)) to address a regulated unit, and rely on an EPA section 3008(h) order to address any releases from SWMUs.

Facilities subject to the new § 265.121 will remain subject to all other applicable interim status requirements, including requirements for financial assurance. These remaining interim status requirements are virtually identical to permit requirements, so there is no need to address them in the new alternatives to post-closure permits. These interim status requirements will continue to be enforceable under section 3008(a) and analogous State authorities.

Facilities subject to the new § 265.121 also will remain subject to section 3008(h) authority unless or until EPA or the authorized State issues a final disposition of a permit application under § 270.73, thereby terminating interim status at the facility. It should be noted that in a **Federal Register** notice dated May 1, 1996 (61 FR 19432, at 19453–4) EPA erroneously stated that facilities at which the regulated units clean closed under interim status no longer have interim status. EPA corrects that statement in this rule and restates the Agency's longstanding position that interim status is terminated only by a final disposition of a permit application, or by the methods outlined in § 270.73, which do not include clean closure. The May 1, 1996, **Federal Register** notice correctly stated that section 3008(h) continues to apply at clean closed facilities where there has been no final disposition of a permit application. Similarly, section 3008(h) continues to apply at facilities addressed through an approved alternate authority until final disposition of a permit application under § 270.73. Issuance of an alternate mechanism does not terminate interim status authorities.

b. Response to comment. Commenters on the proposed rule largely supported the provisions that would remove the permit requirement. Many commenters agreed with the Agency that the rule allows flexibility to regulators, yet maintains protection of human health and the environment.

Some commenters objected that the Agency should have the authority to issue an order or a permit, but should not be able to issue an order, and later to issue a permit to the facility. EPA disagrees. The Agency currently has the authority to issue a permit after the facility is addressed through an alternate authority, such as an enforcement order. This rule does not modify the Agency's authority to issue permits in this situation. Rather, it takes away the permitting obligation in cases where the facility is addressed through an alternate mechanism, by making the permit one of several options to address the facility. EPA believes this approach makes sense, and allows EPA to chose the best available mechanism, while retaining authority to use whatever authority is necessary to protect human health and the environment. EPA notes, however, that it is not likely to issue a permit to impose requirements that a facility has already satisfied under an alternate, enforceable document. Rather, it would limit a permit to requirements that, for some reason, had not been fully satisfied.

Several commenters expressed concern over discussion in the preamble of the November 8, 1994 proposal related to uncooperative facilities. The preamble explained that where the owner or operator is financially incapable of meeting the threshold requirements for permit issuance, such as compliance with the financial assurance requirements, or where the owner or operator may be uncooperative and an enforcement action is necessary, the post-closure permit is likely not the best mechanism to use. The preamble further explained that a post-closure permit will generally be the preferable mechanism for cooperative facilities capable of meeting financial assurance requirements.

Several commenters interpreted this discussion to limit the use of alternate mechanisms to uncooperative facilities not in compliance with applicable financial assurance and groundwater requirements. Commenters objected that facilities should not be rewarded for non-compliance, and that the proposal was making the post-closure care process more burdensome for compliant facilities. Other commenters thought the Agency was proposing to exempt non-compliant facilities from certain requirements.

The Agency did not intend to limit the use of alternate authorities to facilities not in compliance with applicable RCRA requirements. EPA only identified these facilities as examples of where an enforcement mechanism was more appropriate than a permit. Furthermore, EPA does not consider the imposition of alternative enforcement authorities to be a ''reward,'' since such authorities might often include stipulated penalties and, in any case, would impose the same substantive standards as a permit. EPA will retain section 3008(a) authority to enforce against closed interim status facilities that have failed to meet Part 265 financial assurance requirements. As to groundwater monitoring, this rule will substitute the stricter Part 264 requirements for the original Part 265 requirements. EPA will retain authority to use section 3008(a) to enforce past violations of the Part 265 monitoring requirements and to assure that the facility complies with Part 264 requirements once they are put in place by a revised interim status post-closure plan (or other enforceable mechanism). The rule will also require facility-wide corrective action as required under permits. More important, EPA notes that the new authority to use alternatives to post-closure permits is not limited to facilities that are out of compliance with Part 265 requirements. All facilities that have closed (or that, in the future, will close) with waste in place without obtaining a permit are eligible.

Many commenters objected that this preamble discussion appeared to remove the interim status groundwater and financial assurance requirements at facilities not in compliance with the regulations. However, the Agency did not eliminate interim status financial assurance requirements. Facilities addressed through alternate mechanisms remain subject to the financial assurance requirements of Part 265 Subpart H. They become subject to the more prescriptive groundwater requirements of Part 264 Subpart F. Rather than waive requirements at non-compliant facilities, as commenters believe, this rule continues to require compliance with upgraded requirements.

Some commenters believed that the choice of mechanism should be left to the facility, or that the options should

be discussed at length to achieve consensus. These commenters believed that an otherwise reluctant owner or operator is more likely to commit resources to meet agency goals if regulatory alternatives and consequences are clearly discussed and understood up-front.

Other commenters believed that the regulations should specify when an alternative authority would be used in lieu of a permit, and remove some of the Agency's discretion.

EPA did not take either approach suggested by these commenters. EPA agrees with commenters that the owner or operator generally should be involved in discussions related to the selection of mechanisms. This is particularly true of cooperative facilities in compliance with applicable requirements and eligible for post-closure permits. EPA intends to take into consideration the preference of facility owners and operators in deciding how to address these facilities, and it encourages authorized States to do so as well. However, EPA believes that it is important to provide the Agency and authorized States flexibility to consider all factors when deciding what authority to use to address a site. These factors will include conditions at the site, the availability of alternate State authorities, availability of resources, preference of the owner or operator and the local public, and the compliance status of the owner or operator. The Agency believes that by attempting to establish criteria in this rule, it would unnecessarily limit the flexibility to make the decision that best ensures protection of human health and the environment at each site.

Some commenters believed the owner or operator should have opportunity to challenge the Agency's or authorized State's choice of mechanism. EPA disagrees, and believes that the choice of mechanism to use to address a facility is an inherently governmental decision that should not be subject to challenge. EPA believes this approach is consistent with longstanding policy on enforcement discretion, and is vital to an effective enforcement program.

This rule limits the use of alternate mechanisms to facilities that have not received permits. Some commenters believed that the Agency should modify the rule to allow permits to be converted to orders and allow owners or operators of permitted facilities to address the post-closure period through another mechanism.

EPA has not adopted the commenter's suggestion, as this rulemaking deals only with alternative mechanisms for closed facilities that have not yet received post-closure permits. It should be noted that existing §§ 264.117(a)(2)(i) and 265.117(a)(2)(i) address commenters' concern to some extent by allowing the Agency to shorten the post-closure period upon a determination that the shortened period is protective of human health and the environment.

Another commenter suggested that EPA should be allowed to use alternative authorities at closed facilities, needing post-closure permits, that have submitted a Part B permit application. The Agency agrees that it should not be precluded from using alternative mechanisms at these facilities so long as it has not issued a Part B permit.

Some commenters objected to the provisions of the rule that would remove the requirement that EPA use the post-closure permit as the vehicle to impose Part 264 requirements for post-closure care. One commenter believed that the Agency should use enforcement orders to overcome the obstacles to permitting it described (such as non-compliance with financial assurance requirements). This commenter believed that post-closure permitting is protracted because EPA has not used its enforcement authority to move facilities through the permitting process, and has not made issuing post-closure permits a priority.

EPA disagrees with this commenter. There are many facilities in the RCRA universe that are not able to meet the financial assurance requirements of Subpart H. While EPA can take enforcement actions against these facilities to bring them into compliance to the extent possible, there are some facilities that never will be able to meet those requirements, despite an enforcement order. As was explained above, EPA will not be able to issue permits to such facilities. Further, the Agency believes that the flexibility provided by this rule is important, not only to address non-compliant facilities, but to allow regulators to use the most appropriate authority available to them at all facilities. This choice may be based on many factors, including the specific conditions at the facility, availability of approved alternate State cleanup authorities, and recalcitrance of the facility. Thus, while the Agency agrees with the commenter that it is important to take enforcement actions against facilities to bring them into compliance whenever possible, and that enforcement authorities should be used to expedite the permitting process, it does not agree that post-closure permits should or can be issued to all facilities. Further, EPA is more interested in obtaining environmental results than in the choice of mechanism used, and in eliminating redundant processes.

Other commenters believed that the Agency remains subject to the permit deadline for land disposal facilities in RCRA section 3005(c)(2)(A)(i). Those commenters believed that revisions to the rules that reduce the existence of or scope of this mandatory duty to issue post-closure permits in a timely manner violate section 3005(c) of RCRA, and that Congress enacted the permit deadlines based upon the rules then in effect.

EPA agrees that section 3005(c) of RCRA required the Administrator to issue or deny a final permit for each applicant for a land disposal permit by November, 1988. EPA also agrees that, so long as its regulations require it to issue post-closure permits to land disposal facilities, those post-closure permits are subject to the statutory deadline. EPA, however, does not agree that section 3005(c) deprives it of authority to determine whether post-closure permits are necessary or desirable means of imposing post-closure care requirements. Section 3005(c) imposes a deadline for permitting, but does not define the scope of the permitting requirement.

In 1982, when EPA promulgated the post-closure permit requirement, it had discretion under the statute to choose a procedural mechanism for imposing post-closure care requirements on facilities that closed while in interim status. It selected permits rather than interim status closure plans or other alternatives. The fact that Congress enacted a deadline for issuing permits to land disposal facilities in 1984 did not change that discretion. Nothing in the statute or the legislative history of the section 3005(c) indicates that Congress was aware of or concerned about EPA's use of permits to impose post-closure care requirements at facilities closing under interim status. The legislative history of other portions of the 1984 amendments suggests that Congress was concerned that EPA's 1984 regulations for land disposal facilities imposed more stringent requirements for ground-water monitoring and closure on permitted facilities than on interim status facilities. EPA, however, has eliminated this discrepancy, amending the rules for closure on March 19, 1987 (*see* 52 FR 8704), and the rules for groundwater monitoring today.

Essentially, this commenter argues that Congress ''ratified'' EPA's 1982 post-closure permit rule, making it part of the statute so that EPA could no longer revisit it. EPA does not agree with this interpretation of section 3005(c). Nothing in the statute or the

legislative history suggests that Congress wanted to prohibit EPA from revising this part—or, indeed, any part—of the rules defining the scope of the permit requirement. The same is true for the requirement for public participation in permitting set out in section 7004(b)(1) of RCRA. There is no evidence that Congress intended the public participation requirements to create a statutory duty to issue post-closure permits.

EPA acknowledges that it could deny post-closure permits for all of the land disposal facilities that obtain enforceable documents in lieu of post-closure permits. Permit denials would satisfy the requirement of section 3005(c) to issue or deny final permits. EPA, however, does not believe that Congress intended it to impose a deadline on the denial of permits for facilities no longer obligated to have them. The Agency believes it is simply not reasonable to interpret the statute to require EPA to spend scarce resources on actions with so little environmental significance.

Other commenters questioned whether issuance of an alternate mechanism would terminate interim status. This rule does not modify the requirements to terminate interim status, which are outlined in § 270.73. Thus, facilities that have units that closed with waste in place under interim status, and do not receive a post-closure permit as a result of this rule, will remain in interim status until there is final disposition of a permit application (in the case of these closed facilities, a permit denial) under § 270.73(a). EPA recognizes that owners and operators may want to terminate interim status when all RCRA activities are complete at a facility to bring finality to those activities, and that this is an important issue not only to facilities subject to post-closure requirements, but to all facilities that closed without obtaining a RCRA permit. EPA plans to issue guidance related to denial of permit applications for purposes of terminating interim status at closed facilities that have completed all RCRA activities, including facility-wide corrective action.

The Agency agrees that some integration of the closure and facility-wide corrective action requirements is warranted. The Agency has taken steps in this final rule to address the situation where two units are involved in the same remedy and there is potential for the two sets of requirements to conflict.

Other commenters raised concerns that the rule would affect EPA's current policy of using only one authority—CERCLA or RCRA—at a site. Another commenter conditioned support for the proposal on EPA clarifying that it does not intend to modify its current Superfund policy that defers remediation activities to RCRA corrective action authority. On June 10, 1986, EPA published a final policy that allowed the Agency to defer listing RCRA-related sites on Superfund's National Priorities List (*see* 51 FR 21054). This commenter is concerned that if the Agency adopts the rule as proposed, which would allow use of Superfund orders as an alternative mechanism for RCRA post-closure permits, then the Agency would begin to deviate from that policy. The commenter believes that the reasons for deferral to RCRA authority cited in the deferral policy are still valid.

This rule does not modify the Agency's current policies related to the applicability of CERCLA and RCRA at hazardous waste sites. For example, the rule does not affect CERCLA listing policy. The Agency expects that RCRA facilities will, generally, continue to be handled under RCRA, rather than CERCLA. Rather, the result of this rule is that once the Agency decides to address a site under CERCLA authority, EPA is no longer required to issue a post-closure permit at the site, as long as the CERCLA cleanup has the same scope as a corrective action cleanup would have.

2. Requirements for Alternative Mechanisms

Under the provisions of this rule that remove the requirement for post-closure permits, regulated units that do not obtain a post-closure permit generally will remain subject to the requirements for interim status units throughout the post-closure care period. However, because the interim status post-closure care requirements are in some respects less stringent than post-closure permit requirements, the Agency is promulgating § 265.121. This section recognizes the difference in substantive requirements applicable to permitted and interim status post-closure units, and assures that this rule will not result in less stringent requirements at units addressed through alternate mechanisms.

Specifically, § 265.121 requires owners and operators of regulated units addressed through an alternate mechanism to comply with the groundwater requirements of Part 264 Subpart F (with respect to that unit), to submit information required under Part 270, and to address facility-wide corrective action. EPA will review State order authorities to ensure that they are capable of imposing these requirements before authorizing States to use them.

a. Part B Information Submission Requirements (§ 265.121(a)(1)). i. *Overview.* To ensure substantive equivalency of authorities used in lieu of post-closure permits, this rule requires owners and operators to submit the Part 270 information specifically required for post-closure permits, upon request by the Agency, when an enforceable document is issued in lieu of a post-closure permit. The information submission requirements for post-closure permits are promulgated in this final rule in § 270.28, and are discussed in detail in section III.D. of this preamble. Section 270.28 specifies information the Agency believes will be important for all post-closure permits, and, in turn, for all enforceable documents issued in lieu of post-closure permits, that is, groundwater characterization and monitoring data, information related to long-term care of the regulated unit and monitoring systems, and information on SWMUs and possible releases.

In addition, recognizing that additional information may be needed on a site-specific basis, § 270.28 also allows the Regional Administrator to require any of the Part B information specified in §§ 270.17, 270.18, 270.20, and 270.21. Section 265.121(a)(1) adopts this approach for enforceable documents issued in lieu of post-closure permits as well.

ii. *Response to Comment.* One commenter asked EPA to state explicitly in the rule that facilities pursuing the alternative approach would not be required to submit the information required in § 265.121(a)(1) any earlier than they would otherwise be required to submit a Part B application. EPA agrees with the commenter that the information would not be required earlier in the case of an alternate authority than it would be in the case of a permit. In the case of post-closure permits, the Agency typically calls in Part B information when it is ready to begin working on the permit application. This has become the Agency's practice because the Agency recognizes that, if information is submitted earlier, it can become outdated and have to be replaced when it is time to work on the permit. The Agency is extending this practice to instances where a non-permit mechanism is used to address post-closure care. As in the case of the post-closure permit, the information required by § 265.121(a)(1) for non-permitted facilities need not be submitted to the Agency until the Agency requests it.

b. Subpart F Groundwater Monitoring and Corrective Action Program (§§ 265.121(c)(3) and 264.90—264.100). i. *Overview.* This rule requires owners and operators of facilities with regulated units addressed through a non-permit mechanism under § 270.1(c)(7) to meet the requirements of Part 264, Subpart F. Section 265.118(c)(4) requires that the post-closure plan include provisions that implement the Part 264 Subpart F requirements.[3] This approach is designed to ensure equivalent protection of human health and the environment at all facilities, regardless of which legal authority used to address post-closure care. Commenters generally supported this approach, and the Agency is promulgating this provision as proposed.

ii. *Response to Comment.* Though many commenters supported the proposed provision, others argued that it was an illegal expansion of the Agency's statutory authority. EPA disagrees. The statute does not limit EPA's ability to impose more stringent groundwater monitoring requirements on interim status facilities. EPA developed the current regulations based on the premise that facilities would remain in interim status only temporarily and ultimately would receive permits and become subject to the requirements of Part 264 for groundwater. As a result of this rule, however, some facilities that closed while still under interim status standards will not receive a permit. EPA believes it is within the Agency's statutory authority to modify the regulations and assure that those facilities ultimately comply with the more stringent requirements of Part 264, whether a permit is issued or an alternate authority is used to address post-closure care.

One commenter conditioned support for the proposal on EPA removing Part 264 groundwater requirements for regulated units, and requiring instead that they have a groundwater monitoring and response program that is necessary to protect human health and the environment.

In the second part of this rule, EPA is providing discretion to waive Part 264 groundwater monitoring only in cases where corrective action will provide opportunities for oversight by the implementing Agency. In other cases, the Agency continues to believe that it needs the detailed requirements of Part 264, with interaction with the overseeing agency, to ensure protection of human health and the environment. In proposing to modify the requirement for post-closure permits, the Agency did not intend to remove or modify the groundwater requirements applicable to regulated units under post-closure permits—only to allow regulators to use a variety of mechanisms to impose those requirements. Thus, EPA believes that commenter's request extends to issues that are outside the scope of this rulemaking.

c. *Facility-Wide Corrective Action (§ 265.121(a)(2)).* i. *Overview.* This rule requires that authorities used at post-closure facilities as alternatives to post-closure permits impose corrective action requirements consistent with the statute and § 264.101 of the regulations. The rule does not specify the authorities that EPA or a State could use to impose corrective action as an alternative to a post-closure permit—only that the authority must be consistent with RCRA corrective action requirements. Certainly, RCRA section 3008(h) orders are appropriate, but EPA has not limited alternative authorities to this section. State enforcement authorities analogous to section 3008(h) or State cleanup or superfund authorities also would be appropriate, if they were used consistently with the requirements of § 265.121 (*see* requirements for State authorization in section IV.D.1. of this preamble).

In requiring facility-wide corrective action consistent with RCRA section 3004(u) and (v) provisions, EPA does not intend to require that cleanup programs relying on alternative authorities use the procedures of EPA's Subpart S proposal (which the Agency significantly revised in its May, 1996 ANPR) or permit requirements. Rather, the authorities must be broad enough to meet the performance standards of § 264.101. For example, compliance with the National Contingency Plan (NCP) procedures for remedy selection would satisfy these proposed requirements. EPA wishes to emphasize, however, that an alternative approach to corrective action at a facility, used in lieu of a permit, must include a facility-wide assessment, must address releases of hazardous wastes or constituents to all media from all SWMUs within the facility boundary (as well as off-site releases to the extent required under section 3004(v)—as necessary to protect human health and the environment), and must be protective of human health and the environment. Anything less than that, in EPA's view, would not meet the basic requirements of RCRA sections 3004(u) and (v) or § 264.101. EPA believes that this proposed approach is appropriate because it provides reasonable flexibility for regulatory agencies using available authorities to address environmental problems at RCRA sites.

ii. *Response to Comment.* Commenters generally supported this provision, and many commenters agreed that the Agency should not require corrective action procedures identical to those in EPA's Subpart S proposal.

Some commenters objected to the principle that corrective action be consistent with the Subpart S proposal. These commenters believe that because the Subpart S requirements and procedures are not final, it is legally indefensible to base a rule on them. Another commenter believed that until Subpart S regulations are codified and adopted, corrective action clean-up standards should meet the RCRA closure performance standard.

EPA agrees that alternative authorities used to address corrective action should be consistent with promulgated standards and with the statute. EPA did not intend this rule to require compliance with portions of the Subpart S proposal that have not yet been made final. Rather, this rule requires that the authorities must be consistent with promulgated § 264.101. It should be noted that authorities consistent with § 264.101 include provisions originally proposed under Subpart S, that is, provisions allowing designation and use of corrective action management units (§ 264.552) and temporary units (§ 264.553).

3. Public Involvement (§ 265.121(b))

a. Overview. The public involvement provisions proposed in the November 8, 1994 rule are modified in this final rule. In the November 8, 1994 rule, the Agency proposed to require a minimum level of mandatory public participation for all facilities where alternate authorities were used in lieu of post-closure permits. Proposed § 262.121(b) would have established the following requirements at the point of remedy selection: (1) public notification of the proposed remedy through a local newspaper; (2) opportunity for public comment (at least 30 days); (3) availability of a transcript of the public meeting; (4) availability of a written summary of significant comments and information submitted, and the EPA or State response; and, (5) if the remedy is significantly revised during the public participation process, a written summary of significant changes or opportunity to comment on a revised remedy selection. The Agency proposed an exception to these requirements in

[3] Note that §§ 264.90(f) and 265.90(f) of this rule amend the requirements of Subpart F to allow the Regional Administrator to replace Subpart F requirements at regulated units with requirements developed through a corrective action process, in some cases (*see* section III.B. of this preamble).

§ 265.121(b)(2), whereby if a delay in the implementation of the remedy would adversely affect human health or the environment, EPA could delay the implementation of the public involvement requirements.

This final rule requires the Regional Administrator to assure that a meaningful opportunity for public involvement occurs, which includes, at a minimum, public notice and opportunity for comment, at three key stages—when EPA or the authorized State agency first becomes involved in the cleanup process as a regulatory or enforcement matter, when EPA or the authorized State Agency is ready to approve a remedy for the site (this opportunity must include a chance to comment on the assumptions on which the remedy is based), and when EPA or the authorized State is ready to decide that remedial action is complete at a facility. The rule does not limit public involvement to these stages of cleanup; rather, it encourages early, open, and continuous involvement of the public when alternate authorities are used at a facility in lieu of post-closure permits, similar to the public involvement provided by the permitting process. In addition to notifying the public at these three key stages, EPA believes meaningful public involvement includes regular updating of the community on the progress made cleaning up the facility.

Additionally, it is the Agency's expectation that owners and operators conducting cleanups prior to the Agency's or authorized State's involvement will involve the public in decisions throughout the remediation process. Owners and operators should provide notice and opportunity to comment prior to selecting a remedy if they wish to later rely on that remedy as part of an enforceable document issued in lieu of a post-closure permit. The Agency took this approach based on several considerations.

First, it is EPA's policy to encourage public involvement early and often in the permitting process, in its remediation programs, as well as in other Agency actions. EPA wanted this rule to be consistent with that policy.

Second, EPA recognized that the post-closure permit process assures opportunity for public involvement at the time of permit issuance, and through the permit modification procedures. EPA wanted this rule to provide similar opportunities when an alternate authority is used to address a facility.

Third, EPA recognized that existing State and Federal authorities provide for public involvement through widely varying processes. EPA wanted to provide sufficient procedural flexibility to minimize the likelihood that States would have to modify the public involvement provisions of their existing cleanup programs to qualify for authorization, yet EPA wanted to assure, at the same time, that those programs provided for meaningful public participation at key stages of the remediation process.

Fourth, EPA recognizes that many cleanup activities have taken place prior to promulgation of this rule and others will take place prior to the adoption of the State's program for this rule through Federal, State, and facility-initiated actions, and EPA recognizes that those cleanups may or may not have involved the public in the way specified in the final rule. In cases where the cleanup began prior to the effective date of the rule, EPA did not want to require post-closure permits to be issued simply because the early stages of public involvement procedures of this rule were not met.

Finally, EPA recognized that in some cases, where delay in a cleanup might have an impact on human health and the environment, public involvement may not be possible prior to implementation of the remedy. EPA did not want to delay cleanup in those cases, but wanted to assure that the public was involved in the process as promptly as possible after the emergency was addressed. EPA wanted this rule to allow cleanups to take place immediately in these cases, but assure that public involvement would follow at the earliest opportunity. As explained below, the final rule authorizes EPA or the authorized State to modify public involvement requirements in those circumstances.

This rule encourages early public involvement by requiring public involvement (which at a minimum includes public notice and opportunity for comment) as soon as the authorized regulatory agency becomes involved in the cleanup process as a regulatory or enforcement matter (unless this might lead to a delay in the cleanup that would adversely affect human health and the environment). In most cases, the Agency anticipates, this will be very early in the process, prior to remedy selection—certainly before any Agency-prescribed remedies occur (except in cases of emergency). For example, the affected community should be notified and given an opportunity to comment prior to the initiation of any activity to assess contamination or prior to the implementation of any interim measure. By requiring early public notice of activities at a site, the Agency intends this rule to encourage involvement of the public throughout the cleanup process.

EPA proposed to require public involvement during the remedy selection process. EPA is retaining this requirement in the final rule. EPA has, however, made the requirement more specific by requiring public notice and comment on both the proposed remedy and the assumptions upon which it is based, including site characterization and land use.

The Agency understands ''remedy selection'' as a term of art in the RCRA corrective action or in the Superfund process, where the regulatory agency either selects or approves a remedy proposed by the owner or operator. In some cases an owner or operator may implement an action that could be considered a ''remedy'' prior to the Agency or State's involvement or oversight. The owner or operator should provide notice and opportunity to comment on the prospective remedy and its underlying assumptions, otherwise, any enforceable document developed later may not be eligible to substitute for a post-closure permit. In those cases, the owner or operator may have to follow the permit process to obtain a post-closure permit or to obtain a permit denial (if no further action is necessary).

This rule also requires public involvement to assure that notice and opportunity to comment take place prior to the Agency or authorized State deciding that remedial action is complete at a facility. When additional corrective action is no longer needed, the Agency could terminate an enforcement order or terminate interim status at the facility through the permit denial process in Part 124. Either process would ensure full opportunity for public participation, including permit appeal provisions. The rule, however, would allow alternative mechanisms, as long as the Agency or the authorized State provided public notice of its actions, and opportunity to comment prior to making the final decision that remedial action is complete at the facility.

This rule also requires that all public involvement be meaningful. Meaningful public participation is achieved when all impacted and affected parties have ample time to participate in the facility cleanup decisions. In many cases meaningful public involvement will require careful planning and more than notice and opportunity for comment. In some cases, meaningful public notice may require bilingual notifications or publication of legal notices in city or community newspapers (or other media, such as radio, church organizations and

community newsletters). EPA recommends that parties responsible for involving the public provide information at all key milestones in the remediation process, and site fact sheets. Existing forums of community communication such as regular community meetings and electronic bulletin boards can be used to provide regular progress reports on the facility cleanup. Additionally, EPA recommends that parties responsible for involving the public update the community regularly on the progress made cleaning up the facility.

Often, the level of public involvement will depend on the significance of the action—for example, the Agency may simply notify the public of a decision to remove a small quantity of waste, but higher levels of involvement would be called for at remedy selection in a major remedial action, or when a decision is made that may impose significant restrictions on land use. For these reasons, EPA believes that public involvement should be tailored to the needs at the site, and has provided flexibility in this rule.

EPA has long recognized that the level of public involvement should be determined by the significance of the action taking place. For example, in a final rule dated May 24, 1993 (*see* 58 FR 29886), EPA promulgated regulations to govern modification of permits. Those regulations established different levels of public involvement depending on the significance of the permit modification. Class 1 modifications require minimal public involvement—the permittee must send a notice of the permit modification to all persons on the facility mailing list, and to the appropriate units of State and local government. Persons may request review of the permit modifications. Class 3 modifications, on the other hand, require far more extensive involvement of the public—publication in a local newspaper, a public meeting, and a public comment period. To assist owners and operators in implementing the rule, in Appendix 1 to § 270.42, EPA classified different activities as class 1, 2, or 3 modifications, based on the significance of the action.

EPA also issued guidance on public involvement which complements the approach in this rule (*see* the RCRA Public Participation Manual, September, 1996, EPA 530–R–96–007). This manual provides guidance on addressing public participation in the permit process, including permitting and enforcement remedial action activities. It emphasizes the importance of cooperation and communication, and highlights the public's role in providing valuable input. It stresses the importance of early and meaningful involvement of the public in Agency activities, and of open access to information. In addition to the manual, EPA fully endorses The Model Plan for Public Participation, developed by the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council (a Federal Advisory Council to the U.S. Environmental Protection Agency). The Model Plan encourages public participation in all aspects of environmental decisionmaking. It emphasizes that communities, including all types of stakeholders, and regulatory agencies should be seen as equal partners in any dialogue on environmental justice issues. The model also recognizes the importance of maintaining honesty and integrity in the process by clearly articulating goals, expectations and limitations. EPA encourages regulators and owners and operators implementing the provisions of this final rule to refer to these guidances.

It should be noted that the Agency proposed in § 265.121(b)(2) to allow the Regional Administrator to delay or waive the public participation requirements upon a determination that even a short delay in the implementation of the remedy would adversely affect human health or the environment. EPA believes this flexibility is important to assure protection of human health and the environment, and has promulgated that provision, with minor revisions, in this final rule.

It also should be noted that the Agency proposed a § 265.121(b)(3), which would have allowed EPA to address a facility using an approved alternate authority where cleanup activities were conducted prior to the effective date of this rule, but the public involvement procedures of this rule were not met. That provision would have required the Agency to conduct public involvement before considering the facility fully addressed under § 270.1(c)(7)(ii). The Agency has retained this provision.

b. Response to Comment. EPA received a variety of comments on the public involvement provisions of this rule. Some commenters believed the Agency had not gone far enough to assure public participation when alternate authorities are used in lieu of permits; others agreed with the Agency's approach; and others believed the public participation provisions of the proposal were too stringent. EPA considered those comments in developing the public involvement provisions of this final rule. Those comments are discussed below.

i. *The proposed rule did not preserve public involvement procedures when an alternate mechanism is used.* Many commenters believed that, despite statements in the preamble to the contrary, the Agency had not gone far enough in the proposed rule to preserve the public involvement procedures when alternate authorities are used in lieu of post-closure permits. These commenters believed that if the Agency allows alternate authorities to replace post-closure permits, it should assure that the public involvement procedures of the alternate authority are equivalent to that of a permit. These commenters believed that the proposal failed to do so in several respects.

First, these commenters noted that public participation was required by the proposal only at the time of remedy selection. Commenters pointed out that remedy selection occurs at a later stage of the remedial action process, following the development of schedules of compliance, and the preparation and evaluation of plans, reports, and remedial investigations. They pointed out that many decisions have already been made by the point of remedy selection, and that earlier public involvement allows more meaningful opportunity to affect those decisions. Commenters noted that when remedial action is implemented through a permit, these steps are subject to public participation requirements, through either permit issuance or permit modification procedures.

EPA agrees with the concerns raised by these commenters and that the public should be included in the decisionmaking process as early as possible. EPA agrees that early public participation provides the community a more meaningful role in the process.

To address these concerns, this rule requires public involvement to begin when the authorized agency first becomes involved in the cleanup process as a regulatory or enforcement matter. The Agency anticipates that, in most cases, this will be very early in the cleanup process, prior to proposed remedy selection.

Second, several commenters objected that no rights of appeal are provided or guaranteed when an alternative mechanism is used in lieu of a permit, even though such rights are provided in the permitting process. These commenters believed that these appeal rights must be preserved as part of the final rule for alternative mechanisms to be as protective as the post-closure permit. These commenters pointed out that under existing procedures, a hearing is available under Part 124 procedures to challenge a permit, while

EPA hearing procedures established for the respondent only under section 3008(h), Part 24 are less formal and comprehensive. Also, no pre-enforcement review is available for CERCLA 106 orders. These commenters believe that an alternate authority used in lieu of a post-closure permit should be reviewable under Part 124.

EPA recognizes that this rule does not guarantee pre-enforcement review of remedies implemented through alternate authorities. However, neither RCRA nor the Administrative Procedure Act require EPA to provide opportunities for the public to obtain judicial review of enforcement orders. For example, no such review is required under section 3008(h). Further, EPA believes that the ability to require prompt cleanup is important to assuring protection of human health and the environment. The new rule will make it easier to require cleanup at facilities where permit issuance would have been difficult or impossible. Thus, on balance, the rule promotes environmental protection. Finally, issuance of these alternatives orders does not terminate interim status. To terminate interim status, the Agency must make a final permit determination under the procedures of Part 124, and that decision, like a decision to issue a permit, is reviewable. Members of the public who believe that additional cleanup is required to meet the requirements of § 264.101 can raise that issue at that time.

One commenter objected that the proposal is at odds with Executive Order 12898, which instructs EPA to ensure greater public participation by minority and low-income populations at hazardous waste sites. This commenter expressed concern that the rule as proposed would further isolate vulnerable populations from the decisionmaking process.

EPA disagrees with commenter that the effect of this rule will be to isolate minority and low-income populations from the decisionmaking process. EPA has promulgated requirements in this final rule that assure meaningful involvement of the public in cleanups at post-closure facilities regardless of the mechanism used. These requirements will apply to all post-closure facilities, and will benefit all populations, including minority and low-income. In addition, EPA emphasizes that it will implement the rule in full compliance with Executive Order 12898. Other commenters pointed out that Part 124 requires a 45-day public comment period, while the proposal required only 30 days. Some commenters believed that the procedures associated with alternative post-closure mechanisms should follow the public participation procedures associated with permit issuance to make sure coverage is adequate and consistent. One commenter suggested that the rule specify a minimum comment period, and allow a longer period, at the Regional Administrator's discretion. Another commenter believed that since EPA has not demonstrated that public involvement procedures are hindering cleanups, there is no justification for lesser procedures.

EPA disagrees with the commenters that minimum comment period times or specific procedures are necessary, and did not establish detailed procedural requirements for public involvement in this final rule. However, EPA does expect the public to be given an opportunity to get involved early in the process and ample time to participate in the facility cleanup decisions. EPA took this approach because it recognizes that many different approaches to public participation have proved successful, and it did not wish to restrict existing State or Federal programs unnecessarily. The approach in this rule allows States to implement their own established procedures—as long as they provide for public notice and comment at the key stages in the process required by this rule.

ii. *The public involvement procedures of the proposed rule were adequate.* Other commenters believed that the level of public participation proposed by the Agency was adequate, and would provide an effective mechanism for adequately informing the public with regard to proposed remedies, and allowing public comment and public involvement in the remedy selection process.

Other commenters who generally agreed with the Agency's approach, requested some modifications in the final rule. One such commenter supported the requirement for public participation during the remedy selection process, but believed that the rule should also include a requirement for a brief description of the scope of the contamination to be remediated, if any, and a requirement for the placement of supporting documents in a local information repository. Another commenter believed that the rule must explicitly require that public access to information submitted for alternative mechanisms should be provided as if the information were contained in the Part B permit application.

EPA agrees that this type of information should be made available to the public, and anticipates that it will, where appropriate. However, as discussed above, the Agency is not prescribing detailed procedural requirements for public involvement in this final rule. The Agency intends this rule to provide meaningful public involvement while, at the same time, provide maximum flexibility to States to implement their cleanup programs. The Agency recognizes that, clearly, public involvement cannot be meaningful if there is not adequate access to information and, therefore, the Agency encourages regulators and owners or operators to make information regarding the site available to the public. At the same time, the Agency does not want to prescribe in detail in this final rule when and how the regulatory agency should provide information to the public. By requiring meaningful involvement of the public, the Agency believes that this final rule addresses commenter's concerns by requiring meaningful public involvement, which includes adequate access to information, and that detailed regulations prescribing access to specific information are not necessary.

One commenter agreed with the provision of the proposal that would allow EPA to waive public involvement procedures where immediate action is necessary to protect human health or the environment, but believed that public involvement should not be waived for long-term actions. EPA agrees with this commenter and the rule reflects this approach. In proposing the waiver provision of § 265.121(b), EPA intended to allow regulatory agencies to delay public involvement and get cleanup underway immediately, where necessary to protect human health and the environment, but not to remove the requirement for public participation. In response to this comment, EPA has modified the regulatory language of § 265.121(b) in this final rule to clarify the Agency's intent.

iii. *The public involvement procedures of the proposed rule were too stringent.* A third group of commenters believed that the public involvement requirements of the proposal were too stringent, and did not provide enough flexibility to the States. For example, one commenter stated that the proposed public participation requirements for alternative mechanisms were excessive, unnecessary, and inconsistent with existing public participation requirements. Another stated that there is no need for public participation for remedial action orders and closure plan approval to be equivalent to the requirements of Part 124 and Part 270, and that alternate, less stringent procedures would suffice.

EPA believes that public involvement is important in all agency actions, including enforcement orders. Consequently, EPA is requiring public participation at three key stages.

Some commenters believed that EPA should defer to State programs for public involvement as long as they provide basic due process and reasonable public input. These commenters believed that States should have reasonable flexibility to make site-specific determinations regarding the level of public participation that is appropriate at a site, and to adopt public involvement procedures that meet the needs of their own State. They believed that the benefits of public comment are preserved by requiring the States to provide public notice, and that specific differences in process are of differences of degree, and not substance.

EPA agrees that many States have developed cleanup programs with appropriate public involvement, and has tried to balance the need to ensure adequate public participation against requirements that constrain States. EPA believes the approach in the final rule strikes an appropriate balance. EPA, for example, allows States to decide how much notice must be given, and how long comment periods must last.

Some commenters believed that the proposal would expand the current requirements for public involvement. According to these commenters, when post-closure permits are modified to incorporate a proposed remedy, the current requirements for permit modification require publication in a newspaper for seven days, a public hearing, and a 60-day public comment period, regardless of how the action is changed based on public comment. The proposal would require much more at remedy selection, thus would be more expansive than the existing regulations. To maintain consistency, commenters believed the rule should mirror the public involvement procedures of § 270.41.

EPA acknowledges the commenter's concern, and believes that it has addressed them by leaving the details of the notification process and the length of the comment period to the discretion of the overseeing agency.

Some commenters did not agree that public involvement procedures should apply to actions taken under section 3008(h), because public comment on an enforcement proceeding would be inappropriate and would unnecessarily complicate and confuse the process, while increasing costs and delaying the process. One commenter pointed out that the public currently has no assurance it will have opportunity to participate in the remedial action process when remedial action is implemented through an enforcement order, as the Agency's enforcement programs have discretion to limit public participation, yet there is no evidence that the lack of public participation in enforcement orders has been detrimental to the process.

EPA disagrees with this commenter that public involvement unnecessarily complicates and confuses the cleanup process—in fact, the Agency believes that the public is an important contributor to the cleanup process. It helps ensure that remediation does, in fact, protect human health and the environment, and that remedies are based upon reasonable assumptions, including assumptions of future land use. EPA is committed to public involvement in its oversight of cleanup decisions, and the Agency's policy is to provide for meaningful public notice and comment with every section 3008(h) order. The requirements promulgated in this final rule are consistent with current EPA guidance on section 3008(h) orders.

Another commenter believed that EPA should recognize the wide array of actions that may occur, from small to significant, and the increasing tendency to accomplish remedial action through a series of interim measures, rather than a single major action. This commenter believed that the Agency should tailor public participation measures to ensure participation during significant actions without slowing the conduct of the program by requiring extensive administrative procedures for each and every small action that may be taken. The commenter believed that the public participation measures should be flexible enough to ensure adequate public involvement and avoid serving as yet another brake on the system.

EPA believes that the approach to public involvement in this final rule addresses this commenter's concern. The rule requires public involvement when the Agency becomes involved in a remediation at the facility as a regulatory or enforcement matter; on the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and prior to making the final decision that remedial action is complete at the facility. EPA expects that these requirements will be applied flexibly, and it does not expect ''extensive administrative procedures for each and every action.'' For example, in some cases, public comment might be provided on a general strategy, which included interim measures as well as specific final cleanup standards. In other cases, the public might prefer monthly or quarterly updates to activity-by-activity notice. The point is that the public must have early involvement and must have an opportunity to comment before the regulatory agency commits itself to a final remedy or decides final remedial action is complete at the facility. Within this framework, EPA believes the regulatory agency has opportunity to structure a reasonable approach based on the needs at the site. At the same time, the public is put on notice early in the process that activities are taking place.

4. Enforceable Documents Issued Prior to the Effective Date of This Rule (§ 265.121(b)(3))

a. Overview. It is likely that, prior to final promulgation of this rule EPA and authorized States will have required site assessments or cleanup under a variety of authorities, other than post-closure permits, at facilities currently subject to post-closure permit requirements. Most of these actions, if taken after promulgation, would have satisfied the requirements of this rule. EPA proposed and is taking final action to provide a means to give credit to such prior cleanup actions by soliciting public comment on the activities conducted before the effective date of the rule.

Under § 265.121(b)(3), EPA must provide an opportunity for public comment if the enforceable document imposing those remedies is intended to be used in lieu of a permit. Depending on public comment, EPA may impose additional requirements either by amending the existing order, issuing a new order, modifying the post-closure plan, or requiring a post-closure permit.

b. Response to Comment. Several commenters objected to this provision of the rule.

According to one commenter, the proposed approach, if designed to provide finality to owners or operators, was a good idea in that it could provide them with early assurance that they would not have to repeat closure, post-closure, cleanup or investigations at a later date. However, this commenter strongly opposed this provision to the extent that it contemplates any such *post hoc* adequacy determinations would be the impetus to reinvestigate and/or require additional remedial actions with respect to prior closure/post-closure activities. In addition, the commenter believed that when an owner or operator receives an adequacy determination under proposed § 265.121(c) for prior closure/post-closure activities under an alternative legal authority, these activities should

be expressly recognized as adequate in any subsequently-issued permit to assure the finality of any prior closure/post-closure determinations.

Another commenter opposed any effort to retroactively apply new, more restrictive standards (for public involvement or selection of remedies) to past remedial actions, and to approved closures. According to the commenter, actions undertaken in good faith by the owner or operator with Agency approval should be done with reasonable assurance that they will be considered completed. The commenter believed that uncertainty would discourage remedial actions.

Another commenter believed that this provision is beyond EPA's statutory authority. This commenter believed that EPA cannot conveniently ignore agreements entered into by it or States that were presumably within their authority. This issuance of a new regulation does not allow EPA to void binding agreements. Owners that have encouraged the Agency to use an order or consent agreement to oversee remedial action could be required to implement different remedial actions simply because EPA promulgates a new regulation. The commenter believed that this provision would impose more onerous requirements for responsible owners and operators of facilities that are currently implementing remedial action.

Another commenter suggested that before reopening an action, EPA should be required to demonstrate that the cleanup was not protective of human health and the environment. Another commenter expressed concern that any action undertaken in the past would be unlikely to meet current regulatory requirements, yet was likely taken by a cooperative facility aggressive in fulfilling its regulatory obligations at the time. According to the commenter, to reevaluate these facilities without any indication of potential environmental harm would create a costly administrative burden to both the Agency and the owner or operator, without any benefit to human health and the environment.

EPA agrees with the commenters that expressed concern about any uncertainty that might arise for owners and operators due to this provision. However, EPA disagrees that this is the effect of this provision. This provision does not impose new requirements on owners and operators retroactively, since owners and operators were subject to RCRA permit requirements (including section 3004(u)) prior to this rule. Instead, § 265.121(e) would extend the benefits of this rule to post-closure activities or cleanups conducted under enforceable documents issued before the rule was in effect even where these documents had not included public involvement. (Where the public had already had an opportunity to comment on the mechanism, there would be no need to invoke this provision.) EPA does not intend this provision to result in duplicative regulatory action, or to allow reopening of decisions that had already been made. Instead, it would simply ensure the public's opportunity to comment on a mechanism being used in lieu of a permit, if the public had not had an opportunity up to that point.

EPA can understand the commenter's concerns about re-opening past cleanups. EPA and authorized States certainly do not expect to re-open acceptable remedies where they are already underway. EPA believes that, in most situations, the public would have been involved in the remedy selection. In cases where the public was involved, the Agency does not intend this provision to provide an opportunity to revisit issues that already were raised and addressed. Rather, the provision is designed to make this final rule available to facilities that may have begun cleanup prior to the effective date, while, at the same time, assuring that the public has had opportunity to raise issues prior to the Agency's final decision that corrective action is not needed or is no longer need at the site. Even under the current corrective action process, remedies undertaken before the permit is issued are typically incorporated into the permit through the permit procedures. Owners and operators of closed interim status facilities or non-RCRA State programs currently may conduct cleanups outside the post-closure permit process. When EPA or a State issues a post-closure permit, it must determine that any prior cleanup meets the requirements of RCRA section 3004(u). If it does not—that is, if the cleanup is not protective of human health and the environment, or there are significant areas it does not address—EPA or the State may impose permit requirements requiring additional remediation work. Citizens may also raise the same issues in comment periods on draft post-closure permits and in challenges to permits that are issued. Thus, facilities face these issues regardless of whether or not EPA allows older cleanups to be recognized under this new alternative to post-closure permits.

In any case, EPA expects owners and operators conducting cleanups without involving EPA to involve the public at an early stage. EPA strongly discourages owners and operators from waiting until the end of the process to involve the public. If concerns are raised by the public regarding the actions taken under the alternative mechanism, EPA may require additional action through an order or permit. Therefore, EPA is promulgating § 265.121(b)(3).

C. Remediation Requirements for Land-Based Units With Releases to the Environment

1. Overview

In the 1994 notice, EPA requested comment on the possibility of allowing the Regional Administrator to establish groundwater monitoring, closure and post-closure, and financial assurance requirements on a site-specific basis at regulated units addressed through the corrective action process (*see* 59 FR 55778 at 55787–88). EPA specifically requested comment on this prospect for regulated units clustered with non-regulated units, all of which were releasing hazardous constituents to the environment, because of the concern that two different regulatory regimes would apply—for example, the regulated units could be subject to the detailed requirements of Part 264 (which were developed as a preventive requirement), while the non-regulated units could be subject to the more flexible remedial requirements for corrective action under § 264.101 and associated guidance.

EPA is promulgating in this notice final rules that will provide flexibility where a regulated unit is situated among SWMUs (or areas of concern), a release has occurred, and both the regulated unit and one or more SWMUs (or areas of concern) are suspected of contributing to the release. The final rule described in this section allows EPA and the authorized States to replace the regulatory requirements of Subparts F, G, and H at certain regulated units with alternative requirements developed under a remediation authority. This portion of the rule is designed to eliminate some of the problems Regions and States have encountered where two sets of requirements apply at a cleanup site—requirements for closure at the regulated unit, and corrective action requirements at the SWMUs. It applies to both permitted and interim status units. It also applies to both operating and closed facilities. Further, it can be used at closed facilities using alternative authorities in lieu of post-closure permits.

The closure process in Parts 264 and 265 was promulgated in 1982, before the Agency had much experience with closure of RCRA units. Since that time,

EPA has learned that, when a unit has released hazardous waste or constituents into surrounding soils and groundwater, closure is not simply a matter of capping the unit, or removing the waste, but instead may require a significant undertaking to clean up contaminated soil and groundwater. The procedures established in the closure regulations were not designed to address the complexity and variety of issues involved in remediation. Most remediation processes, on the other hand, were designed to allow site-specific remedy selection, because of the complexity of and variation among sites.

Similarly, the groundwater monitoring requirements designed for regulated units do not provide sufficient flexibility for complex cleanups. The requirement to place wells at the downgradient edge of a regulated unit often would not make sense if there are SWMUs further downgradient. Also, the Part 264 regulations contain specific requirements for the selection of cleanup levels for hazardous constituents released to groundwater, and do not provide for considerations of technical practicability, which are critical in a remediation context. Corrective action and other remediation authorities provide more flexible (yet protective) regimes for selecting cleanup levels.

Financial responsibility for closure or post-closure care may also work at cross purposes with financial responsibility for corrective action. It makes sense to allow a facility with funds set aside for closure of a regulated unit to spend those funds on a broader corrective action, when the regulated unit is being addressed in that corrective action.

This portion of this rule revises the requirements of Parts 264 and 265 Subparts F, G, and H, by adding new §§ 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d), and 265.140(d). Those provisions allow EPA to address environmental needs at certain closing regulated units with more flexible, but protective, site-specific requirements developed through a remediation process. EPA is providing flexibility where a Regional Administrator (or State Director) finds that a regulated unit is situated among SWMUs (or areas of concern), a release has occurred, and the regulated unit and one or more of the SWMUs (or areas of concern) are likely to have contributed to the release.

To provide greater flexibility for the cleanup of regulated units in this situation, EPA is giving the Regional Administrator (or State Director) discretion to replace the requirements for closure, groundwater monitoring, and financial responsibility set out in Parts 264 and 265 with standards tailored specifically for the cleanup. For closure, the new ''generalized'' standard is protecting human health and the environment by meeting the closure performance standard in either § 264.111(a) and (b) or § 265.111(a) and (b). For groundwater monitoring and financial responsibility, the new standard is protection of human health and the environment. The Regional Administrator can use these new standards to integrate the cleanup requirements for the regulated unit into the requirements for the SWMUs developed under remediation authorities. In addition, to reduce duplicative administrative processes, EPA is not requiring that the alternative requirements be incorporated into the permit, closure plan, and/or post-closure plan in all cases. In the case of permitted facilities, alternative requirements for a regulated unit might be included in the permit where related SWMUs were being addressed under RCRA section 3004(u), the permitting corrective action authority. EPA, however, wants the Regional Administrator to be able to use other authorities to develop the requirements for regulated units and related SWMUs, such as RCRA section 3008(h), CERCLA, and approved State remediation authorities. This rule, therefore, allows the Regional Administrator (or an authorized State) to determine that there is no need to impose the unit-specific requirements of Part 264 or Part 265 because alternative requirements developed under an approved remediation authority will protect human health and the environment. The requirements for the regulated unit and the SWMUs developed under that authority can be set out in the permit or in an approved closure plan and/or post-closure plan, or can be set out in another enforceable document (as defined in § 270.1(c)(7)), and referenced in the permit or approved closure plan and/or post-closure plan.

For permitted facilities, EPA is modifying the requirements for content of the closure plan and closure plan modification by adding new § 264.112(b)(8) and (c)(2)(iv), and post-closure plan content and post-closure plan modification at § 264.118(b)(4) and (d)(2)(iv) to require owners and operators to incorporate the alternative requirements into the closure plan and/or post-closure plan, or to incorporate into those plans a reference to the enforceable document (or permit section) that sets forth those requirements. To do so, the owner or operator would use the existing procedures for closure plan and post-closure plan approval and modification in Part 264, and for permit modifications in Part 270. EPA expects that any such decision would be a ''class 3'' modification.

For interim status facilities, EPA is similarly adding new §§ 265.112(b)(8) and (c)(2)(iv) and 265.118 (c)(5) and (d)(1)(iv)to require owners and operators to incorporate alternative requirements into the closure plan and/or post-closure plan, or to incorporate into those plans a reference to the enforceable document that sets forth those requirements. To do so, the owner or operator would use the existing procedures for closure plan and post-closure plan approval and modification in Part 265.

Members of the public may also utilize current procedures to challenge either the specifics of how EPA is addressing a regulated unit as part of corrective action (for example, if the corrective action is imposed through a RCRA permit), or the decision by EPA or the State to address the regulated unit under alternative requirements set out in an enforceable document. Under EPA's federal rules, members of the public may file administrative appeals for permits; they may challenge closure or post-closure plans in court.

The Regional Administrator (or State Director) may use existing procedures for modifying permits or closure plans to revisit corrective action requirements for regulated units set out in permits or to revisit cleanups under alternative enforceable documents. EPA's rules allow permits, closure plans, and post-closure plans to be modified when significant new information arises after the issuance of the plan or permit. Some developments during remediation may justify use of this authority. For example, if a non-RCRA agency in charge of an alternate authority selected a very different remedy which, in the RCRA authority's judgement, would not adequately protect human health and the environment, the RCRA authority might consider this to be new information warranting reconsideration of the decision to defer existing RCRA requirements for regulated units.

Because the concept of deferring closure, groundwater monitoring, and financial responsibility requirements is new, EPA is limiting the range of authorities that can be used to craft alternate requirements. First, a Regional Administrator (or State Director) may defer regulated unit requirements in favor of requirements crafted under corrective action for permits under RCRA section 3004(u) and corrective

action orders for interim status facilities under RCRA section 3008(h). The Regional Administrator (or State Director) may also defer to requirements established in actions under CERCLA section 104 and 106. EPA is familiar with the scope of these legal authorities and the enforcement mechanisms that accompany them. Any Regional Administrator (or State Director) wishing to defer to regulated unit requirements developed under these authorities need only consider whether the requirements will, in fact, protect human health and the environment.

EPA also wants State Directors to be able to defer to State remedial authorities outside of RCRA. EPA, however, is less familiar with these authorities and their enforcement mechanisms. EPA, therefore, is requiring any State that wishes to use a non-RCRA authority to craft alternative regulatory requirements to submit that authority to EPA for review in the State authorization process. EPA will review the scope of the legal authority. It will determine for example, whether the authority can provide for cleanup of releases from a regulated unit to all media, as required under §§ 264.111(b) and 265.111(b). EPA will also review the State's mechanisms for enforcing the alternative requirements. Where a State will not be incorporating the new regulated unit requirements directly into a permit or closure plan enforceable under RCRA, EPA needs to have some assurance that it will be able to enforce them, if necessary. EPA is, in this notice, amending the existing requirements for enforcement of State programs in § 271.16 to add a new requirement regarding the enforceability of these new, alternative regulated unit requirements. Recognizing that effective enforcement mechanisms may vary greatly from State to State, EPA is promulgating a general standard, rather than a list of specific enforcement requirements.

This rule also allows the Agency to transfer the financial assurance requirements of Part 264 or Part 265 Subpart H to the corrective action process, when the regulated unit is addressed through corrective action. This provision does not allow the Agency to waive the requirements for financial assurance at a regulated unit. Owners and operators of regulated units remain subject to the requirement to provide financial assurance to address cleanup at the unit—however, this rule allows EPA or the authorized States to develop site-specific financial assurance requirements for corrective action at the unit, and transfer funds set aside under Subpart H for closure, post-closure, and third-party liability requirements to address corrective action. This provision may be invoked by EPA or by a State authorized for this rule only in cases where the alternative cleanup authority requires financial assurance for the corrective action.

In addition to the financial assurance requirements for closure and post-closure care, Parts 264 and 265 Subpart H require owners and operators to provide assurances that they can pay claims for damages to third-parties arising from accidental occurrences at the facility. The Agency, however, typically has not required third-party liability coverage as part of financial assurance for corrective action. (The general third-party funds required by Parts 264 and 265 would, of course, apply to accidents involving hazardous waste management occurring during corrective action.) This rule allows the Regional Administrators and authorized States to release funded third-party liability assurances, or to relieve owners and operators from the obligation to provide third-party liability assurance, where all regulated units at the facility are being addressed under §§ 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d) or 265.140(d). EPA expects this action would be warranted under limited circumstances—for example, it might be warranted where all regulated units at the facility are being addressed through corrective action, and the Regional Administrator finds that it is necessary to use the third-party liability funds to pay for the cleanup. It should be noted that where a facility is subject to third-party liability requirements because of regulated units other than those being addressed under §§ 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d) or 265.140(d), the facility remains subject to the requirement for third-party liability coverage.

2. Response to Comment

In the preamble of the proposed rule (*see* 59 FR 55778 at 55787 and 55688), EPA requested comment on the need for provisions allowing regulated units to be addressed through a remediation process. The Agency described a situation where a collection of adjacent SWMUs and a regulated unit are releasing hazardous constituents to the environment. Prior to this rule, EPA would have been required to impose the requirements of Part 264 or Part 265 for financial assurance, closure, and groundwater monitoring and remediation of the regulated unit, and to select remedies for the SWMUs through the RCRA corrective action process. This situation was inconsistent with a major objective of EPA's Subpart S initiative discussed above, that is, to create a consistent, holistic approach to cleanup at RCRA facilities.

Many commenters supported the approach described by EPA in the preamble to the proposal. Commenters on the proposed rule agreed with EPA that regulated units and non-regulated SWMUs are often indistinguishable in terms of risk, and most supported integration of the closure and corrective action programs.

Many commenters had encountered situations similar to those described by the Agency, and believed that the closure process prevented the best remedy at those sites. Several commenters agreed that it is often difficult to identify the source of contamination, particularly when many SWMUs are located near each other. Commenters cited situations where the boundaries of regulated units and non-regulated units overlap, or where contaminant plumes have commingled as situations where the regulatory distinction between regulated and non-regulated SWMUs is particularly troublesome.

Some commenters believed that the corrective action process, which was specifically designed to address remediation, rather than the closure process, which has preventative goals, should be used to address all units at a facility.

EPA does not believe that the closure process is inappropriate for all regulated units with releases. However, it does believe that it does not make sense to have two separate remedial processes working to clean up a single release, so it is providing relief where a regulated unit and one or more SWMUs appear to have contributed to the same release. EPA believes the Regional Administrator should be able to choose, on a case-by-case basis, whether to apply the current Part 264 and 265 requirements to the SWMUs or the more flexible remediation requirements to the regulated unit. This final rule provides the Regional Administrator with the discretion needed to make this choice.

Several commenters mentioned that having two regulatory programs for RCRA units is complicated by State authorization issues—some States are authorized for the base RCRA program, thus are responsible for closure, but are not authorized for corrective action. In these States, two agencies are responsible for reviewing plans, and making decisions. Another commenter's regulatory agency has taken the position that any detectable levels of organics left in soil or groundwater during closure will require capping and post-closure

monitoring of the unit, whereas the corrective action program uses risk-based cleanup standards. Thus, there is potential for different areas of a facility to be cleaned up to different sets of standards, even if the areas are adjacent to each other, and exposure patterns are identical. Commenters believed that a single, uniform set of cleanup standards should be established for all units regardless of the time the waste or contaminant was placed in the unit, and regardless of the regulatory program that has jurisdiction.

EPA cannot eliminate all of the complexities caused by the State authorization requirements. However, States that are authorized for the base program will be able to request authorization for this rule. They may request authority to address regulated units as part of corrective action. EPA also notes that there is no Federal requirement that facilities cap any detectable levels of organics left in soil or groundwater during closure.

Other commenters raised concerns about EPA's proposal that closure and cleanup standards be integrated. Some commenters expressed concern that the Agency's proposal might be an attempt to extend the closure requirements to non-regulated units, rather than to address all SWMUs through the corrective action process. Some commenters said that they have had to close non-regulated units as regulated units because they could not identify the source of contamination at a site. These commenters believe that the corrective action process, not closure requirements, should be the applicable requirements at SWMUs requiring remediation.

The Agency agrees that regulated unit standards were not designed for SWMUs subject to corrective action. The Agency intends this rule to provide Regional Administrators and State Directors with discretion to choose whether to apply current Part 264 and 265 standards to regulated units closed as part of a broader corrective action, or to address them through cleanup requirements. This rule is not intended as a way to bring SWMUs under Part 264 or Part 265 unit-specific standards.

A few commenters supported retaining the distinction between regulated units and other SWMUs. One commenter believed the Agency should retain the closure process at all regulated units because the regulatory timeframes of that process result in a quicker remedy selection than the open-ended corrective action process. This commenter feared that removing closure requirements at regulated units would delay cleanups. Another commenter objected that site-specific determinations delay any process because they are an open door to extended negotiations, disputes, and litigation, and allow inconsistent decisions. This commenter believed that the closure regulations provide consistent requirements.

The Agency agrees with the commenter that the closure requirements, including the timeframes incorporated in the closure process, are generally appropriate where a release has not occurred. EPA, however, does not agree that these procedures are well-suited to remediation of environmental releases. EPA believes that, where a regulated unit is located among SWMUs (or areas of concern), and releases have or are likely to have occurred, applying two sets of regulatory requirements can slow, rather than hasten the cleanup. Thus, in this final rule, EPA is allowing regulators discretion to apply alternate requirements to the closing regulated unit developed under a remediation authority.

Another commenter suggested retaining the closure requirements if the regulated unit is a landfill, because, according to commenter, landfills typically are large and isolated. The commenter also suggested the closure requirements be retained in situations where routine monitoring is necessary, or in situations where waste in the regulated unit is very hazardous. This commenter suggested that the closure standards be retained where the units contain similar wastes, but were used at different times, and where there are multiple adjacent sources of contamination with overlapping parameters of concern.

This rule retains the closure requirements for isolated units. This final rule allows the Regional Administrator to replace the requirements of Subparts F, G, and H with alternative requirements developed for corrective action only where a regulated unit is situated among SWMUs (or areas of concern), a release has occurred, and both the regulated unit and one or more SWMUs (or areas of concern) are likely to have contributed to the release.

EPA disagrees that the type of waste involved or the need for monitoring should determine which set of regulatory requirements must be used to address the unit, or that routine monitoring can be imposed only through the closure process. EPA believes that remediation processes can be used to provide protective cleanups for all types of wastes, and can be used to impose sufficient groundwater monitoring requirements.

Another commenter suggested that the timeframes for initiating corrective action (§ 264.99(h)(2)) and other administrative and reporting requirements of Part 264 Subpart F be retained in all cases. However, EPA disagrees with this commenter and has chosen to allow greater flexibility provided by alternate remedial authorities for regulated units surrounded by SWMUs that are both suspected to have released to the environment.

One commenter conditioned its approval of this change on due process rights of owner or operator being maintained. EPA believes the existing rights available to an owner or operator in federal enforcement actions appropriately address due process rights and this rule does not modify these rights.

Some commenters asked for clarification of how integration of closure and corrective action would work administratively. EPA has provided this information in the preamble discussion above.

Another commenter stated that the proposal contradicted itself by first claiming that protections imposed through alternative mechanisms would be equivalent to those of a post-closure permit, and then proposing that closure standards be developed on a site-specific basis under the corrective action process. The commenter requested EPA to clarify its intention in this regard, and to ensure that the regulatory requirements were truly the same for closure and post-closure activities conducted with or without a permit.

In response to this comment, EPA clarifies that it intends for the closure of regulated units to be subject to consistent substantive standards, regardless of whether that closure is addressed under a permit or under an alternate authority. EPA believes the requirements of § 265.121 make this point clearly. The commenter's concern derives from EPA's proposal (and decision in this final rule) to amend the closure standards to allow the integration of closure and corrective action at certain specified closed or closing units. These new standards apply equally to all eligible regulated units, regardless of whether they are subject to permits or interim status. Thus, while EPA has amended the closure standards as they apply to certain regulated units, it has retained a consistent approach to closure under the permit process and under alternate authorities. To the extent that the commenter is objecting to EPA's decision to allow use of alternative, site-

specific requirements in lieu of the generic requirements of Subparts F, G, and H, EPA, as explained above, believes that the need to coordinate the cleanup of ''mingled'' releases outweighs any perceived benefits of the more specific requirements for regulated units.

In the preamble of the proposed rule, the Agency described a second remedial situation where the closure standards might not be appropriate—where waste has been removed from a unit but contaminated soils remain, and the remedy that might best prevent future releases from the unit would be precluded by the requirement for a RCRA cap.

Many commenters agreed with the Agency that the requirement for a RCRA cap may impede remedies. Several commenters agreed that the closure regulations do not consider remediation as an alternative to capping the unit, yet many currently available remedial technologies are more protective to human health and the environment in the long term than is capping, and that the Agency should provide flexibility to pursue such options in the closure of regulated units. Many commenters also agreed that required RCRA caps are very expensive and often provide little additional environmental protection where most waste has been removed from the unit.

However, the Agency is not proceeding with revisions to the closure requirements that would modify the requirement for a RCRA cap (or other closure, groundwater, or financial assurance requirements) beyond the situations outlined in §§ 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d), and 265.140(d). Thus, the unit described by commenters could be addressed under corrective action procedures only if it was situated among SWMUs or areas of concern, and was part of a broader corrective action. EPA was not prepared, at the time this rule was made final, to make a final decision on this issue. EPA will consider additional action in this area if, in implementing this final rule, the Agency identifies further opportunities for integrating closure and corrective action.

D. Post-Closure Permit Part B Information Submission Requirements (§ 270.28)

1. Overview

EPA is promulgating § 270.28, which establishes information submission requirements for post-closure permits. Prior to this rule, the information submission requirements of Part 270 did not distinguish between operating permits and post-closure permits, and facilities seeking post-closure permits were generally expected to provide EPA, as part of their Part B permit applications, the facility-level information specified in § 270.14 as well as relevant unit-specific information required in §§ 270.16, 270.17, 270.18, 270.20, and 270.21.

However, EPA recognized that certain of the Part 270 information requirements are important to ensuring proper post-closure care, while others are generally less relevant to post-closure. The Agency believes the most important information for setting long-term post-closure conditions are groundwater characterization and monitoring data, long-term care of the regulated unit and monitoring systems (e.g., inspections and systems maintenance), and information on SWMUs and possible releases. Therefore, EPA is adding a new § 270.28 to identify that subset of the Part B application information that must be submitted for post-closure permits.

As a result of this provision, an owner or operator seeking a post-closure permit must submit only that information specifically required for such permits under newly added § 270.28, unless otherwise specified by the Regional Administrator. The specific items required in post-closure permit applications are:

—A general description of the facility;
—A description of security procedures and equipment;
—A copy of the general inspection schedule;
—Justification for any request for waiver of preparedness and prevention requirements;
—Facility location information;
—A copy of the post-closure plan;
—Documentation that required post-closure notices have been filed;
—The post-closure cost estimate for the facility;
—Proof of financial assurance;
—A topographic map; and
—Information regarding protection of groundwater (e.g., monitoring data, groundwater monitoring system design, site characterization information)
—Information regarding SWMUs at the facility.

In many cases, this information will be sufficient for the permitting agency to develop a draft permit. However, since RCRA permits are site-specific, EPA believes it is important that the Regional Administrator have the ability to specify additional information needs on a case-by-case basis. Accordingly, to ensure availability of any information needed to address post-closure care at surface impoundments (§ 270.17), waste piles (§ 270.18), land treatment facilities (§ 270.20) and landfills (§ 270.21), § 270.28 of this rule authorizes the Regional Administrator to require any of the Part B information specified in these sections in addition to that already required for post-closure permits at these types of units. This approach enables the Regional Administrator to require additional information as needed, but does not otherwise compel the owner or operator to submit information that is irrelevant to post-closure care determinations.

2. Response to Comment

Commenters generally supported the provisions of the proposed rule related to information submission requirements, and EPA is promulgating the provisions as proposed. Some commenters suggested that additional information be required by § 270.28 (e.g., one commenter suggested the Agency require the chemical and physical analysis of § 270.14(b)(2), and the training plan information required by § 270.14(b)(12)). However, after considering these comments, EPA is promulgating the proposed requirements because the Agency believes they will provide the Agency with the information it needs to address post-closure care in most instances. The information suggested by commenter is not, in the Agency's experience, routinely needed for post-closure permits. For example, § 270.14(b)(2), suggested by commenter, requires a chemical and physical analysis of waste to be handled at the facility—but, in the case of post-closure permits, the regulated unit is closed, and will not be handling wastes. Similarly, § 270.14(b)(12) requires the owner or operator to train persons who will be operating the facility—but, in the case of a post-closure permit, the facility will not be operating.

If for some reason this information is needed by the Agency, this rule does not preclude the Agency from requiring it. As was discussed above, this rule provides the Agency authority to obtain additional information on a case-by-case basis, as needed, but, for most situations, requires only the minimum information necessary for all post-closure situations. This approach, the Agency believes, provides sufficient information to the overseeing agency to ensure adequate post-closure care, while minimizing the information submission requirements for all owners and operators. However, as a result of this final rule, EPA will request information

for post-closure permit applications beyond the information specified in § 270.28 only when necessary on a case-by-case basis.

IV. State Authorization

A. Authorization of State Programs

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (*See* 40 CFR Part 271 for the standards and requirements for state authorization).

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, the new requirements and prohibitions of HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including issuance of permits, until the State is granted authorization to do so. While States must still adopt more stringent HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim. In general, § 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. For those Federal program changes that are not more stringent or reduce the scope of the Federal program, States are not required to modify their programs (*see* § 271.1(i)). Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program.

B. Enforcement Authorities

Since 1980, certification of adequate enforcement authority has been a condition of State authorization. EPA's authority to use its own enforcement authorities, however, does not terminate when it authorizes a State's enforcement program. Following authorization, EPA retains the enforcement authorities of sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

C. Effect of this Rule on State Authorizations

This rule promulgates revisions to the post-closure requirements under HSWA and non-HSWA authorities. The requirements in §§ 264.90(e), 265.110(c), 265.118(c)(4), 265.121 (except for paragraph 265.121(a)(2)), 270.1, 270.14(a), and 270.28, which remove the post-closure permit requirement and allow the use of alternate mechanisms, are promulgated under non-HSWA authority. Thus, those requirements are immediately effective only in States that do not have final authorization for the base RCRA program, and are not applicable in authorized States unless and until the State revises its program to adopt equivalent requirements. These new standards are not more stringent than current requirements and, therefore, States are not required to adopt them.

Sections 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d), 265.140(d), and 271.16(e), which allow the Agency to address closing regulated units through the corrective action program, are promulgated under HSWA authority. Except for § 271.16(e) these provisions provide additional options to regulators, and, therefore, are not more stringent than the current base RCRA program requiring closure of all regulated units. Authorized States are required to modify their programs only if the new Federal provisions are more stringent.

Further, because these HSWA provisions in this rule are not more stringent, they are immediately effective only in those States not authorized for the base RCRA program. In States authorized for the RCRA base program, these HSWA provisions cannot be enforced until and unless the State adopts them. Once a State adopts these provisions, they can be implemented by EPA before the State is authorized for the regulation change because they are promulgated pursuant to HSWA authority, and are thus immediately effective in the State.

D. Review of State Program Applications

1. Post-Closure Care Under Alternatives to Permits

Sections 264.90(e), 265.110(c), 265.118(c)(4), 265.121, and 270.1 of this final rule remove the requirement for post-closure permits, and allow EPA and the authorized States to address facilities needing post-closure care using alternate authorities. All States seeking authorization for the above provisions of this rule must submit an application that includes regulations at least as stringent as these provisions, as well as the information required under § 271.21. In all States, this information will include copies of State statutes and regulations demonstrating that the State program includes the provisions promulgated in this rule in the sections listed above. EPA will review this information to determine that the State has adopted provisions to assure that authorities used in lieu of post-closure permits are as stringent as the Federal program.

In addition, States must submit an application that includes copies of the statutes and regulations the State plans to use in lieu of the section 3004(u) provisions of a post-closure permit to address corrective action at interim status facilities. For example, many States authorized for corrective action have cleanup authorities, which they apply at interim status facilities. EPA will review those statutes and regulations to determine whether the alternate authority is sufficient to impose requirements consistent with § 264.101. At a minimum, that authority must be sufficiently broad to allow the authorized authority to: (1) require facility-wide assessments; (2) address all releases of hazardous wastes or constituents to all media from all SWMUs within the facility boundary as well as off-site releases to the extent required under section 3004(v) (to the extent that releases pose a threat to human health and the environment); and (3) impose remedies that are protective of human health and the environment. This review by EPA will assure that actions taken at closed facilities under an alternate authority are as protective as those that would be taken under a post-closure permit. In addition, EPA is promulgating in this final rule a revision to § 271.16 to ensure that these alternate authorities are adequately enforceable. EPA will review the State's authority to determine whether it includes the authority to sue in court, and to assess penalties.

2. Remediation Requirements for Land-Based Units With Releases to the Environment

Sections 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d), and 265.140(d) of this rule allow EPA or the authorized State to replace requirements of Part 264 or 265 Subpart F and G with analogous requirements developed through the corrective action process. When regulated units are addressed through the corrective action process, these provisions allow the Agency to transfer financial assurance requirements to corrective action as well. Sections 264.112(b) and (c), 264.118(b) and (d), 265.112(b) and (c), and 265.118(c) and (d) contain procedures for owners and operators to implement this flexibility.

To obtain authorization for §§ 264.90(f), 264.110(c), and 264.140(d), which apply at permitted facilities, States must be authorized for section 3004(u) or submit an application that includes copies of the statutes and regulations the State plans to use to develop a remedy at regulated units. To obtain authorization for §§ 265.90(f), 265.110(d), and 265.140(d), which apply at interim status facilities, States must submit an application that includes copies of the statutes and regulations the State plans to use to develop a remedy at regulated units. As in the case of alternate authorities submitted for approval to be used in lieu of post-closure permits, authorities to be used to implement §§ 265.90(f), 265.110(d), and 265.140(d) must impose corrective action consistent with § 264.101, and must be sufficiently broad to impose minimum requirements. They must allow the regulatory authority to: (1) include facility-wide assessments; (2) address all releases of hazardous wastes or constituents to all media from all SWMUs within the facility boundary as well as off-site releases to the extent required under section 3004(v) (to the extent necessary to protect human health and the environment); and (3) be protective of human health and the environment. Further, they must include authority to sue in court, and to assess penalties, consistent with § 271.16. For § 265.90(f), the authority must allow the State to require financial assurance.

3. Post-Closure Permit Part B Information Submission Requirements

Section 270.28, which specifies information that must be submitted for post-closure permits, is promulgated under non-HSWA authority and is not more stringent than the current RCRA program. Therefore, § 270.28 does not become effective in an authorized State until and unless the State obtains authorization for that provision. Further, authorized States are not required to modify their programs to adopt § 270.28.

V. Effective Date

This final rule is effective immediately. Section 3010(b)(1) of RCRA allows EPA to promulgate an immediately effective rule where the Administrator finds that the regulated community does not need additional time to come into compliance with the rule. Similarly, the Administrative Procedures Act (APA) provides for an immediate effective date for rules that relieve a restriction (*see* 5 U.S.C. 553(d)(1)).

This rule does not impose any requirements on the regulated community; rather, the rule provides flexibility in the regulations with which the regulated community is required to comply. The Agency finds that the regulated community does not need six months to come into compliance.

VI. Regulatory Assessments

A. Executive Order 12866

Under Executive Order 12866, which was published in the **Federal Register** on October 4, 1993 (*see* 58 FR 51735), 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 entitlement, 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.

Under the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' on the basis of (4) within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for this rulemaking (*see* Docket # F–94–PCPP–FFFFF).

This final rule establishes two main changes to the procedures required for closure and post-closure care. First, it allows EPA and the authorized States the option of either issuing post-closure permits or using alternative mechanisms for ensuring the proper management and care of facilities after their closure. Second, it amends the regulations governing closure of regulated units to allow, under certain circumstances, the regulatory agency to address regulated units through Federal or State cleanup programs, instead of applying Part 264 and 265 standards for closure.

The first provision benefits the regulated community by providing a potential avoidance of the permit process for post-closure, as well as eliminating duplication of effort in cases, where EPA and the States have already issued enforcement orders to ensure expeditious action by facility operators. The cost savings for this change are estimated to be a total of $507,000, and are discussed in further detail in the Economic Impact Analysis background document, which has been placed in the docket. The second gives EPA and States discretion to replace regulatory requirements applying to closed regulated units with site-specific requirements developed through cleanup authorities. It does not affect any authority EPA and authorized States have to impose the closure requirements. Further, the requirements for corrective action are not more stringent than those required for closure under Parts 264 and 265. Consequently, no cost assessment was prepared for the second main provision of the rule.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), at the time the Agency publishes a 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. However, no regulatory flexibility analysis is required if the Administrator certifies that the rule will not have significant adverse impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The first portion of this final rule would provide regulatory relief by expanding the options available to address post-closure care so that a permit would not be required in every case. No new requirements would be imposed on owners and operators in addition to those already in effect. The Agency estimates a cost savings of $500,000 as a result of this portion of the rule. Additional details related to this cost savings are included in the Economic Impact Analysis, which can be found in the docket. The second part of the final rule makes available more flexible standards regarding closure, groundwater monitoring, and financial assurance for some facilities. It also imposes no new requirements. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on 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 local, and tribal governments, in the aggregate, or by private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the 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.

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, or the private sector in any one year. Neither portion of this rule is more stringent than the current Federal program, therefore, States are not required to adopt them (see section V of this preamble). In addition, this rule imposes no new requirements on owners and operators, but, rather, allows flexibility to regulators to implement requirements already in place. As stated above, EPA estimates a cost savings of $500,000 for the provisions of the final rule. EPA also has concluded that this rule will not significantly or uniquely affect small governments. Small governments will not be responsible for implementing the rule. Although they may be owners or operators of facilities regulated by the rule, the rule does not impose any new requirements.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0009 (EPA ICR Number 1573.05).

EPA believes the changes to the information collection do not constitute a substantive or material modification. The recordkeeping and reporting requirements of this rule would replace or reduce similar requirements already promulgated and covered under the existing Information Collection Request (ICR). There is no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule will not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq..

The current ICR expires on December 31, 1999. During the ICR renewal process, EPA will prepare an ICR document with an estimate of the burden reduction resulting from the decreased reporting provisions of this rule, and will publish in the **Federal Register** a Notice announcing the availability of that ICR and soliciting public comments.

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.

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.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (*see* 62 FR 19885, April 23, 1997) applies to any rule that EPA determines: (1) is ''economically significant'' as defined under Executive Order 12866, and (2) 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.

This final rule is not subject to E.O. 13045 because this is not an ''economically significant'' regulatory action as defined by E.O. 12866. In addition, the rule does not involve decisions based on environmental health or safety risks.

F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications,

test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not promulgating technical standards as part of today's final rule. Thus, the Agency has not considered the use of voluntary consensus standards in developing this rule.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of this final rule on low-income populations and minority populations and concluded that this final rule will potentially advance environmental justice causes. The process for public involvement set forth in this final rule encourages all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a proposed Agency action under the rule. EPA believes that public involvement should include regular updating of the community on the progress made cleaning up the facility. Public participation should provide all impacted and affected parties ample time to participate in the facility cleanup decisions. In many cases, public involvement should include bilingual notifications or publication of legal notices in community newspapers.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

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 EPA complies by consulting, Executive Order 12875 requires EPA to 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 rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. It provides more flexibility for States and tribes to implement already-existing requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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 EPA complies by consulting, Executive Order 13084 requires EPA to 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.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments. In addition, this rule imposes no new requirements on owners and operators, but, rather, allows flexibility to regulators to implement requirements already in place. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801(a)(1)(A), 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 General Accounting Office prior to publication of the rule in this **Federal Register**. 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).

VII. Brownfields

In February 1995, EPA announced its Brownfields Action Agenda, launching the first Federal effort of its kind designed to empower States, Tribes, communities, and other parties to safely cleanup, reuse, and return brownfields to productive use. To broaden the mandate of the original agenda, in 1997 EPA initiated the Brownfields National Partnership Agenda, involving nearly twenty other Federal agencies in brownfields cleanup and reuse. Since the 1995 announcement, EPA has funded brownfields pilots, reduced barriers to cleanup and redevelopment by clarifying environmental liability issues, developed partnerships with interested stakeholders, and stressed the importance of environmental workforce training. In implementing the Agenda, EPA, to date, has focused primarily on issues associated with CERCLA. Representatives from cities, industries, and other stakeholders, however, have recently begun emphasizing the importance of looking beyond CERCLA and addressing issues at brownfield sites in a more comprehensive manner.

This final rule furthers the Administration's brownfields work by

removing barriers posed by RCRA regulations. Modifying the post-closure permit requirement and allowing the use of an alternative authority to clean up regulated and solid waste management units, expedites the clean up of RCRA facilities and makes such property available for reuse.

List of Subjects

40 CFR Part 264

Environmental protection, Hazardous waste, Closure, Corrective action, Post-closure, Permitting.

40 CFR Part 265

Hazardous waste, Closure, Corrective action, Post-closure, Permitting.

40 CFR Part 270

Hazardous waste, Post-closure, Permitting.

40 CFR Part 271

State authorization, Enforcement authority.

Dated: October 15, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Chapter 1 Title 40 of the Code of Federal Regulations is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.90 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 264.90 Applicability.

* * * * *

(e) The regulations of this subpart apply to all owners and operators subject to the requirements of 40 CFR 270.1(c)(7), when the Agency issues either a post-closure permit or an enforceable document (as defined in 40 CFR 270.1(c)(7)) at the facility. When the Agency issues an enforceable document, references in this subpart to ''in the permit'' mean ''in the enforceable document.''

(f) The Regional Administrator may replace all or part of the requirements of §§ 264.91 through 264.100 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the permit (or in an enforceable document) (as defined in 40 CFR 270.1(c)(7)) where the Regional Administrator determines that:

(1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of §§ 264.91 through 264.100 because alternative requirements will protect human health and the environment.

3. Section 264.110 is amended by adding a new paragraph (c) to read as follows:

§ 264.110 Applicability.

* * * * *

(c) The Regional Administrator may replace all or part of the requirements of this subpart (and the unit-specific standards referenced in § 264.111(c) applying to a regulated unit), with alternative requirements set out in a permit or in an enforceable document (as defined in 40 CFR 270.1(c)(7)), where the Regional Administrator determines that:

(1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

(2) It is not necessary to apply the closure requirements of this subpart (and those referenced herein) because the alternative requirements will protect human health and the environment and will satisfy the closure performance standard of § 264.111 (a) and (b).

4. Section 264.112 is amended by adding new paragraphs (b)(8) and (c)(2)(iv) to read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(b) * * *

(8) For facilities where the Regional Administrator has applied alternative requirements at a regulated unit under §§ 264.90(f), 264.110(d), and/or § 264.140(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) * * *

(2) * * *

(iv) the owner or operator requests the Regional Administrator to apply alternative requirements to a regulated unit under §§ 264.90(f), 264.110(c), and/or § 264.140(d).

* * * * *

5. Section 264.118 is amended by adding new paragraphs (b)(4) and (d)(2)(iv) to read as follows:

* * * * *

§ 264.118 Post-closure plan; amendment of plan.

(b) * * *

(4) For facilities where the Regional Administrator has applied alternative requirements at a regulated unit under §§ 264.90(f), 264.110(c), and/or §§ 264.140(d), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

* * * * *

(d) * * *

(2) * * *

(iv) The owner or operator requests the Regional Administrator to apply alternative requirements to a regulated unit under §§ 264.90(f), 264.110(c), and/or § 264.140(d).

* * * * *

6. Section 264.140 is amended by adding a new paragraph (d) to read as follows:

§ 264.140 Applicability.

* * * * *

(d) The Regional Administrator may replace all or part of the requirements of this subpart applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document (as defined in 40 CFR 270.1(c)(7)), where the Regional Administrator:

(1) Prescribes alternative requirements for the regulated unit under § 264.90(f) and/or § 264.110(d); and

(2) Determines that it is not necessary to apply the requirements of this subpart because the alternative financial assurance requirements will protect human health and the environment.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

2. Section 265.90 is amended by adding new paragraph (f) to read as follows:

§ 265.90 Applicability.

* * * * *

(f) The Regional Administrator may replace all or part of the requirements of this subpart applying to a regulated unit (as defined in 40 CFR 264.90), with alternative requirements developed for groundwater monitoring set out in an approved closure or post-closure plan or in an enforceable document (as defined in 40 CFR 270.1(c)(7)), where the Regional Administrator determines that:

(1) A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

(2) It is not necessary to apply the requirements of this subpart because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of 40 CFR 264.101(a).

3. Section 265.110 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 265.110 Applicability.

* * * * *

(c) Section 265.121 applies to owners and operators of units that are subject to the requirements of 40 CFR 270.1(c)(7) and are regulated under an enforceable document (as defined in 40 CFR 270.1(c)(7)).

(d) The Regional Administrator may replace all or part of the requirements of this subpart (and the unit-specific standards in § 265.111(c)) applying to a regulated unit (as defined in 40 CFR 264.90), with alternative requirements for closure set out in an approved closure or post-closure plan, or in an enforceable document (as defined in 40 CFR 270.1(c)(7)), where the Regional Administrator determines that:

(1) A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release, and

(2) It is not necessary to apply the closure requirements of this subpart (and/or those referenced herein) because the alternative requirements will protect human health and the environment, and will satisfy the closure performance standard of § 265.111 (a) and (b).

4. Section 265.112 is amended by adding new paragraphs (b)(8) and (c)(1)(iv) to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(b) * * *

(8) For facilities where the Regional Administrator has applied alternative requirements at a regulated unit under §§ 265.90(f), 265.110(d), and/or 265.140(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) * * *

(1) * * *

(iv) The owner or operator requests the Regional Administrator to apply alternative requirements to a regulated unit under §§ 265.90(f), 265.110(d), and/or 265.140(d).

* * * * *

5. § 265.118 is amended by adding new paragraphs (c) (4) and (5), and (d)(1)(iii) to read as follows:

§ 265.118 Post-closure plan; amendment of plan.

* * * * *

(c) * * *

(4) For facilities subject to § 265.121, provisions that satisfy the requirements of § 265.121(a)(1) and (3).

(5) For facilities where the Regional Administrator has applied alternative requirements at a regulated unit under §§ 265.90(f), 265.110(d), and/or 265.140(d), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

(d) * * *

(1) * * *

(iii) The owner or operator requests the Regional Administrator to apply alternative requirements to a regulated unit under §§ 265.90(f), 265.110(d), and/or 265.140(d).

* * * * *

5. A new § 265.121 is added to Subpart G to read as follows:

§ 265.121 Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits.

(a) Owners and operators who are subject to the requirement to obtain a post-closure permit under 40 CFR 270.1(c), but who obtain enforceable documents in lieu of post-closure permits, as provided under 40 CFR 270.1(c)(7), must comply with the following requirements:

(1) The requirements to submit information about the facility in 40 CFR 270.28;

(2) The requirements for facility-wide corrective action in § 264.101 of this chapter;

(3) The requirements of 40 CFR 264.91 through 264.100.

(b)(1) The Regional Administrator, in issuing enforceable documents under § 265.121 in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice and opportunity for public comment:

(i) When the Agency becomes involved in a remediation at the facility as a regulatory or enforcement matter;

(ii) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and

(iii) At the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the Regional Administrator may consider that the facility has met the requirements of 40 CFR 270.1(c)(7), unless the facility qualifies for a modification to these public involvement procedures under paragraph (b)(2) or (3) of this section.

(2) If the Regional Administrator determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Regional Administrator may delay compliance with the requirements of paragraph (b)(1) of this section and implement the remedy immediately. However, the Regional Administrator must assure involvement of the public at the earliest opportunity, and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

(3) The Regional Administrator may allow a remediation initiated prior to October 22, 1998 to substitute for corrective action required under a post-closure permit even if the public involvement requirements of paragraph (b)(1) of this section have not been met so long as the Regional Administrator assures that notice and comment on the decision that no further remediation is necessary to protect human health and the environment takes place at the earliest reasonable opportunity after October 22, 1998.

6. Section 265.140 is amended by adding a new paragraph (d) to read as follows:

§ 265.140 Applicability.

* * * * *

(d) The Regional Administrator may replace all or part of the requirements of this subpart applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document (as

defined in 40 CFR 270.1(c)(7)), where the Regional Administrator:

(1) Prescribes alternative requirements for the regulated unit under § 265.90(f) and/or 265.110(d), and

(2) Determines that it is not necessary to apply the requirements of this subpart because the alternative financial assurance requirements will protect human health and the environment.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.l is amended by revising paragraph (c) introductory text and adding a new paragraph (c)(7) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) *Scope of the RCRA permit requirement.* RCRA requires a permit for the ''treatment,'' ''storage,'' and ''disposal'' of any ''hazardous waste'' as identified or listed in 40 CFR part 261. The terms ''treatment,'' ''storage,'' ''disposal,'' and ''hazardous waste'' are defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under § 270.1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as provided under paragraph (c)(7) of this section. If a post-closure permit is required, the permit must address applicable 40 CFR part 264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of this chapter. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

* * * * *

(7) *Enforceable documents for post-closure care.* At the discretion of the Regional Administrator, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of 40 CFR 265.121. ''Enforceable document'' means an order, a plan, or other document issued by EPA or by an authorized State under an authority that meets the requirements of 40 CFR 271.16(e) including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.

3. Section 270.14 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 270.14 Contents of part B: General requirements.

(a) * * * For post-closure permits, only the information specified in § 270.28 is required in Part B of the permit application.

* * * * *

4. A new § 270.28 is added to Subpart B to read as follows:

§ 270.28 Part B information requirements for post-closure permits.

For post-closure permits, the owner or operator is required to submit only the information specified in §§ 270.14(b)(1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), (c), and (d), unless the Regional Administrator determines that additional information from §§ 270.14, 270.16, 270.17, 270.18, 270.20, or 270.21 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in § 270.1(c)(7).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

2. Section 271.16 is amended by adding a new paragraph (e) to read as follows:

§ 271.16 Requirements for enforcement authority.

* * * * *

(e) Any State authority used to issue an enforceable document either in lieu of a post-closure permit as provided in 40 CFR 270.1(c)(7), or as a source of alternative requirements for regulated units, as provided under 40 CFR 264.90(f), 264.110(c), 264.140(d), 265.90(d), 265.110(d), and 265.140(d), shall have available the following remedies:

(1) Authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of the requirements of such documents, as well as authority to compel compliance with requirements for corrective action or other emergency response measures deemed necessary to protect human health and the environment; and

(2) Authority to access or sue to recover in court civil penalties, including fines, for violations of requirements in such documents.

[FR Doc. 98–28221 Filed 10–19–98; 10:16 am]

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federal register

Thursday
October 22, 1998

Part III

Office of Personnel Management

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 19

Federal Acquisition Regulation; Corrections; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97–07 Correction]

Federal Acquisition Regulation; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Correcting amendments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing amendments to FAC 97–07, FAR case 97–004B, Reform of Affirmative Action in Federal Procurement, published in the **Federal Register** at 63 FR 36120, July 1, 1998, to correct the language concerning the use of the price evaluation adjustment for small disadvantaged business concerns. The interim rule goes into effect on January 1, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte at (202) 501–4225, General Services Administration, FAR Secretariat, Washington, DC 20405.

List of Subjects in 48 CFR Part 19

Government Procurement.

Accordingly, 48 CFR Part 19 is corrected as follows:

PART 19—[AMENDED]

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. In section 19.201, paragraph (b), add the sentence following the sixth sentence to read as follows:

19.201 General policy.

* * * * *

(b) * * * The General Services Administration shall post the Department of Commerce determination at http://www.arnet.gov/References/sdbadjustments.htm. * * *

* * * * *

3. In 19.306, add the sentence at the end of paragraph (b) to read as follows:

19.306 Solicitation provision.

* * * * *

(b) * * * Use the provision with its Alternate I in solicitations for acquisitions for which a price evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis.

* * * * *

Dated: October 15, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–28177 Filed 10–21–98; 8:45 am]

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federal register

Thursday
October 22, 1998

Part IV

Department of Labor

Office of the Secretary

Office of Workers' Compensation Program

20 CFR Part 10

29 CFR Parts 70a and 71

Privacy Act of 1974: Implementation and Use and Disclosure of Federal Employees' Compensation Act Claims File Material; Final Rules

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Parts 70a and 71

RIN 1290–AA16

Protection of Individual Privacy in Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Labor hereby issues a final rule revising its existing regulations governing the conduct of Departmental employees and members of the public as it pertains to the treatment of records covered by the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The existing regulations were promulgated shortly after the Privacy Act was enacted over 20 years ago and are in need of revision. In their place new regulations are being issued. The intent of these final regulations is to conform Labor Department requirements with the caselaw which evolved under the Privacy Act over the past years and to provide clarity.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, telephone (202) 219–8188, ext. 135.

SUPPLEMENTARY INFORMATION: This final rule addresses access to records, records in exempt systems of records, fees, appeals from denials of access, requests for correction or amendment of records, records not subject to correction or amendment, requests for accounting of disclosure of records, emergency disclosures, security of systems of records, use and collection of social security numbers and taxpayer identifying numbers, and employee standards of conduct. Each of these subjects is comprehensively addressed in a separate section.

This final rule correlates with the Department's earlier publication of all current systems of records. On September 23, 1993, in 58 FR 49548, the Department published 137 systems of records, as well as various proposed routine uses. On December 13, 1993, those proposed systems became final and effective. This document is the final step in exempting a total of thirty-nine of those systems from access.

Below, accordingly, the Department hereby revises 29 CFR part 70a, its existing regulations governing implementation of the Privacy Act, by inserting in lieu thereof a new regulatory scheme set forth at 29 CFR part 71 which reflects the current state of the law.

I. Discussion

A. On July 28, 1997, at 62 FR 40406, the Department published the proposed rule which was the predecessor to this final rule. The period for public comment ended on September 26, 1997. No comments were received in response to that proposal. Accordingly, the proposal is being adopted in full, except for certain minor administrative changes, which are discussed at a later point in this Preamble.

B. The major effect of this rule is to add thirty-five systems of records to the exempt category. The current regulations were originally published in 1977, and set forth only four systems of records as being exempt from access. During the past twenty years numerous additional systems of records have been established. Thirty-five of these additional systems are investigative systems, and accordingly, should be exempt from certain requirements of the Privacy Act, by virtue of either subsections (j)(2), (k)(2) or (k)(5) of Title 5 of section 552a.

C. This final regulation, in contrast to the existing regulation, is divided into two subparts. Subpart A is entitled ''General'', and sets forth procedures. Subpart B contains the exemptions from access, and provides justification for the exemptions. The rule is much more detailed and more instructive to the public than is the existing rule.

D. The existing rule places the listing of the disclosure officers within the body of the rule. This rule places them in an appendix at the end of the rule. This structure is more readable for the public.

E. This rule, in contrast to the existing regulations, sets forth two government-wide systems. These systems are DOL/GOVT–1, which is the Office of Workers' Compensation Programs, Federal Employees' Compensation Act File, and DOL/GOVT–2, Job Corps Student Records. These systems of records are maintained by and are under the control of the Department of Labor, even though custody may be at the employing agency.

F. Finally, the rule increases the fees for photocopying from $.10 to $.15 per page, and it raises the minimum payment to $15.00.

II. Changes From the Proposed Rule

The Department is making a small number of non-substantive, administrative changes from the proposed rule. These administrative changes are as follows:

A. Recently, one of the Department's investigative systems of records was renamed due to a reorganization within the Department. In this connection, DOL/OAW–1, entitled Investigative Files, a system of records maintained by the Office of Labor-Management Standards, was renamed in a **Federal Register** document published on October 14, 1997 at 62 FR 53343 through 53347. That system of records was renamed as DOL/ESA–45, Investigative Files of the Office of Labor-Management Standards. That change was necessitated because the Office of Labor-Management Standards was transferred into the Employment Standards Administration from the Office of the American Workplace which Office was eliminated in a Departmental reorganization. In view of this renaming, this final rule has been changed at §§ 71.50(a)(1), and 71.51(a)(24) in order to present the various systems in alphabetical order. The renamed system, DOL/ESA–45, is now listed at § 71.50(a)(1), and at § 71.51(a)(18). This renumbering requires the renumbering of the codified entries which follow after paragraph (a)(1) of § 71.50, and after paragraph (a)(18) of § 71.51. Both lists are thus in alphabetical order.

B. The appendix to the rule has been updated. The Appendix contains the list of disclosure officers for the Department, and is entitled, Appendix to Part 71-Responsible Officials. The changes in the Appendix include the listing of an additional disclosure officer for the Bureau of Labor Statistics, and the updating of officers and office addresses for the Employment Standards Administration (ESA), the Occupational Safety and Health Administration (OSHA), the Pension and Welfare Benefits Administration (PWBA), and the Veterans' Employment and Training Service (VETS). In addition, the Wage and Hour Division, a component of the Employment Standards Administration, has deleted their District Directors from the list of responsible officials, and has also added two officials to its national office listing.

C. The Secretary of Labor finds that the above discussed administrative changes from the proposed rule do not require public comment under the Administrative Procedure Act (APA). This finding is based upon the fact that rules of agency organization, procedure and practice are exempt from public comment by virtue of section 553(b)(A) of the APA (5 U.S.C. 553(b)(A)). The changes from the proposal, being made in this document, are clearly within the purview of section 553(b)(A) of the APA.

III. Companion Document

In a companion document published elsewhere in today's issue of **Federal Register**, the Department's Office of Workers' Compensation Programs (OWCP), is issuing a final rule amending its regulation which governs the release, use and disclosure of documents relating to claims filed under the Federal Employees' Compensation Act (FECA). This amendment, which appears at 20 CFR 10.12, reserves to OWCP the exclusive authority for ruling on requests submitted by the subject of the FECA file for the correction or amendment of any record contained in such file. The reader should note that the provisions set forth at § 71.l(b) of this rule are identical to the provisions in the companion document. See § 10.12 of the companion document.

IV. Regulatory Procedures

Executive Order 12866

The final rule constitutes a ''significant regulatory action'' within the meaning of Executive Order 12866 of September 30, 1993 (58 FR 51735), because it meets the criteria of section 3(f)(4) of Executive Order 12866 for the following reasons. This final rule raises certain novel legal and policy issues arising out of legal mandates, the President's priorities, and principles set forth in the Executive Order.

Accordingly, because the rule meets the criteria of section 3(f)(4) of the Executive Order, and because the Office of Management and Budget (OMB) performs a special role under the Privacy Act, pursuant to the statute and as specified by OMB Circular A–130, this document has been submitted to OMB.

It should be noted that the rule does not require an assessment of anticipated monetary costs because the proposal will not have an annual monetary effect on the economy of $100 million or more, nor will it adversely affect the economy in any material way. This conclusion is based upon the fact that this final rule addresses access to records and related matters, and clearly does not affect the economy in a material fashion.

Regulatory Flexibility Act

This final rule will address access to records and related matters. The Privacy Act records that are maintained by the Department of Labor relate to individuals rather than small, or even large business or other types of entities. For the vast majority of instances, these records do not relate to sole proprietorships. In view of the above facts, the Secretary of Labor hereby certifies that this rule will not have a ''significant economic impact on a substantial number of small entities''. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 605(b)) is not required. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act since it does not contain a collection of information requirement.

Small Business Regulatory Enforcement Fairness Act of 1996

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

V. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, the Department will submit to Congress a report regarding the issuance of today's final rule prior to the Effective Date set forth in the outset of this document. The report will note the Office of Management and Budget's determination that this rule does not constitute a ''major rule'' under that Act. 5 U.S.C. 801, 805.

List of Subjects in 29 CFR Parts 70a and 71

Privacy.

For the reasons set out in the preamble, part 70a of subtitle A of Title 29 of the Code of Federal Regulations is redesignated as part 71 and revised to read as follows:

PART 70a—[REDESIGNATED AS PART 71 AND REVISED]

PART 71—PROTECTION OF INDIVIDUAL PRIVACY AND ACCESS TO RECORDS UNDER THE PRIVACY ACT OF 1974

Subpart A—General

Sec.
71.1 General provisions.
71.2 Request for access to records.
71.3 Responses by components to requests for access to records.
71.4 Form and content of component responses.
71.5 Access to records.
71.6 Fees for access to records.
71.7 Appeals from denials of access.
71.8 Preservation of records.
71.9 Requests for correction or amendment of records.
71.10 Certain records not subject to correction.
71.11 Emergency disclosures.
71.12 Use and collection of social security numbers.
71.13 Employee standards of conduct.
71.14 Use of nonpublic information.
71.15 Training.

Subpart B—Exemption of Records Systems Under the Privacy Act

71.50 General exemptions pursuant to subsection (j) of the Privacy Act.
71.51 Specific exemptions pursuant to subsection (k)(2) of the Privacy Act.
71.52 Specific exemptions pursuant to subsection (k)(5) of the Privacy Act.

Appendix A to Part 71—Responsible Officials

Authority: 5 U.S.C. 301; 5 U.S.C. 552a as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix.

Subpart A—General

§ 71.1 General provisions.

(a) *Purpose and scope.* This part contains the regulations of the U.S. Department of Labor implementing the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records which are contained in systems of records maintained by, or under the control of, the Department of Labor and which are retrieved by an individual's name or personal identifier. These regulations set forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him, may request correction or amendment of such records, or may seek an accounting of disclosures of such records by the Department. These regulations are applicable to each component of the Department.

(b) *Government-wide systems of records.* (1) DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File):

(i) All records, including claim forms, medical, investigative and other reports, statements of witnesses, and other papers relating to claims for compensation filed under the Federal Employees' Compensation Act (as amended and extended), are covered by the government-wide system of records entitled DOL/GOVT–1. This system is maintained by and under the control of the Employment Standards Administration's Office of Workers' Compensation Programs (OWCP), and, as such, all records contained in the OWCP claims file, as well as all copies of such documents retained and/or maintained by the injured worker's employing agency, are official records of the OWCP.

(ii) The protection, release, inspection and copying of records covered by DOL/GOVT–1 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as with part 70 of this subtitle, and with the notice of the systems of records and routine uses published in the **Federal Register**. All questions relating to access/disclosure, and/or the amendment of FECA records maintained by the OWCP or an employing agency, are to be resolved in accordance with this part.

(iii)(A) While an employing agency may establish procedures that an injured employee or beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor.

(B) Any administrative appeal taken from a denial issued by the employing agency shall be filed with the Solicitor of Labor in accordance with §§ 71.7 and 71.9 of this part.

(iv) No agency other than the OWCP has authority to issue determinations in response to requests for the correction or amendment of records contained in or covered by DOL/GOVT–1. Any request for correction or amendment received by an employing agency must be referred to the OWCP for review and decision.

(2) For the government-wide system of records entitled DOL/GOVT–2 (Job Corps Student Records), a system maintained by and under the control of the Employment and Training Administration, the regulations of this Department shall govern, including the procedure for requesting access to, or amendment of the records, as well as appeals therefrom, shall govern.

(c) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) *Agency* has the meaning set forth in 5 U.S.C. 552(f).

(2) *Component* means each separate agency, bureau, office, board, division, commission, service, or administration of the Department of Labor, as well as each agency which possesses records covered by a DOL government-wide system of records.

(3) *Individual Data Subject* means the individual by whose name or identifier the subject record is retrieved.

(4) *Record* means any item, collection, or grouping of information about an individual which is maintained by any component within a system of records and which contains the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(5) *Requester* means an individual who makes either a request for access, a request for correction or amendment, or a request for an accounting.

(6) *Routine use* has the meaning set forth in 5 U.S.C. 552a(7).

(7) *Statistical record* has the meaning set forth in 5 U.S.C. 552a(6).

(8) *System of records* means a group of any records under the control of the Department or any component from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

(9) *Under the control of* means those official records for which the agency is officially responsible and either has in its possession or exercises dominion over. This excludes those records which, although in the physical possession of agency employees and used by them in performing official functions, are not, in fact, agency records. Uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no dominion or control (e.g., personal telephone list) are not *agency records* for purposes of this part.

(10) *He, his,* and *him* include ''she'', ''hers'' and ''her''.

§ 71.2 Requests for access to records.

(a) *Procedure for making requests for access to records.* An individual, or legal representative acting on his behalf, may request access to a record about himself by appearing in person or by writing to the component that maintains the record. (*See* appendix A to this part which lists the components of the Department of Labor and their addresses.) A requester in need of guidance in defining his request may write to the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210–0002. A request should be addressed to the component that maintains the requested record. Both the envelope and the request itself should be marked: ''Privacy Act Request.''

(b) *Description of records sought.* A request for access to records must describe the records sought in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept.

(c) *Agreement to pay fees.* The filing of a request for access to a record under this subpart shall be deemed to constitute an agreement to pay all applicable fees charged under § 71.6 up to $25.00. The component responsible for responding to the request shall confirm this agreement in its letter of acknowledgment to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

(d) *Verification of identity.* Any individual who submits a request for access to records must verify his identity in one of the following ways:

(1) Any requester making a request in writing must state in his request his full name, and current address. In addition, a requester must provide with his request an example of his signature, which shall be notarized, or signed as an unsworn declaration under penalty of perjury, pursuant to 28 U.S.C. 1746. In order to facilitate the identification of the requested records, a requester may also include in his request his Social Security number.

(2) Any requester submitting a request in person may provide to the component a form of official photographic identification, such as a passport, an identification badge or a driver's license which contains the photograph of the requester. If a requester is unable to produce a form of photographic identification, he may provide to the component two or more acceptable forms of identification bearing his name and address. In all cases, sufficient identification must be presented to confirm that the requester is the individual data subject.

(e) *Verification of guardianship.* The parent, guardian, or representative of a minor or the guardian or representative of a person judicially determined to be

incompetent who submits a request for access to the records of the minor or incompetent must establish:

(1) His identity, as required in paragraph (d) of this section,

(2) That the requester is the parent, guardian, or representative of the subject of the record, which may be proved by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing the guardianship, and

(3) That he seeks to act on behalf of the subject of the record.

(f) The disclosure officer may waive the requirements set forth in paragraphs (d) and (e) of this section when he deems such action to be appropriate, and may substitute in lieu thereof, other reasonable means of identification.

§ 71.3 Responses by components to requests for access to records.

(a) *In general.* Except as otherwise provided in this section, the component that:

(1) First receives a request for access to a record, and

(2) Has possession of the requested record is the component ordinarily responsible for responding to the request.

(b) *Authority to grant or deny requests.* The head of a component, or his designee (*i.e.* disclosure officer), is authorized to make an initial grant or denial of any request for access to a record in the possession of that component.

(c) *Processing of requests for access not properly addressed.* A request for access that is not properly addressed as specified in § 71.2 shall be forwarded to the Assistant Secretary for Administration and Management, who shall forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be deemed not to have been received by the Department until the Assistant Secretary for Administration and Management has forwarded the request to the appropriate component which has the record and that component has received the request. When the component receives an improperly addressed request, it shall notify the requester of the date on which it received the request. Accordingly, a request for access shall be deemed received on the date that it is received in the appropriate component.

(d) *Date for determining responsive records.* In determining the extent to which records are responsive to a request for access, a component ordinarily will include only those records within the component's possession and control as of the date of its receipt of the request.

(e) *First party requests.* A request for access by the individual data subject for his or her own records shall be processed both under the Freedom of Information Act (FOIA) and the Privacy Act (PA).

§ 71.4 Form and content of component responses.

(a) *Form of notice granting request for access.* A request by the individual data subject for access to his or her own records shall not be denied unless both a Privacy Act exemption and a Freedom of Information Act exemption apply to the requested records. A component shall make a determination within 30 days to grant or deny a request for access in whole or in part. If the request is granted in whole, the component shall so notify the requester in writing. The notice shall describe the manner in which access to the record will be granted and shall inform the requester of any fees to be charged in accordance with § 71.6.

(b) *Form of notice denying request for access.* A component denying a request for access in whole or in part shall so notify the requester in writing. The notice, signed by the responsible agency official, shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the Privacy Act and FOIA exemption or exemptions which the component has relied upon in denying the request; and

(3) A statement that the denial may be appealed under § 71.7(a), and a description of the requirements of that paragraph.

(c) *Record cannot be located.* If no records are found which are responsive to the request, the component shall so notify the requester in writing. Such notification by the component shall inform the requester that, if the requester considers this response to be a denial of their request, the requester has a right to appeal to the Solicitor of Labor, within ninety days, as set forth in § 71.7.

(d) *Medical records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the disclosure officer shall, if deemed necessary because of possible harm to the individual, advise the individual that the Department of Labor believes that the records should be provided to a physician designated in writing by the individual. In addition, the Department shall request the individual to designate such a physician. Upon receipt of the designation, the disclosure officer will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity.

§ 71.5 Access to records.

(a) *Manner of access.* A component that has made a determination to grant a request for access shall grant the requester access to the requested record either by providing the requester with a copy of the record, or making the record available for inspection by the requester at a reasonable time and place. The component shall charge the requester only duplication costs in accordance with the provisions of § 71.6. If a component provides access to a record by making the record available for inspection by the requester, the manner of such inspection shall not unreasonably disrupt the operations of the component.

(b) *Accompanying person.* A requester appearing in person to review his own records may be accompanied by another individual of his own choosing. The requester shall provide the Department with his or her written consent to disclose the record to the accompanying person.

§ 71.6 Fees for access to records.

(a) *When charged.* A component shall charge fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552a(f)(5) for the copying of records unless the component, in its discretion, waives or reduces the fees for good cause shown. A component shall charge fees at the rate of $0.15 per page. In accordance with the provisions of the Freedom of Information Act, the first 100 pages of copying shall be furnished without charge. For materials other than paper copies, the component may charge the direct costs of reproduction, but only if the requester has been notified of such costs before they are incurred. Fees shall not be charged where they would amount, in the aggregate, for one request or for a series of related requests, to less than $15.00. Notwithstanding any other provision of this paragraph, the first copy of an individual's Privacy Act record shall be provided to the individual at no cost.

(b) *Notice of estimated fees amounting to between $25 to $250.* When a component determines or estimates that the fees to be charged under this section may amount to between $25 to $250, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fee, unless the requester has indicated in advance his willingness to pay a fee as high as that anticipated.

(c) *Notice of estimated fees in excess of $250.* When a component determines or estimates that the fees to be charged under this section may amount to more than $250, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fee, unless the requester has indicated in advance his willingness to pay a fee as high as that estimated. If the fee is estimated to be in excess of $250, then the agency may require payment in advance. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) Where the estimated fee exceeds $250 and a component has so notified the requester, the component will be deemed not to have received the request for access to records until the requester has paid the anticipated fee, in full or in part. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel with the object of reformulating his request to meet his needs at a lower cost.

(d) *Form of payment.* Requesters must pay fees by cash, check or money order payable to either the Treasury of the United States, or the U.S. Department of Labor. However, the Department shall not require advance payment in any case where the fee is under $250, except that where a requester has previously failed to pay a fee charged under this part, the requester must pay the component or the Department the full amount owed and make an advance deposit of the full amount of any estimated fee before a component shall be required to process a new or pending request for access from that requester.

§ 71.7 Appeals from denials of access.

(a) *Appeals to the Solicitor of Labor.* When a component denies in whole or in part a request for access to records, the requester may appeal the denial to the Solicitor of Labor within 90 days of his receipt of the notice denying his request. An appeal to the Solicitor of Labor shall be made in writing, addressed to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC. 20210–0002. Both the envelope and the letter of appeal itself must be clearly marked: ''Privacy Act Appeal.'' An appeal not so addressed and marked shall be forwarded to the Office of the Solicitor as soon as it is identified as an appeal under the Privacy Act. An appeal that is improperly addressed shall be deemed not to have been received by the Department until the Office of the Solicitor receives the appeal.

(b) *Form of action on appeal.* The disposition of an appeal shall be in writing. A written decision affirming in whole or in part the denial of a request for access shall include a brief statement of the reason or reasons for the affirmation, including each Privacy Act and FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the U.S. District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request for access is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(c) *Delegation of Authority by the Solicitor of Labor.* The Solicitor of Labor is authorized to delegate his authority to decide appeals from any and all denials of access to other senior attorneys within the Office of the Solicitor.

§ 71.8 Preservation of records.

Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to title 44 of the U.S. Code and record schedules approved by the National Archives and Records Administration, and otherwise in accordance with retention requirements as published in the agency's system of records. Under no circumstances shall records be destroyed while they are the subject of a pending request for access, appeal, or lawsuit under the Act.

§ 71.9 Request for correction or amendment of records.

(a) *How made.* An individual may submit a request for correction or amendment of a record pertaining to him. The request must be in writing and must be addressed to the component that maintains the record. (Appendix A of this part lists the components of the Department and their addresses.) The request must identify the particular record in question, state the correction or amendment sought, and set forth the justification for the change. Both the envelope and the request itself must be clearly marked: ''Privacy Act Amendment Request.''

(b) *Initial determination.* Within 30 working days of receiving a request for correction or amendment, a component shall notify the requester whether his request will be granted or denied, in whole or in part. If the component grants the request in whole or in part, it shall send the requester a copy of the amended record, in releasable form, as proof of the change. If the component denies the request in whole or in part, it shall notify the requester in writing of the denial. The notice of denial shall state the reason or reasons for the denial and advise the requester of his right to appeal.

(c) *Appeals.* When a request for correction or amendment is denied in whole or in part, the requester may appeal the denial to the Solicitor of Labor within 90 days of his receipt of the notice denying his request. An appeal to the Solicitor of Labor shall be made in writing, shall set forth the specific item of information sought to be corrected or amended, and shall include any documentation said to justify the change. An appeal shall be addressed to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210–0002. Both the envelope and the letter of appeal itself must be clearly marked: ''Privacy Act Amendment Appeal.''

(d) *Determination on appeal.* The Solicitor of Labor shall decide all appeals from denials of requests to correct or amend records. All such appeals shall be decided within 30 working days of receipt of the appeal, unless there is good cause shown to extend this period. The appellant shall be notified if the period for decision has been extended.

(1) If the denial of a request is affirmed on appeal, the requester shall be so notified in writing and advised of:

(i) The reason or reasons the denial has been affirmed,

(ii) The requester's right to file a Statement of Disagreement, as provided in paragraph (f) of this section, and

(iii) The requester's right to obtain judicial review of the denial in the U.S. District Court for the judicial district in which the requester resides or has its principal place of business, the judicial district in which the record is located, or the District of Columbia.

(2) If the denial is reversed on appeal, the requester shall be so notified and the request for correction or amendment shall be promptly remanded to the component that denied the request for processing in accordance with the decision on appeal.

(e) *Delegation of Authority by the Solicitor of Labor.* The Solicitor of Labor is authorized to delegate his or her authority to decide any and all appeals from denials of requests to correct or amend records to other senior attorneys within the Office of the Solicitor.

(f) *Statements of disagreement.* A requester whose request or appeal under this section has been denied shall have the right to file a Statement of Disagreement with the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210–0002, within 30 days of receiving notice of denial. Statements of Disagreement may not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for condensation. Upon receipt of a Statement of Disagreement under this section, the agency shall promptly have the statement included in the record and shall have the disputed record marked so as to indicate that a Statement of Disagreement has been filed.

(g) *Notices of correction or amendment or disagreement.* Within 30 working days of the correction or amendment of a record, the component that maintains the record shall advise all components or agencies to which it previously disclosed the record that the record has been amended. Whenever an individual has filed a Statement of Disagreement, a component shall append a copy of the Statement to the disputed record whenever the record is disclosed. The component may also append to the disputed record a written statement giving the component's reasons for denying the request to correct or amend the record.

§ 71.10 Certain records not subject to correction.

Certain records are not subject to correction or amendment. These include, but are not limited to:

(a) Transcripts of testimony given under oath or written statements made under oath;

(b) Transcripts or decisions of grand jury, administrative, judicial, or quasi-judicial proceedings which constitute the official record of such proceedings;

(c) Records duly exempted from correction pursuant to 5 U.S.C. 552a(j) or 552a(k) by rulemaking promulgated under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*)

§ 71.11 Emergency disclosures.

If the record of an individual has been disclosed to any person under compelling circumstances affecting the health or safety of any person, as described in 5 U.S.C. 552a(b)(8), the individual to whom the record pertains shall be notified of the disclosure at his last known address within 10 working days. The notice of such disclosure shall be in writing and shall state the nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. The officer who made or authorized the disclosure shall be responsible for providing such notification.

§ 71.12 Use and collection of social security numbers.

(a) Each component unit that requests an individual to disclose his social security account number shall provide the individual, in writing, with the following information:

(1) The statute, regulation, Executive Order or other authority under which the number is solicited;

(2) Whether the disclosure is mandatory or voluntary; and

(3) The consequences, if any, to the individual should he or she refuse or fail to disclose the number.

(b) Neither the Department nor any of its component units shall, in the absence of specific federal statutory authority, deny to an individual any right, benefit or privilege provided by law solely because of such individual's refusal to disclose his social security account number.

(c) The head of each component unit shall ensure that employees authorized to collect social security account numbers or tax identifying numbers, are aware of the statutory or other basis for collecting such information, of the uses to which such numbers may be put, and of the consequences, if any, that might follow if a person refuses to disclose the requested number.

§ 71.13 Employee standards of conduct.

(a) Each component shall inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Each component also shall notify its employees that they have a duty to:

(1) Protect the security of records,

(2) Ensure the accuracy, relevance, timeliness, and completeness of records,

(3) Avoid the unauthorized disclosure, either verbal or written, of records, and

(4) Ensure that the component maintains no system of records without public notice.

(b) Except to the extent that the Privacy Act permits such activities, an employee of the Department of Labor shall:

(1) Not collect information of a personal nature from individuals unless the employee is authorized to collect such information to perform a function or discharge a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to the performance of the functions or to the discharge of the responsibilities of the Department;

(3) Collect information about an individual directly from that individual, whenever practicable;

(4) Inform each individual from whom information is collected of:

(i) The legal authority that authorizes the Department to collect such information,

(ii) The principal purposes for which the Department intends to use the information,

(iii) The routine uses the Department may make of the information, and

(iv) The practical and legal effects upon the individual of not furnishing the information;

(5) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Maintain no record describing how any individual exercises rights guaranteed by the First Amendment to the United States Constitution, unless:

(i) The individual has volunteered such information for his own benefit,

(ii) A statute expressly authorizes the Department to collect, maintain, use, or disseminate the information, or

(iii) The individual's beliefs, activities, or membership are pertinent to and within the scope of an authorized law enforcement activity;

(7) Notify the head of the component of the existence or development of any system of records that has not been disclosed to the public;

(8) Disclose no record to anyone, for any use, unless authorized by the Act;

(9) Maintain and use records with care to prevent the inadvertent disclosure of a record to anyone; and

(10) Notify the head of the component of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit the Department to maintain.

§ 71.14 Use of nonpublic information.

(a) *Prohibition.* (1) An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendations, or by knowing unauthorized disclosure. *See* 5 CFR 2635.703.

(2) Nonpublic information is information that an employee gains by reason of Federal employment that he knows or reasonably should know has not been made available to the general

public. Nonpublic information includes information contained in a Privacy Act system of records which an individual knew or should have known:

(i) Is normally exempt from disclosure under Exemptions 6 or 7(C) of the Freedom of Information Act, or is otherwise protected from disclosure by statute, Executive Order or regulation;

(ii) Has not actually been disseminated to the general public and is not authorized to be made available to the public upon request.

(b) *Sanctions.* Any DOL employee who willfully discloses any information or records from any file that contains individually-identifiable information to any person or agency not entitled to receive it, and the disclosure of which is prohibited by the Privacy Act or by rules or regulations established thereunder, and who, knowing the disclosure of the specific material is so prohibited, will be subject to disciplinary action, as appropriate.

(c) *Public Disclosures by Third Parties of DOL Privacy Act Records.* When Labor Department records subject to the Privacy Act are disclosed to third parties, and as a condition of the disclosure of such records, the person or entity to whom the records are furnished is expressly prohibited from further disseminating the information, any further dissemination of the information so furnished to such person or entity may be subject to the penalties set forth in 18 U.S.C. 641.

§ 71.15 Training.

All DOL systems managers, disclosure officers, and employees with responsibilities under the Privacy Act shall periodically attend training offered by the Department on the Privacy Act.

Subpart B—Exemption of Records Systems Under the Privacy Act

§ 71.50 General exemptions pursuant to subsection (j) of the Privacy Act.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(j)(2) because they are maintained by a component of the agency or subcomponent which performs as its principal function the enforcement of criminal laws, and they contain investigatory material compiled for criminal law enforcement purposes. Accordingly, these systems of records are exempt from the following subsections of 552a of title 5 U.S. Code: (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G), (H), and (I), (e)(5) and (8), (f) and (g).

(1) DOL/ESA–45 (Investigative Files of the Office of Labor-Management Standards), a system of records maintained by the Office of Labor-Management Standards.

(2) DOL/OIG–1 (General Investigative Files, and Subject Title Index, USDOL/OIG), a system of records maintained by the Office of the Inspector General (OIG).

(3) DOL/OIG–2 (Freedom of Information/Privacy Acts Records), a system of records maintained by the OIG.

(4) DOL/OIG–3 (Case Development Records), a system of records maintained by the OIG.

(5) DOL/OIG–5 (Investigative Case Tracking Systems/Audit Information Reporting Systems, USDOL/OIG), a system of records maintained by the OIG.

(6) DOL/MSHA–20 (Civil/Criminal Investigations), a system of records maintained by the Mine Safety and Health Administration.

(7) DOL/PWBA–2 (Office of Enforcement Index Cards and Investigation Files), a system of records maintained by the Pension and Welfare Benefits Administration.

(b) This exemption applies to the extent that information in these systems of records is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(c) These systems are exempted for the reasons set forth in paragraphs (c)(1) through (12) of this section, from the following subsections of 5 U.S.C. 552a:

(1) *Subsection (c)(3).* The release of the disclosure accounting would present a serious impediment to law enforcement by permitting the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation and the information obtained, or to identify witnesses and informants.

(2) *Subsection (c)(4).* Since an exemption is being claimed for subsection (d) of the Act (Access to Records), this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) *Subsection (d).* Access to records contained in these systems would inform the subject of an actual or potential criminal investigation of the existence of that investigation, of the nature and scope of the investigation, of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection, apprehension, and prosecution. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and imposes an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal and related law enforcement investigations, cases, and matters, the agency will occasionally obtain information concerning actual or potential violations of law that may not be technically within its statutory or other authority, or it may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain some or all of such information since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies. Moreover, it is difficult to know during the course of an investigation what is relevant and necessary. In this connection, facts or evidence may not seem relevant at first, but later in the investigation, their relevance is borne out.

(5) *Subsection (e)(2).* To collect information to the greatest extent practicable from the subject individual of a criminal investigation or prosecution would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, improperly influence witnesses, destroy evidence, or fabricate testimony.

(6) *Subsection (e)(3).* To provide individuals supplying information with a form which includes the information required by subsection (e)(3) would constitute a serious impediment to law enforcement, i.e., it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent that these systems are exempt from the access provisions of subsection (d) and the rules provisions of subsection (f).

(8) *Subsection (e)(4)(I).* The categories of sources of the records in these systems have been published in the

Federal Register in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9) *Subsection (e)(5).* In the collection of information for criminal enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. Furthermore, the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal information and related data necessary for effective law enforcement.

(10) *Subsection (e)(8).* The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11) *Subsection (f).* Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under investigation or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsections (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12) *Subsection (g).* Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

§ 71.51 Specific exemptions pursuant to subsection (k)(2) of the Privacy Act.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly the following systems of records are exempt from (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(I) and (f) of 5 U.S.C. 552a.

(1) DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File), a system of records maintained by the Employment Standards Administration (ESA).

(2) DOL/OASAM–17 (Equal Employment Opportunity Complaint Files), a system of records maintained by the Office of the Assistant Secretary for Administration and Management (OASAM).

(3) DOL/OASAM–19 (Negotiated Grievance Procedure and Unfair Labor Practice Files), a system of records maintained by OASAM.

(4) DOL/OASAM–20 (Personnel Investigation Records), a system of records maintained by OASAM.

(5) DOL/OASAM–22 (Directorate of Civil Rights Discrimination Complaint Case Files), a system of records maintained by OASAM.

(6) DOL/OASAM–29 (OASAM Employee Administrative Investigation File), a system of records maintained by OASAM.

(7) DOL/BLS–7 (BLS Employee Conduct Investigation), a system of records maintained by the Bureau of Labor Statistics (BLS).

(8) DOL/ESA–2 (Office of Federal Contract Compliance Programs, Complaint Files), a system of records maintained by ESA.

(9) DOL/ESA–25 (Office of Federal Contract Compliance Programs, Management Information Systems (OFCCP/MIS), a system of records maintained by ESA.

(10) DOL/ESA–26 (Office of Workers' Compensation Programs, Longshore and Harbor Workers' Compensation Act Investigation Files), a system of records maintained by ESA.

(11) DOL/ESA–27 (Office of Workers' Compensation Programs, Longshore Act Claimant Representatives), a system of records maintained by ESA.

(12) DOL/ESA–28 (Office of Workers' Compensation Programs, Physicians and Health Care Providers Excluded under the Longshore Act), a system of records maintained by ESA.

(13) DOL/ESA–29 (Office of Workers' Compensation Programs, Physicians and Health Care Providers Excluded under the Federal Employees' Compensation Act), a system of records maintained by ESA.

(14) DOL/ESA–32 (ESA, Complaint and Employee Conduct Investigations), a system of records maintained by ESA.

(15) DOL/ESA–36 (ESA, Wage and Hour Division, MSPA/FLCRA Civil Money Penalty Record Files), a system of records maintained by ESA.

(16) DOL/ESA–40 (ESA, Wage and Hour Division, MSPA/FLCRA Tracer List), a system of records maintained by ESA.

(17) DOL/ESA–41 (ESA, Wage and Hour Division, MSPA/FLCRA Certificate Action Record Files), a system of records maintained by ESA.

(18) DOL/ESA–45 (Investigative Files of the Office of Labor-Management Standards), a system maintained by the Office of Labor-Management Standards.

(19) DOL/ETA–16 (Employment and Training Administration Investigatory File), a system of records maintained by the Employment and Training Administration (ETA).

(20) DOL/ETA–22 (ETA Employee Conduct Investigations), a system of records maintained by ETA.

(21) DOL/OIG–1 (General Investigative Files, and Subject Title Index, USDOL/OIG), a system of records maintained by the Office of the Inspector General (OIG).

(22) DOL/OIG–2 (Freedom of Information/Privacy Acts Records), a system of records maintained by the OIG.

(23) DOL/OIG–3 (Case Development Records), a system of records maintained by OIG.

(24) DOL/OIG–5 (Investigative Case Tracking Systems/Audit Information Reporting Systems, USDOL/OIG), a system of records maintained by OIG.

(25) DOL/MSHA–10 (Discrimination Investigations), a system of records maintained by the Mine Safety and Health Administration (MSHA).

(26) DOL/MSHA–19 (Employee Conduct Investigations), a system of records maintained by MSHA.

(27) DOL/MSHA–20 (Civil/Criminal Investigations), a system of records maintained by MSHA.

(28) DOL/OSHA–1 (Discrimination Complaint File), a system of records maintained by the Occupational Safety and Health Administration (OSHA).

(29) DOL/OSHA–12 (Employee Conduct Investigations), a system of records maintained by OSHA.

(30) DOL/PWBA–2 (Office of Enforcement Index Cards and Investigation Files), a system of records maintained by the Pension and Welfare Benefits Administration (PWBA).

(31) DOL/PWBA–7 (PWBA Employee Conduct Investigations), a system of records maintained by PWBA.

(32) DOL/SOL–8 (Special Litigation Files), a system of records maintained by the Office of the Solicitor (SOL).

(33) DOL/SOL–9 (Freedom of Information Act and Privacy Act Appeals Files), a system of records maintained by SOL.

(34) DOL/SOL–11 (Division of Civil Rights Defensive Litigation Files), a system of records maintained by SOL.

(35) DOL/SOL–12 (Third-party Recovery Files), a system of records maintained by SOL.

(36) DOL/SOL–13 (SOL Employee Conduct Investigations), a system of records maintained by SOL.

(37) DOL/SOL–15 (Solicitor's Office Litigation Files), a system of records maintained by SOL.

(38) DOL/VETS–1 (Veterans' Reemployment Complaint File—VETS–1), a system of records maintained by the Veterans' Employment and Training Service (VETS).

(39) DOL/VETS–2 (Veterans' Preference Complaint File), a system of records maintained by VETS.

(b) This exemption applies to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(c) The systems of records listed under paragraphs (a)(1) through (a)(39) of this section are exempted for the reasons set forth in paragraphs (c) (1) through (6) of this section, from the following subsections of 5 U.S.C. 552a:

(1) *Subsection (c)(3).* The release of the disclosure accounting, for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would enable the subject of an investigation of an actual or potential civil case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2) *Subsections (d)(1), (d)(2), (d)(3), and (d)(4).* Access to the records contained in these systems would inform the subject of an actual or potential civil investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3) *Subsection (e)(1).* The notices for these systems of records published in the **Federal Register** set forth the basic statutory or related authority for maintenance of these systems. However, in the course of civil and related law enforcement investigations, cases and matters, the agency will occasionally obtain information concerning actual or potential violations of law that are not strictly or technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific case. In the interests of effective law enforcement, it is necessary to retain some or all of such information in this system of records since it can aid in establishing patterns of compliance and can provide valuable leads for Federal and other law enforcement agencies. Moreover, it is difficult to know during the course of an investigation what is relevant and necessary. In this connection, facts or evidence may not seem relevant at first, but later in the investigation, their relevance is borne out.

(4) *Subsections (e)(4) (G) and (H).* Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(5) *Subsection (e)(4)(I).* The categories of sources of the records in these systems have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of civil law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(6) *Subsection (f).* Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act (Access to Records), the rules required pursuant to subsections (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

§ 71.53 Specific exemptions pursuant to subsection (k)(5) of the Privacy Act.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(5) because they contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express

promise that the identity of the source would be held in confidence, or, prior to January 1, 1975 , under an implied promise that the identity of the source would be held in confidence. Accordingly, these systems of records are exempt from (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(I) and (f) of 5 U.S.C. 552a.

(1) DOL/OASAM–20 (Personnel Investigation Records), a system of records maintained by the Office of the Assistant Secretary for Administration and Management (OASAM).

(2) DOL/OIG–1 (General Investigative Files, and Subject Title Index, USDOL/OIG), a system of records maintained by the Office of the Inspector General (OIG).

(3) DOL/OIG–2 (Freedom of Information/Privacy Acts Records), a system of records maintained by the OIG.

(4) DOL/OIG–3 (Case Development Records), a system of records maintained by the OIG.

(5) DOL/OIG–5 (Investigative Case Tracking Systems/Audit Information Reporting Systems, USDOL/OIG), a system of records maintained by the OIG.

(b) This exemption applies to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(c) The systems of records listed under paragraphs (a)(1) through (a)(5) of this section are exempted for the reasons set forth in paragraphs (c)(1) through (6) of this section, from the following subsections of 5 U.S.C. 552a:

(1) *Subsection (c)(3).* The release of the disclosure accounting, for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for this system of records, would enable the subject of an investigation of an actual or potential civil case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to the investigation. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2) *Subsections (d)(1), (d)(2), (d)(3), and (d)(4).* Access to the records contained in these systems would inform the subject of an actual or potential investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection. This result, therefore, would constitute a serious impediment to effective investigation not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3) *Subsection (e)(1).* The notices for these systems of records published in the **Federal Register** set forth the basic statutory or related authority for maintenance of this system. However, in the course of civil and related investigations, cases and matters, the agency will occasionally obtain information concerning actual or potential violations of law that are not strictly or technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific case. In the interests of effective investigation, it is necessary to retain some or all of such information in these systems of records since it can aid in establishing patterns of compliance and can provide valuable leads for Federal and other law enforcement agencies. Moreover, it is difficult to know during the course of an investigation what is relevant and necessary. In this connection, facts or evidence may not seem relevant at first, but later in the investigation, their relevance is borne out.

(4) *Subsections (e)(4)(G) and (H).* Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(5) *Subsection (e)(4)(I).* The categories of sources of the records in these systems have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of investigatory information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(6) *Subsection (f).* Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential investigation must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act (Access to Records), the rules required pursuant to subsections (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

Appendix A to Part 71—Responsible Officials

(a)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. This list is provided for information and to assist requesters in locating the office most likely to have responsive records. The officials may be changed by appropriate designation. Unless otherwise specified, the mailing addresses of the officials shall be: U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210–0002.

Secretary of Labor, *Attention:* Assistant Secretary for Administration and Management (OASAM)
Deputy Solicitor, Office of the Solicitor
Chief Administrative Law Judge, Office of the Administrative Law Judges (OALJs)
Legal Counsel (OALJs)
Assistant Secretary for Administration and Management (OASAM)
Deputy Assistant Secretary for Administration and Management (OASAM)
Director, Business Operations Center, OASAM
Director, Civil Rights Center, OASAM
Director, Human Resources Center, OASAM
Director, Information Technology Center, OASAM
Director, Worklife Center, OASAM
Director, Reinvention Center, OASAM
Director, Safety and Health Center, OASAM
Director, Conference and Services Center, OASAM
Chief Financial Officer, Office of the Chief Financial Officer
Associate Deputy Secretary for Adjudication
Chairperson, Administrative Review Board (ARB)
Chief Administrative Appeals Judge, Benefits Review Board (BRB)
Chairperson, Employees' Compensation Appeals Board (ECAB)
Executive Director, Office of Adjudicatory Services (OAS)

Director, Office of Small Business Programs
Director, Women's Bureau
Assistant Secretary Office of Congressional and Intergovernmental Affairs (OCIA)
Deputy Assistant Secretary, OCIA
Assistant Secretary for Policy (ASP)
Deputy Assistant Secretary, ASP
Assistant Secretary, Office of Public Affairs (OPA)
Deputy Assistant Secretary, OPA
Disclosure Officer, Office of the Inspector General (OIG)
Director, Office of Management, Administration and Planning Bureau of International Labor Affairs (ILAB)
Secretary, U.S. National Administrative Office (USNAO)
Assistant Secretary for Employment Standards, Employment Standards Administration (ESA)
Director, Office of Management, Administration and Planning (OMAP), ESA
Director, Equal Employment Opportunity Unit, ESA
Director, Office of Public Affairs, OMAP, ESA
Director, Division of Human Resources Management, OMAP, ESA
Director, Division of Legislative and Regulatory Analysis, OMAP, ESA
Director, Office of Workers' Compensation Programs (OWCP), ESA
Special Assistant to the Director, OWCP, ESA
Director for Federal Employees' Compensation, OWCP, ESA
Director for Longshore and Harbor Workers' Compensation, OWCP, ESA
Director for Coal Mine Workers' Compensation, OWCP, ESA
Administrator, Wage and Hour Division, ESA
Deputy Administrator, Wage and Hour Division, ESA
National Office Program Administrator, Wage and Hour Division, ESA
Deputy National Office Program Administrator, Wage and Hour Division, ESA
Director, Office of Enforcement Policy, Wage and Hour Division, ESA
Deputy Director, Office of Enforcement Policy, Wage and Hour Division, ESA
Director, Office of Planning and Analysis, Wage and Hour Division ESA
Director, Office of Wage Determinations, Wage and Hour Division ESA
Director, Office of External Affairs, Wage and Hour Division, ESA
Director, Office of Quality and Human Resources, Wage and Hour Division, ESA
Deputy Assistant Secretary for Federal Contract Compliance Programs (OFCCP), ESA
Deputy Director, Office of Federal Contract Compliance Programs, OFCCP, ESA
Director, Division of Policy, Planning and Program Development, OFCCP, ESA
Deputy Director, Division of Policy, Planning and Program Development, OFCCP, ESA
Director, Division of Program Operations, OFCCP, ESA
Deputy Director, Division of Program Operations, OFCCP, ESA
Director, Division of Management and Administrative Programs, OFCCP, ESA
Deputy Assistant Secretary for Labor-Management Standards, ESA
Assistant Secretary of Labor, Employment and Training Administration (ETA)
Deputy Assistant Secretary of Labor, Employment and Training Administration (ETA)
Administrator, Office of Financial and Administrative Management, ETA
Director, Office of Management, Information, and Support, ETA
Director, Office of Human Resources, ETA
Director, Office of the Comptroller, ETA
Director, Office of Grants and Contracts Management, ETA
Chief, Division of Resolution and Appeals, ETA
Chief, Division of Acquisition and Assistance, ETA
Chief, Division of Financial and Grant Management Policy and Review, ETA
Director, Office of Regional Management, ETA
Administrator, Office of Policy and Research, ETA
Director, Unemployment Insurance Service, ETA
Director, United States Employment Service, ETA
Chief, Division of Foreign Labor Certifications, ETA
Administrator, Office of Job Training Programs, ETA
Director, Office of Welfare-to-Work Programs, ETA
Director, Office of Employment and Training Programs, ETA
Director, National Office of School to Work Opportunities, ETA
Director, Office of Job Corps, ETA
Director, Office of National Programs, ETA
Director, Bureau of Apprenticeship and Training, ETA
Administrator, Office of Work-Based Learning, ETA
Program Manager, Division of Policy and Analysis, Office of Worker Retraining and Adjustment Programs, ETA
Program Manager, Division of Program Implementation, Office of Worker Retraining and Adjustment Programs, ETA
Director, Office of Trade Adjustment Assistance, ETA
Director, Office of One-Stop/LMI, ETA
Director, Office of Equal Employment Opportunity, Occupational Safety and Health Administration (OSHA)
Director, Office of Information and Consumer Affairs, OSHA
Director, Directorate Office of Construction, OSHA
Director, Directorate of Federal-State Operations, OSHA
Director, Directorate of Policy, OSHA
Director, Directorate of Administrative Programs, OSHA
Director, Personnel Programs, OSHA
Director, Office of Administrative Services, OSHA
Director, Office of Management Data Systems, OSHA
Director, Office of Management Systems and Organization, OSHA
Director, Office of Program Budgeting, Planning and Financial Management, OSHA
Director, Directorate of Compliance Programs, OSHA
Director, Directorate of Technical Support, OSHA
Director, Directorate of Safety Standards Programs, OSHA
Director, Directorate of Health Standards Programs, OSHA
Director, Office of Statistics, OSHA
Director, Office of Program Services, Pension and Welfare Benefits Administration
Assistant Secretary for Veterans' Employment and Training (VETS)
Deputy Assistant Secretary for Veterans' Employment and Training, VETS
Director, Office of Operations and Programs, VETS
Chair, Benefits Review Board
Commissioner, Bureau of Labor Statistics (BLS)
Associate Commissioner, Office of Administration, BLS

The mailing address for responsible officials in the Bureau of Labor Statistics is: Rm. 4040—Postal Square Bldg., 2 Massachusetts Ave., NE, Washington, DC 20212–0001.

Director of Program Evaluation and Information Resources Mine Safety and Health Administration (MSHA)

The mailing address for responsible official in the Mine Safety and Health Administration (MSHA) is: 4015 Wilson Boulevard, Arlington, Virginia 22203.

The mailing address for the Office of Administrative Law Judges is: Chief, Office of Administrative Law Judges, 800 K Street, NW, Suite N–400, Washington, DC 20001–8002.

(2) The titles of the responsible officials in the regional offices of the various independent agencies are listed below: Unless otherwise specified, the mailing address for these officials by region, shall be:

Region I

U.S. Department of Labor, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (For Wage and Hour only: Contact Region III)

In Region I, Only, the mailing address for OSHA is:

133 Portland Street, 1st Floor, Boston, Massachusetts 02114

Region II

201 Varick Street, New York, New York 10014, (For Wage and Hour only: Contact Region III)

Region III

Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104

Region IV

U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303
214 N. Hogan Street, Suite 1006, Jacksonville, Florida 32202 (OWCP Only)

Region V

Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604
1240 East Ninth Street, Room 851, Cleveland, Ohio 44199 (FEC only)

Region VI

525 Griffin Square Building, Griffin & Young Streets, Dallas, Texas 75202

Region VII

City Center Square Building, 1100 Main Street, Kansas City, Missouri 64105–2112 (For Wage and Hour only: Contact Region V)

801 Walnut Street, Room 200, Kansas City, Missouri 64106 (OFCCP only)

Region VIII

1999 Broadway Street, Denver, Colorado 80202 (For Wage and Hour only: Contact Region VI)

1801 California Street, Suite 915, Denver, Colorado 80202 (OWCP only)

The mailing address for the Director of the Regional Bureau of Apprentice and Training in Region VIII is: Room 465, U.S. Custom House, 721—19th Street, Denver, CO 80202

Region IX

71 Stevenson Street, San Francisco, California 94105

Region X

1111 Third Avenue, Seattle, Washington 98101–3212 (For Wage and Hour only: Contact Region IX)

Regional Administrator for Administration and Management (OASAM)
Regional Personnel Officer, OASAM
Regional Director for Information and Public Affairs, OASAM
Regional Administrator for Occupational Safety and Health and Safety (OSHA)
Regional Commissioner, Bureau of Labor Statistics (BLS)
Regional Administrator for Employment and Training Administration (ETA)
Regional Director, Job Corps, ETA
Director, Regional Bureau of Apprenticeship and Training, ETA
Regional Management Analyst, ETA-Atlanta, Georgia
Regional Administrator for Wage and Hour, ESA
Regional Director for Federal Contract Compliance Programs, ESA
Regional Director for the Office of Workers' Compensation Programs, ESA
District Director, Office of Workers' Compensation Programs, ESA

Office of Federal Contract Compliance Programs ESA, Responsible Offices, Regional Offices

JFK Federal Building, Room E–235, Boston, Massachusetts 02203
201 Varick Street, Room 750, New York, New York 10014
Gateway Building, Room 15340, 3535 Market Street, Philadelphia, Pennsylvania 19104
61 Forsyth Street, SW, Suite 7B75, Atlanta, Georgia 30303
Klucynski Federal Building, Room 570, 230 South Dearborn Street, Chicago, Illinois 60604
Federal Building, Room 840, 525 South Griffin Street, Dallas, Texas 75202
71 Stevenson Street, Suite 1700, San Francisco, California 94105–2614
1111 Third Avenue, Suite 610, Seattle, Washington 98101–3212

Office of Workers' Compensation Programs ESA, Responsible Officials, District Directors

John F. Kennedy, Federal Building, Boston, Massachusetts 02203 (FECA and LHWCA Only)
201 Varick Street, Seventh Floor, New York, New York 10014 (FECA and LHWCA only)
3535 Market Street, Philadelphia, Pennsylvania 19104 (FECA and LHWCA only)
Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901 (BLBA only)
105 North Main Street, Suite 100, Wilkes-Barre, Pennsylvania 18701 (BLBA Only)
Wellington Square, 1225 South Main Street, Greensburg, Pennsylvania 15601 (BLBA only)
300 West Pratt Street, Suite 240, Baltimore, Maryland 21201 (LHWCA Only)
Federal Building, 200 Granby Mall, Room #212, Norfolk, Virginia 23510 (LHWCA only)
2 Hale Street, Suite 304, Charleston, West Virginia 25301 (BLBA Only)
609 Market Street, Parkersburg, West Virginia 26101 (BLBA Only)
800 North Capitol Street NW, Washington, DC 20211 (FECA Only)
1200 Upshur Street, NW, Washington, DC 20210 (DCCA Only)
334 Main Street, Fifth Floor, Pikeville, Kentucky 41501 (BLBA only)
500 Springdale Plaza,
Spring Street, Mt. Sterling, Kentucky 40353 (BLBA Only)
214 N. Hogan Street, 10th Floor, Jacksonville, Florida 32201 (FECA and LHWCA only)
230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (FECA and LHWCA)
1240 East 9th Street, Cleveland, Ohio 44199 (FECA Only)
274 Marconi Boulevard, 3rd Floor, Columbus, Ohio 43215 (BLBA Only)
525 Griffin Street, Federal Building, Dallas, Texas 75202 (FECA Only)
701 Loyola Avenue, Room 13032, New Orleans, Louisiana 70113 (LHWCA Only)
8866 Gulf Freeway, Suite 140, Houston, Texas 77017 (LHWCA Only)
City Center Square, Suite 750, 1100 Main Street, Kansas City, Missouri 64105 (FECA Only)
1801 California Street, Denver, Colorado 80202 (FECA and BLBA Only)
71 Stevenson Street, 2nd Floor, San Francisco, California 94105 (LHWCA and FECA Only)
401 E. Ocean Boulevard, Suite 720, Long Beach, California 90802 (LHWCA Only)
300 Ala Moana Boulevard, Room 5119, Honolulu, Hawaii 96850 (LHWCA Only)
1111 3rd Avenue, Seattle, Washington 98101–3212 (LHWCA and FECA only)

Regional Administrator, Occupational Safety and Health Administration (OSHA)

Area Director, OSHA

639 Granite Street, 4th Floor, Braintree, Massachusetts 02184
279 Pleasant Street, Suite 201, Concord, New Hampshire 03301
202 Harlow Street, Room 211, Bangor, Maine 04401
Federal Office Building, 450 Main Street, Room 508, Hartford, Connecticut 06103
One LaFayette Square, Suite 202, Bridgeport, Connecticut 06604
1145 Main Street, Room 108, Springfield, Massachusetts 01103–1493
Federal Office Building, 380 Westminister Mall, Room 243, Providence, Rhode Island 02903
Valley Office Park, 13 Branch Street, Methuen, Massachusetts 01844
6 World Trade Center, Room 881, New York, New York 10048
990 Westbury Road, Westbury, New York 11590
42–40 Bell Boulevard, Bayside, New York 11361
401 New Karner Road, Suite 300, Albany, New York 12205–3809
Plaza 35, Suite 205, 1030 St. Georges Avenue, Avenel, New Jersey 07001
299 Cherry Hill Road, Suite 304, Parsippany, New Jersey 07054
3300 Vikery Road, North Syracuse, New York 13212
5360 Genesee Street, Bowmansville, New York 14026
BBV Plaza Building, 1510 F.D. Roosevelt Avenue, Suite 5B, Guaynabo, Puerto Rico 00968
500 Route 17 South, 2nd Floor, Hasbrouck Heights, New Jersey 07604
Marlton Executive Park, Building 2, Suite 120, 701 Route 73 South, Marlton, New Jersey 08053
660 White Plains Road, 4th Floor, Tarrytown, New York 10591–5107
US Custom House, Room 242, Second & Chestnut Street, Philadelphia, Pennsylvania 19106
One Rodney Square, Suite 402, 920 King Street, Wilmington, Delaware 19801
Federal Building, 1000 Liberty Avenue, Room 1428, Pittsburgh, Pennsylvania 15222
3939 West Ridge Road, Suite B12, Erie, Pennsylvania 16506
Federal Office Building, 200 Granby Street, Room 835, Norfolk, Virginia 23510
820 First Street, NE, Suite 440, Washington, DC 20002
20 North Pennsylvania Avenue, Penn Place, Room 2005, Wilkes-Barre, Pennsylvania 18701–3590
850 North 5th Street, Allentown, Pennsylvania 18102
550 Eagan Street, Room 206, Charleston, West Virginia 25301
Federal Building, Room 1110, 300 W. Pratt St., Baltimore, Maryland 21201
Progress Plaza, 49 Progress Avenue, Harrisburg, Pennsylvania 17109
2400 Herodian Way, Suite 250, Smyrna, Georgia 30080
450 Mall Boulevard, Suite J, Savannah, Georgia 31406
Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216
8040 Peters Road, Building H–100, Fort Lauderdale, Florida 33324
Ribault Building, Suite 227, 1851 Executive Center Drive, Jacksonville, Florida 32207
5807 Breckenridge Parkway, Suite A, Tampa, Florida 33610
1835 Assembly Street, Room 1468, Columbia, South Carolina 29201

3780 I–55 North, Suite 210, Jackson, Mississippi 39211–6323
3737 Government Boulevard, Suite 100, Mobile, Alabama 36693
2002 Richard Jones Road, Suite C–205, Nashville, Tennessee 37215
John C. Watts Federal Building, 330 West Broadway, Room 108, Frankfort, Kentucky 40601
La Vista Perimeter Office Park, 2183 N. Lake Parkway, Building 7, Suite 110, Tucker, Georgia 30084
Century Station Federal Office Building, 300 Fayetteville Mall, Room 438, Raleigh, North Carolina 27601
1600 167th Street, Suite 9, Calumet City, Illinois 60409
O'Hara Lake Plaza, 2360 East Devon Avenue, Suite 1010, Des Plaines, Illinois 60018
344 Smoke Tree Business Park, North Aurora, Illinois 60542
Federal Office Building, 1240 East 9th Street, Room 899, Cleveland, Ohio 44199
Federal Office Building, 200 N. High Street, Room 620, Columbus, Ohio 43215
US P.O. & Courthouse Building, 46 East Ohio Street, Room 423, Indianapolis, Indiana 46204
36 Triangle Park Drive, Cincinnati, Ohio 45246
2618 North Ballard Road, Appleton, Wisconsin 54915
Henry S. Reuss Building, Room 1180, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203
110 South 4th Street, Suite 1220, Minneapolis, Minnesota 55401
234 North Summit Street, Room 734, Toledo, Ohio 43604
801 South Waverly Road, Suite 306, Lansing, Michigan 48917–4200
4802 East Broadway, Madison, Wisconsin 53716
2918 W. Willow Knolls Road, Peoria, Illinois 61614
8344 East R.L. Thornton Freeway, Suite 420, Dallas, Texas 75228
903 San Jacinto Boulevard, Suite 319, Austin, Texas 78701
Westbank Building, Suite 820, 505 Marquette Avenue, NW, Albuquerque, New Mexico 87102
2156 Wooddale Boulevard, Hoover Annex, Suite 200, Baton Rouge, Louisiana 70806
Wilson Plaza, 606 N. Carancahua, Suite 700, Corpus Christi, Texas 78401
Federal Office Building, 1205 Texas Avenue, Room 806, Lubbock, Texas 79401
350 North Sam Houston Parkway East, Suite 120, Houston, Texas 77060
17625 El Camino Real, Suite 400, Houston, Texas 77058
420 West Main Place, Suite 300, Oklahoma City, Oklahoma 73102
North Starr II, Suite 430, 8713 Airport Freeway, Fort Worth, Texas 76180–7604
TCBY Building, Suite 450, 425 West Capitol Avenue, Little Rock, Arkansas 72201
4171 North Mesa Street, Room C119, El Paso, Texas 79902
6200 Connecticut Avenue, Suite 100, Kansas City, Missouri 64120
911 Washington Avenue, Room 420, St. Louis, Missouri 63101
210 Walnut Street, Room 815, Des Moines, Iowa 50309
300 Epic Center, 301 North Main, Wichita, Kansas 67202
Overland—Wolf Building, Room 100, 6910 Pacific Street, Omaha, Nebraska 68106
8600 Farley, Suite 105, Overland Park, Kansas 66212–4677
2900 Fourth Avenue, North, Suite 303, Billings, Montana 59101
220 E. Rosser, Room 348, P.O. Box 2439, Bismarck, North Dakota 58501
7935 East Prentice Avenue, Suite 209, Englewood, Colorado 80011–2714
1391 Speer Boulevard, Suite 210, Denver, Colorado 80204
1781 South 300 West, P.O. Box 65200, Salt Lake City, Utah 84165–0200
71 Stevenson Street, Room 420, San Francisco, California 94105
101 El Camino Plaza, Suite 105, Sacramento, California 95815
5675 Ruffin Road, Suite 330, San Diego, California 92123
300 Ala Moana Boulevard, Suite 5122, P.O. Box 50072, Honolulu, Hawaii 96850
3221 North 16th Street, Suite 100, Phoenix, Arizona 85016
705 North Plaza, Room 204, Carson City, Nevada 89701
301 West Northern Lights Boulevard, Suite 407, Anchorage, Alaska 99503
3050 North Lakeharbor Lane, Suite 134, Boise, Idaho 83703
505 106th Avenue, Northeast, Suite 302, Belleview, Washington 98004
1220 Southwest Third Avenue, Room 640, Portland, Oregon 97204

Pension and Welfare Benefits Administration Regional Director or District Supervisor

Regional Director, J.F.K. Federal Bldg., Room 575, Boston, Massachusetts 22203
Regional Director, 1633 Broadway, Rm. 226, New York, N.Y. 10019
Regional Director, 3535 Market Street, Room M300, Gateway Building, Philadelphia, Pennsylvania 19104
District Supervisor, 1730 K Street N.W., Suite 556, Washington, DC 20006
Regional Director, 61 Forsyth Street, S.W., Room 7B54, Atlanta, Georgia 30303
District Supervisor, 8040 Peters Road, Building H, Suite 104, Plantation, Florida 33324
Regional Director, 1885 Dixie Highway, Suite 210, Ft. Wright, Kentucky 41011
District Supervisor, 211 West Fort Street, Suite 1310, Detroit, Michigan 48226–3211
Regional Director, 200 West Adams Street, Suite 1600, Chicago, Illinois 60606
Regional Director, City Center Square, 1100 Main Street, Suite 1200, Kansas City, Missouri 64105
District Supervisor, 815 Olive Street, Room 338, St. Louis, Missouri 63101
Regional Director, 525 Griffin Street, Room 707, Dallas, Texas 75202
Regional Director, 71 Stevenson Street, Suite 915, P.O. Box 190250, San Francisco, California 94119–0250
District Director, 1111 Third Avenue, Room 860, Seattle, Washington 98101–3212
Regional Director, Suite 514, 790 E. Colorado Blvd, Pasadena, CA 91101

Regional Administrators, Veterans' Employment and Training Service (VETS)

Region I

J.F. Kennedy Federal Building, Government Center, Room E–315, Boston, Massachusetts 02203

Region II

201 Varick Street, Room 766, New York, New York 10014

Region III

U.S. Customs House, Room 802, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106

Region IV

Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T85, Atlanta, Georgia 30303

Region V

230 South Dearborn, Room 1064, Chicago, Illinois 60604

Region VI

525 Griffin Street, Room 858, Dallas, Texas 75202

Region VII

Center City Square, 1100 Main Street, Suite 850, Kansas City, Missouri 64105–2112

Region VIII

1801 California Street, Suite 910, Denver, Colorado 80202–2614

Region IX

71 Stevenson Street, Suite 705, San Francisco, California 94105

Region X

1111 Third Avenue, Suite 800, Seattle, Washington 98101–3212

Signed at Washington, DC, this 15th day of October, 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–28212 Filed 10–21–98; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215–AB18

Use and Disclosure of Federal Employees' Compensation Act Claims File Material

AGENCY: Employment Standards Administration, Office of Workers' Compensation Programs, Labor.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Labor's Office of Workers' Compensation Programs (OWCP), is revising the rules regulating the release, use, and disclosure of documents covered by the Privacy Act system of records entitled ''DOL/GOVT–1 (Office of Workers'

Compensation Programs, Federal Employees' Compensation Act File).'' This system covers all documents relating to claims filed under the Federal Employees' Compensation Act (FECA), including copies retained by employing agencies. Because records covered by DOL/GOVT–1 are used by the OWCP in making decisions with regard to FECA entitlement, the Department is revising its regulation to reserve to the OWCP the exclusive authority for ruling on requests submitted by the subject of the FECA file for the correction or amendment of any record contained in such file.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue, NW, Washington, DC 20210–0002. Telephone: (202) 219–7552.

SUPPLEMENTARY INFORMATION:

I. Discussion

In a notice published July 28, 1997 (62 FR 40418), the Department proposed to amend § 10.12 of part 10 to clarify the provisions regulating the release, use and/or disclosure of documents relating to claims filed under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* Only one comment was received by the Department. In its written submission, the Department of Defense's Civilian Personnel Management Service agreed with the provisions giving the OWCP exclusive authority over FECA related records. The Service expressed concern, however, on the impact which the provisions could have on so-called dual records. The Service wrote:

> It is evident that a work related incident that causes an injury will likely trigger many records other than Workers' Compensation documentation. A single incident may generate a safety investigation, a criminal investigation, and various personnel actions, any one of which will create dual records. These dual records are currently part of the DoD systems of records. Copies of these records may be submitted to OWCP as evidence to support or controvert initial or continuing actions in the Worker's Compensation case.

The Service sought clarification on whether it was appropriate to maintain records concerning an injury covered by the FECA in systems of records it may have established, and, if so, whether the agency could make corrections or amendments to its own records.

The Department of Labor, which has the exclusive authority for administering and enforcing the workers' compensation program applicable to Federal employees (5 U.S.C. 8128(b), 8145), considers all records collected because a claim was filed seeking benefits under the FECA, to be official records of the Department and, with one limited exception, covered by DOL/GOVT–1, the government-wide Privacy Act system of records most recently reported by the Department at 62 FR 49548 (September 23, 1993). The one exception specifically recognized by the Department provides that an agency may retain forms CA–1 and CA–2 in an Employee Medical Folder (EMF) in accordance with guidelines issued by the Office of Personnel Management (OPM), but only if those forms were not submitted to the OWCP (20 CFR 10.102(a); 52 FR 10488 (April 1, 1987)). The instances where such reports are not to be submitted to the OWCP, and thus do not become part of a file assigned a FECA claims number covered by DOL/GOVT–1, are extremely limited. Cf. 20 CFR 10.102(a).

When the forms CA–1 or CA–2, or other claim forms are submitted to the OWCP, and/or the OWCP assigns a claim file number to a particular injury, all materials relating to that claim or injury, whether in the possession of the OWCP or the agency, are covered by DOL/GOVT–1, and thus subject to OWCP's exclusive control. As a general matter, therefore, it would not be appropriate for an agency to maintain copies of records generated as a result of a FECA claim in a system other than DOL/GOVT–1. That is not to say that a record created to satisfy two or more purposes (i.e., personnel, safety and health, potential criminal matters, etc.), may not be covered by other systems of records even though the subject-matter of the document relates to an on-the-job injury sustained by a Federal employee. To comply with the Privacy Act in such situations, the agency should place a copy of the document in folders specifically designated as covered by other systems of records. However, before an agency discloses or uses any record covered by DOL/GOVT–1 for purposes other than those directly related to the FECA program, it must ensure that such disclosure or use has been authorized by the Department of Labor.

It should be noted that the Privacy Act grants the Department broad discretion to determine how and when a particular record should be used. Thus, even where a routine use could be construed as authorizing the release of a Privacy Act record, such release is not mandatory. The owner of the record, in this case the Department of Labor's OWCP, may, in the exercise of its statutory discretion, determine not to authorize a record to be used in particular situations. For example, the Department has determined that records covered by DOL/GOVT–1 may not be used in connection with a personnel action absent consent of the subject of the record. *See* ''Injury Compensation for Federal Employees,'' Publication CA–810 (February 1994) p. 46. Agencies must remember, therefore, that it is not permissible to use or release FECA documents in connection with personnel matters unless they have first obtained the claimant's written consent. Any questions an agency has concerning the disclosure of or uses to which FECA-related documents should be referred to the OWCP for resolution.

On the other hand, any records collected by an agency as part of a safety, criminal, or personnel investigation conducted pursuant to other statutory or regulatory authority, would not be covered by DOL/GOVT–1. The use, release and/or disclosure of those records, even though having some relationship to a FECA-covered injury, would be controlled by the investigating agency, as would the authority and responsibility for responding to requests for the correction of the records contained in the agency's system of records.

If the agency subsequently submits copies of the documents collected as described above to the OWCP for use in connection with the FECA claim, then the copies given to the OWCP would become part of the official claims file covered by DOL/GOVT–1. Thereafter, the correction of the record, insofar as the FECA proceedings are concerned, would be controlled by § 10.12 of title 20 as amended by this rule: any request submitted by the subject of the FECA file to correct a record contained in the claims file must be sent to the OWCP for handling.

The fact that records concerning an injury covered by the FECA may be maintained in another system of records does not necessarily mean that ''dual records'' exist. In our view, a dual record would exist only if both systems contained the identical documents which were collected for the same purposes. The use of a government-wide system of records approved by the OMB and published in the **Federal Register**, such as DOL/GOVT–1, was designed to prevent this from happening. Moreover, the official FECA file maintained by or under the control of the OWCP, will include many records that neither the employing agency nor an investigative arm of that agency have in their possession, and vice versa. Second, the

purposes for which the records were collected are not the same: the FECA file is maintained for the purpose of determining the worker's entitlement to compensation for a job-related injury, while an agency safety and health file might be maintained to ensure compliance with the recordkeeping and reporting guidelines imposed on Federal agencies.

II. Companion Document

In a companion document published elsewhere in today's issue of the **Federal Register**, the Department is issuing a final rule revising the existing regulations governing the conduct of Departmental employees and members of the public as it pertains to the treatment of records covered by the Privacy Act. That rule also applies to records covered by DOL/GOVT–1.

Procedural Matters

The final rule does not constitute a significant regulatory action within the meaning of Executive Order 12866 of September 30, 1993 (58 FR 51735). Further, this rule applies only to records concerning individual Federal employees and, therefore, will have no significant impact or other substantial effect on small entities. Accordingly, the requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)) do not apply. The Assistant Secretary has so certified to the Chief Counsel for Advocacy for the Small Business Administration.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1985, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal government, or increased expenditures by the private section of more than $100 million.

Paperwork Reduction Act

The final rule is not subject to the Paperwork Reduction Act since it does not contain a collection of information requirement.

Submission to Congress and the General Accounting office

In accordance with the Small Business Regulatory Enforcement Fairness Act , the Department will submit to each House of the Congress and to the Comptroller General a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note that this rule does not constitute a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 20 CFR Part 10

Claims, Government employees, Labor, Workers' Compensation.

For the reasons set forth in the preamble, part 10 of Chap. I of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES COMPENSATION ACT, AS AMENDED

1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8149; Secretary's Order 5–96, 62 FR 107.

2. Section 10.12 is revised to read as follows:

§ 10.12 Protection, release, inspection and copying of records.

(a) All records relating to claims for benefits filed under the Act, including any copies of such records maintained by an employing agency, are covered by the government-wide Privacy Act system of records entitled DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). This system of records is maintained by and under the control of the Office, and, as such, all records covered by DOL/GOVT–1 are official records of the Office. The protection, release, inspection and copying of records covered by DOL/GOVT–1 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the **Federal Register**. All questions relating to access/disclosure, and/or amendment of FECA records maintained by the Office or the employing agency, are to be resolved in accordance with this section.

(b) (1) While an employing agency may establish procedures that an injured employee or beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor which govern all other aspects of safeguarding these records.

(2) No employing agency has the authority to issue determinations with respect to requests for the correction or amendment of records contained in or covered by DOL/GOVT–1. That authority is within the exclusive control of the Office. Thus, any request for correction or amendment received by an employing agency must be referred to the Office for review and decision.

(3) Any administrative appeal taken from a denial issued by the employing agency or the Office shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

Signed at Washington, DC, this 15th day of October, 1998.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

T. Michael Kerr,

Deputy Assistant Secretary for Workers' Compensation Programs.

[FR Doc. 98–28211 Filed 10–21–98; 8:45 am]

BILLING CODE 4510–27–P

federal register

Thursday
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Part V

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC52

Student Assistance General Provisions

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations, to permit a school to appeal its Direct Loan Program cohort rate or weighted average cohort rate on the basis of improper servicing or collection of the Direct Loans included in that rate. The Secretary also clarifies when a school's rate is considered final.

EFFECTIVE DATE: These regulations take effect on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW., ROB–3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242. 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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SUPPLEMENTARY INFORMATION: On July 13, 1998, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions regulations in the **Federal Register** (63 FR 37714).

The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list provides summaries of the changes and identifies the pages of the preamble to the NPRM on which a discussion of the issues can be found:

Section 668.17(h) Loan Servicing Appeals

The Secretary proposed to allow a school to challenge its Direct Loan Program cohort rate or weighted average cohort rate on the basis of the improper servicing or collection of the Direct Loans included in the calculation of the rate. (63 FR 37714)

Section 668.17(i) Finality of a School's Rate

The Secretary proposed that once the Secretary initiates a proposed limitation, suspension, or termination (LS&T) action under § 668.17(a)(2), based on the school's rate, the school may not challenge that rate.

The Higher Education Amendments of 1998 (Pub. L. 105–244, enacted October 7, 1998) (the Amendments) make changes that affect the calculation of Direct Loan Program and weighted average cohort rates. Regulations implementing the requirements contained in the Amendments will be drafted through the process provided in that statute. The Secretary has determined that these final regulations are not subject to the implementation process provided in the Amendments.

These final regulations contain changes from the NPRM. These changes are fully explained in the Analysis of Comments and Changes that follows.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, eight parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—generally are not addressed.

General

Comments: All of the commenters supported the Secretary's proposal of a process for schools to challenge their Direct Loan Program cohort rates or weighted average cohort rates on the basis of allegations of the improper servicing or collection of the Direct Loans included in the rates. The commenters said they appreciated the Secretary's effort to make provisions of the Federal Family Education Loan (FFEL) Program and the Direct Loan Program more equal in this area. Two commenters also specifically noted their support of the Secretary's clarification of when a rate is considered final, at § 668.17(i), agreeing that the provision would assist in addressing unnecessary delays.

Discussion: The Secretary appreciates the commenters' support.

Changes: None.

Effective Dates for FY 1996 Appeals (Preamble)

Comments: The preamble to the NPRM (63 FR 37715) stated that the Secretary intends to allow a school to appeal its official Direct Loan Program cohort rate or weighted average cohort rate for fiscal year (FY) 1996 on the basis of the improper servicing or collection of the Direct Loans included in the rate as defaulted loans. Two commenters asked for clarification of this statement and requested information about the effective date, the ending date, and whether the provision is retroactive. One commenter reasoned that this information is needed because schools participating in the Direct Loan Program were not given the opportunity to respond to draft cohort rate data.

Discussion: The Secretary will allow schools to appeal rates based on the improper servicing or collection of Direct Loans when the schools are notified of their FY 1996 official rates, later this year. Appeals on this basis will be made using the timelines and requirements published in these regulations. The provisions in these regulations also apply to a school's ability to appeal previous rates on this basis. A school may only appeal its FY 1994 or FY 1995 rate based on the improper servicing or collection of Direct Loans if the school is subject to loss of participation due in part to its FY 1994 or FY 1995 rate.

One commenter argued that ''effective'' and ''ending'' dates should be provided because schools participating in the Direct Loan Program have not been given the opportunity to respond to draft data. This comment, however, is based on a misunderstanding of the draft data review process. The draft data review process allows schools to review the data on which the rate is based; it does not apply to allegations of improper servicing or collection. Those allegations can only be raised during the appeal after the final rates are issued. The draft data review process is essentially the same for a Direct Loan Program loan as it is for an FFEL Program loan.

Changes: None.

Use of ''Shall'' and ''Must'' (§ 668.17(h)(3)(iii)(B))

Comments: Two commenters noted that the use of the words ''shall'' and ''must'' appears to be inconsistent when provisions for the FFEL Program (§ 668.17(h)(3)(ii)(B)) are compared with those for the Direct Loan Program (§ 668.17(h)(3)(iii)(B)). For example, regulations governing the FFEL Program state that ''the guaranty agency shall provide'' or ''the guaranty agency must provide,'' while regulations for the Direct Loan Program state only that ''the Secretary provides.'' The commenters asked that the language be identical in order to eliminate misinterpretations and to promote parity.

Discussion: The difference in regulatory language is a necessary reflection of the difference in the purpose of the regulations, and it is consistent with language used in other regulations. In the FFEL Program regulations, the Secretary is regulating the activities of guaranty agencies; in the Direct Loan requirements, the Secretary is providing notice of departmental procedures.

Changes: No change is made in response to the commenters' request. However, to correct an inconsistency in the regulatory language, the last sentence of § 668.17(h)(3)(iii)(B)(6) was changed from ''the Secretary shall notify'' to ''the Secretary notifies.''

Selection of Representative Sample (§ 668.17(h)(3)(iii)(B))

Comments: One commenter on behalf of a school stated that a school is capable of identifying students who have experienced loan servicing problems, and the commenter wanted to ensure that those students would be included in a school's representative sample. The commenter asked that a school be allowed to supply a list of those students for inclusion in the representative sample.

Discussion: The manner in which a representative sample is determined is described in § 668.17(h)(3)(ii)(B) for FFEL Program loans and in § 668.17(h)(3)(iii)(B) for Direct Loan Program loans. A representative sample is not intended to identify each individual improperly serviced loan included in the calculation of the school's rate. Instead, it is used to calculate a reliable estimate of the number of improperly serviced loans included in the school's rate. This estimate cannot be valid if it includes pre-selected loans.

Changes: None.

Documentation of Criteria (§§ 668.17(h)(3)(iii)(B) and 668.17(h)(3)(viii))

Comments: One commenter stated that, since the Secretary does not regulate the Department's procedures for servicing Direct Loans, a school cannot know whether it has received complete loan servicing and collection records. The commenter recommended that the requirements for loan servicing records in the Direct Loan Program be the same as those for a guaranty agency's records in the FFEL Program at § 682.414(a)(1)(ii). Further, the commenter believed that procedures outlined in the FY 1995 Official Cohort Default Rate Guide (Guide) require a proportional reduction of a rate if records are incomplete, illegible, or missing, and that a school cannot know whether this reduction is appropriate if it is not able to determine whether complete records have been provided. Another commenter asked the Secretary to clarify that a loan servicing error is considered to have occurred when the Direct Loan Servicer is unable to provide complete and legible loan servicing records.

Discussion: The first commenter is correct that the Secretary generally does not regulate the Department's own procedures for servicing Direct Loans. As explained in the preamble for final regulations for the Direct Loan Program published in the **Federal Register** on December 1, 1994 (59 FR 61664), the Secretary is not required to issue regulations that control internal agency processes but do not affect the substantive or procedural rights of program participants (59 FR 61667). For this reason, the Secretary does not agree that it is appropriate to issue regulations to govern the loan servicing and collection procedures of the Direct Loan Program. The Secretary further notes that § 668.17(h), rather than § 682.414(a)(1)(ii), determines what constitutes a complete loan servicing and collection record for purposes of an appeal under § 668.17(h).

As noted in the ''Direct Loan School Guide,'' the Direct Loan Servicer performs collection activities similar to those performed by lenders in the FFEL Program. Insofar as those activities relate to the servicing and collection criteria included in § 668.17(h)(3)(viii), the procedures of the Direct Loan Servicer are generally equivalent to the corresponding procedures for an FFEL lender. Therefore, the same type of record information needed to determine whether an FFEL Program loan is considered to be improperly serviced or collected under § 668.17(h)(3)(viii) is needed to determine whether a Direct Loan Program loan is considered to be improperly serviced or collected. In order to further clarify these requirements for the Direct Loan Program, the criteria for determining whether a loan has been improperly serviced or collected have been revised to separate the requirements for the FFEL Program from those for the Direct Loan Program and to include additional guidance.

Also, the commenters are not correct in stating that missing or illegible records are automatically considered to be loan servicing errors. The Guide only outlines a procedure for schools to use when documenting a guaranty agency's failure to comply with a request to supply a required missing record or to replace an illegible record. The same procedure is appropriate for a school's documentation of a similar request to the Direct Loan Servicer.

Changes: Section 668.17(h)(3)(viii) is revised to clarify the criteria used to determine whether a Direct Loan has been improperly serviced or collected.

Comments: One commenter asked for clarification of the requirements for documenting skip tracing in the Direct Loan Program, because the Department's procedures for servicing Direct Loans are not provided in regulations. The commenter asserted that, without this clarification, a school cannot verify that there is adequate documentation to determine whether skip tracing, if required, was performed in accordance with the Direct Loan Servicer's contract. The commenter recommended that the requirements for documenting skip tracing in the Direct Loan Program be the same as those for the FFEL Program, at § 682.411(g).

Discussion: Section 668.17(h)(3)(viii) has been revised to clarify the criterion for skip tracing that is used in determining whether a Direct Loan was improperly serviced or collected. Additional information about the skip tracing criterion for the Direct Loan Program will be provided in the same part of the Guide that provides similar information for the FFEL Program. Although the FY 1996 Guide contains instructions for the FFEL Program only, these instructions may be used for the Direct Loan Program as well. The references to a ''lender'' in that part of the Guide should be understood to refer to the Direct Loan Servicer.

The guidance included in these regulations and the Guide provides schools with the information needed to determine if the skip tracing requirement was met. Under the regulations, the skip tracing criterion looks only at whether skip tracing has been performed and does not evaluate timing or other procedural requirements related to skip tracing, and it is not governed by § 682.411(g).

Changes: Section 668.17(h)(3)(viii) is revised to clarify the criteria used to determine whether a Direct Loan has been improperly serviced or collected.

Additional Criteria (§ 668.17(h)(3)(viii))

Comments: One commenter provided examples of loan servicing problems that the commenter believes should be considered improper loan servicing or collection under § 668.17(h)(3)(viii): (1) Maintaining inaccurate addresses and telephone numbers; (2) failing to apply deferments and forbearances to accounts accurately; (3) failing to provide accurate, comprehensive information

about a borrower's delinquency status on multiple accounts to a school; and (4) failing to maintain the most recent information on accounts supplied by the school.

Discussion: In proposing these regulations, it was not the Secretary's intent to expand the criteria used to determine whether a loan is considered to have been improperly serviced or collected. None of the examples listed by the commenter are considered improper loan servicing or collection of an FFEL Program loan under § 668.17(h)(3)(viii) of the previous regulations, and none of these circumstances would be considered improper loan servicing under these regulations. The only criteria used to determine whether an FFEL or Direct Loan program loan has been improperly serviced or collected for purposes of an appeal of a rate under § 668.17(h) are those listed at § 668.17(h)(3)(viii).

Changes: None.

Comments: Two commenters asked that the criteria for improper loan servicing or collection be expanded to include an additional criterion for a Direct Loan Program loan. The proposed new criterion would correspond to the criterion for an FFEL Program cohort default rate appeal concerning a lender's submission of a request for preclaims assistance to the guaranty agency, at § 668.17(h)(3)(viii)(A)(*2*) of these regulations. Both commenters recommended that the timely notification to schools of a borrower's delinquency be used as this additional criterion for Direct Loans, reasoning that this notification would be extremely useful to schools in working with borrowers to avoid default. One commenter argued that adding this criterion would provide an appropriate parallel to the preclaims notification process for the FFEL Program. The other commenter, noting that there was no equivalent for the FFEL Program's preclaims process in the Direct Loan Program, asked that the criterion be added in order to maintain an equivalent number of criteria in the two programs, and thus a more equivalent level of assurance that loan servicing and collection have been conducted properly.

Discussion: The purpose of preclaims assistance in the FFEL Program is to require a guaranty agency to assist a lender in collecting on a loan before the loan goes into default. There is no parallel for this activity in the Direct Loan Program because the Department's Direct Loan Servicer performs all of the collection activities on a Direct Loan.

In the FFEL Program, a guaranty agency is required to notify schools of preclaims requests when the schools request that notification (§ 682.404(a)(5)), but there is no requirement that *all* schools be notified at the time that a preclaims request is filed. The Direct Loan Servicer currently makes monthly reports available to a school concerning the delinquency of borrowers who attended the school. These reports may be used by schools to contact borrowers and to assist in reducing the schools' rates, but schools are not *required* to receive or use the reports. Accepting the commenters' recommended criterion and requiring receipt of these reports by Direct Loan schools would place an additional burden on Direct Loan schools and would create dissimilar requirements in the FFEL and Direct Loan programs.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, were identified and explained in the preamble to the NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM (63 FR 37714).

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program 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 intergovernmental 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 this order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the responses to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 19, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007: Federal Supplemental Educational Opportunity Grant Program; 84.032: Federal Family Education Loan Program; 84.032: Federal PLUS Program; 84.032: Federal Supplemental Loans for Students Program; 84.033: Federal Work-Study Program; 84.038: Federal Perkins Loan Program; 84.063: Federal Pell Grant Program; 84.069: State Student Incentive Grant Program; 84.226: Income Contingent Loan Program; and 84.268: William D. Ford Federal Direct Loan Program)

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.17 is amended by revising the heading, paragraph (h), and paragraph (i) and by republishing the OMB control number following the section to read as follows:

§ 668.17 Default reduction and prevention measures.

* * * * *

(h) *Appeal based on allegations of improper loan servicing or collection*—(1) *General.* An institution that is subject to loss of participation in the FFEL Program or the Direct Loan Program under paragraph (a)(3), (b)(1), or (b)(2) of this section or that has been notified by the Secretary that its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate equals or exceeds 20 percent for the most recent year for which data are available may include in its appeal of that loss or rate a challenge based on allegations of improper loan servicing or collection. This challenge may be raised in addition to other challenges permitted under this section.

(2) *Standard of review.* (i) An appeal based on allegations of improper loan servicing or collection must be submitted to the Secretary in accordance with the requirements of this paragraph.

(ii) The Secretary excludes any loans from the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate calculation that, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of that rate.

(iii) For the purposes of paragraph (h) of this section, a Direct Loan that has been included in a Direct Loan Program cohort rate, under paragraph (e)(1)(ii) of this section, or a weighted average cohort rate, under paragraph (f)(1)(ii) of this section, because it has been in repayment under the income contingent repayment plan for 270 days, with scheduled payments that are less than $15 per month and with those payments resulting in negative amortization, is not considered to have been included in that rate as a defaulted loan. An institution's appeal under this paragraph does not affect the inclusion of these loans in an institution's rate.

(3) *Procedures.* The following procedures apply to appeals from FFEL Program cohort default rates, Direct Loan Program cohort rates, and weighted average cohort rates issued by the Secretary:

(i) *Notice of rate.* Upon receiving notice from the Secretary that the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate exceeds the thresholds specified in paragraph (a)(3), (b)(1), or (b)(2) of this section or that its most recent rate equals or exceeds 20 percent, the institution may appeal the calculation of that rate based on allegations of improper loan servicing or collection. The Secretary's notice includes a list of all borrowers included in the calculation of the institution's rate.

(ii) *Appeals for FFEL Program loans.* (A) To initiate an appeal under this paragraph for FFEL Program loans included in the institution's rate, the institution must notify, in writing, the Secretary and each guaranty agency that guaranteed loans included in the institution's FFEL Program cohort default rate or weighted average cohort rate that it is appealing the calculation of that rate. The notification must be received by the guaranty agency and the Secretary within 10 working days of the date the institution received the Secretary's notification. The institution's notification to the guaranty agency must include a copy of the list of students provided by the Secretary to the institution.

(B) Within 15 working days of receiving the notification from an institution subject to loss of participation in the FFEL or Direct Loan programs under paragraph (a)(3), (b)(1), or (b)(2) of this section, or within 30 calendar days of receiving that notification from any other institution that may file a challenge to its FFEL Program cohort default rate or weighted average cohort rate under this paragraph, the guaranty agency shall provide the institution with a representative sample of the loan servicing and collection records relating to borrowers whose loans were guaranteed by the guaranty agency and that were included as defaulted loans in the calculation of the institution's rate. For purposes of this section, when used for FFEL Program loans, the term ''loan servicing and collection records'' refers only to the records submitted by the lender to the guaranty agency to support the lender's submission of a default claim and included in the claim file. In selecting the representative sample of records, the guaranty agency shall use the following procedures:

(*1*) The guaranty agency shall identify in social security number order all loans guaranteed by the guaranty agency and included as defaulted loans in the calculation of the FFEL Program cohort default rate or weighted average cohort rate that is being challenged by the institution.

(*2*) From the population of loans identified by the guaranty agency, the guaranty agency shall identify a sample of the loans. The sample must be of a size such that the universe estimate derived from the sample is acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval. The sampling procedure must result in a determination of the number of FFEL Program loans that should be excluded from the calculation of the FFEL Program cohort default rate or weighted average cohort rate under this paragraph.

(*3*) The guaranty agency shall provide a copy of all servicing and collection records relating to each loan in the sample to the institution in hard copy format unless the guaranty agency and institution agree that all or some of the records may be provided in another format.

(*4*) The guaranty agency may charge the institution a reasonable fee for copying and providing the documents, not to exceed $10 per borrower file.

(*5*) After compiling the servicing and collection records for the loans in the sample, the guaranty agency shall send the records, a list of the loans included in the sample, and a description of how the sample was chosen to the institution. The guaranty agency shall also send a copy of the list of the loans included in the sample, listed in order by social security number, and the description of how the sample was chosen to the Secretary at the same time the material is sent to the institution.

(*6*) If the guaranty agency charges the institution a fee for copying and providing the documents under paragraph (h)(3)(ii)(B)(*4*) of this section, the guaranty agency is not required to provide the documents to the institution until payment is received by the agency. If payment of a fee is required, the guaranty agency shall notify the institution, in writing, within 15 working days of receipt of the institution's request, of the amount of the fee. If the guaranty agency does not receive payment of the fee from the institution within 15 working days of the date the institution receives notice of the fee, the institution shall be considered to have waived its right to challenge the calculation of its FFEL Program cohort default rate or weighted average cohort rate based on allegations of improper loan servicing or collection in regard to the loans guaranteed by that guaranty agency. The guaranty agency shall notify the institution and the Secretary, in writing, that the institution has failed to pay the fee and has apparently waived its right to challenge the calculation of its rate for this purpose. The Secretary determines that an institution that does not pay the required fee to the guaranty agency has not met its burden of proof in regard to the loans insured by that guaranty agency unless the institution proves that the agency's conclusion that the institution waived its appeal is incorrect.

(iii) *Appeals for Direct Loan Program loans.* (A) To initiate an appeal under this paragraph for Direct Loans included in the institution's rate, the institution must notify the Secretary, in writing, that it is appealing the calculation of its Direct Loan Program cohort rate or weighted average cohort rate. The notification must be received by the Secretary within 10 working days of the date the institution received the Secretary's notification.

(B) Within 15 working days of receiving the notification from an institution subject to loss of participation in the FFEL or Direct Loan Program under paragraph (a)(3), (b)(1), or (b)(2) of this section, or within 30 calendar days of receiving that notification from any other institution that may file a challenge to its Direct Loan Program cohort rate or weighted average cohort rate under this paragraph, the Secretary provides the institution with a representative sample of the loan servicing and collection records relating to borrowers whose Direct Loans were included as defaulted loans in the calculation of the institution's rate. For purposes of this section, when used for Direct Loans, the term ''loan servicing and collection records'' refers only to the records maintained by the Department's Direct Loan Servicer with respect to the servicing and collecting of delinquent loans prior to the default. In selecting the representative sample of records, the Secretary uses the following procedures:

(*1*) The Secretary identifies in social security number order all Direct Loans included as defaulted loans in the calculation of the Direct Loan Program cohort rate or weighted average cohort rate that is being challenged by the institution.

(*2*) From the population of loans identified by the Secretary, the Secretary identifies a sample of the loans. The sample is of a size such that the universe estimate derived from the sample is acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval. The sampling procedure must result in a determination of the number of Direct Loans included in the rate as defaulted loans that should be excluded from the calculation of the Direct Loan Program cohort rate or weighted average cohort rate under this paragraph.

(*3*) The Secretary provides a copy of all servicing and collection records relating to each loan in the sample to the institution in hard copy format unless the Secretary and institution agree that all or some of the records may be provided in another format.

(*4*) The Secretary may charge the institution a reasonable fee for copying and providing the documents, not to exceed $10 per borrower file.

(*5*) After compiling the servicing and collection records for the loans in the sample, the Secretary sends the records, a list of the loans included in the sample, and a description of how the sample was chosen to the institution.

(*6*) If the Secretary charges the institution a fee for copying and providing the documents under paragraph (h)(3)(iii)(B)(*4*) of this section, the Secretary does not provide the documents to the institution until payment is received by the Secretary. If payment of a fee is required, the Secretary notifies the institution, in writing, within 15 working days of receipt of the institution's request, of the amount of the fee. If the Secretary does not receive payment of the fee from the institution within 15 working days of the date the institution receives notice of the fee, the institution shall be considered to have waived its right to challenge the calculation of its Direct Loan Program cohort rate or weighted average cohort rate based on allegations of improper loan servicing or collection in regard to the Direct Loans included in that rate. The Secretary notifies the institution, in writing, that the institution has failed to pay the fee and has waived its right to challenge the calculation of its rate on the basis of those allegations.

(iv) *Procedures for filing an appeal.* After receiving the relevant loan servicing and collection records from the Secretary (for defaulted Direct Loan Program loans included in a Direct Loan Program cohort rate or weighted average cohort rate) and from all of the guaranty agencies that insured loans included in the institution's FFEL Program cohort default rate or weighted average cohort rate calculation (for defaulted FFEL Program loans included in a rate), the institution has 30 calendar days to file its appeal with the Secretary. An appeal is considered filed when it is received by the Secretary. If the institution is also filing an appeal under paragraph (c)(1)(i) of this section, the institution may delay submitting its appeal under this paragraph until the appeal under paragraph (c)(1)(i) is submitted to the Secretary. As part of the appeal, the institution shall submit the following information to the Secretary:

(A) A list of the loans that the institution alleges would, due to improper loan servicing or collection, result in an inaccurate or incomplete calculation of the rate.

(B) Copies of all of the loan servicing or collection records and any other evidence relating to a loan that the institution believes has been subject to improper servicing or collection. The records must be in hard copy or microfiche format.

(C) For FFEL Program loans, a copy of the lists provided by the guaranty agencies under paragraph (h)(3)(ii)(B) of this section.

(D) An explanation of how the alleged improper servicing or collection resulted in an inaccurate or incomplete calculation of the institution's rate.

(E) A summary of the institution's appeal listing the following:

(*1*) For FFEL Program cohort default rates, the number of loans insured by each guaranty agency that were included as defaulted loans in the

calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans for each guaranty agency.

(*2*) For Direct Loan Program cohort rates, the number of Direct Loans that were included as defaulted loans in the calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans serviced by the Secretary.

(*3*) For weighted average cohort rates—

(*i*) The number of FFEL Program loans insured by each guaranty agency that were included as defaulted loans in the calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans for each guaranty agency; and

(*ii*) The number of Direct Loans that were included as defaulted loans in the calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans serviced by the Secretary.

(F) A certification by an authorized official of the institution that all information provided by the institution in the appeal is true and correct.

(v) *Decision.* The Secretary or the Secretary's designee reviews the information submitted by the institution and issues a decision.

(A) In making a decision under this paragraph, the Secretary presumes that the information provided to the institution by the guaranty agency or Secretary under paragraphs (h)(3)(ii)(B) and (iii)(B) of this section is correct unless the institution provides substantial evidence showing that the information is not correct.

(B) If the Secretary finds that the evidence presented by the institution shows that some of the loans included in the sample of loan records reviewed by the institution should be excluded from calculation of the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate under paragraph (h)(2) of this section, the Secretary reduces the institution's rate, in accordance with a statistically valid methodology, to reflect the percentage of defaulted loans in the sample that should be excluded.

(vi) *Notification.* The Secretary notifies the institution, in writing, of the decision.

(vii) *Seeking judicial review.* An institution may not seek judicial review of the Secretary's determination of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate until the Secretary or the Secretary's designee issues the decision under paragraph (h)(3)(v) of this section.

(viii) *Improper loan servicing or collection criteria.* For purposes of this paragraph, a default is considered to have been due to improper servicing or collection only if the borrower did not make a payment on the loan and—

(A) For an FFEL Program loan, the institution proves that the lender failed to perform one or more of the following activities, if that activity was required:

(*1*) Send at least one letter (other than the final demand letter) urging the borrower or endorser to make payments on the loan.

(*2*) Attempt at least one phone call to the borrower or endorser.

(*3*) Submit a request for preclaims assistance to the guaranty agency.

(*4*) Send a final demand letter to the borrower.

(*5*) Submit a certification (or other evidence) that skip tracing was performed.

(B) For a Direct Loan Program loan, the institution proves that the Direct Loan Servicer failed to perform one or more of the following activities, if that activity is applicable to the loan:

(*1*) Send at least one letter (other than the final demand letter) urging the borrower or endorser to make payments on the loan.

(*2*) Attempt at least one phone call to the borrower or endorser unless the borrower or endorser is incarcerated or is residing outside a State, Mexico, or Canada.

(*3*) Send a final demand letter to the borrower.

(*4*) Document that skip tracing was performed if the Direct Loan Servicer determined it did not have the borrower's current address.

(i) *Effect of decision.* (1) An institution may challenge the calculation of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate under this section no more than once. The Secretary's determination of an institution's appeal of the calculation of such a rate is binding on any future appeal by the institution.

(2) An institution that fails to challenge the calculation of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate under this section within 10 working days of receiving notice of the determination of that rate is prohibited from challenging that rate in any other proceeding before the Department.

(3) If the Secretary has initiated an action under paragraph (a)(2) of this section, the institution may not challenge the calculation of the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate on which the action is based.

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(Approved by the Office of Management and Budget under control number 1840–0537)

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Part VI

Department of Housing and Urban Development

1998 HUD Disaster Recovery Initative; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4398–N–01]

1998 HUD Disaster Recovery Initiative

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174, 112 Stat. 58, *et seq.*, approved May 1, 1998), with respect to the 1998 HUD Disaster Recovery Initiative grant funds, requires the publication of a Notice governing the allocation and use of such funds. This Notice addresses that requirement.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Empowering Communities for Recovery

A. Purpose

1. This Notice describes policies and procedures applicable to the HUD Disaster Recovery Initiative (DRI).

2. When a community is hit hard by a natural disaster, there is often a long, difficult process of recovery. Most impacted areas never fully recover because of limited resources. HUD is uniquely positioned to support other Federal agencies in assisting States and communities with disaster recovery, because of its mission and experience as the Federal Government's agency for addressing a broad spectrum of needs related to community viability (e.g., housing, economic and community development).

3. HUD's Disaster Recovery Initiative helps communities impacted by natural disasters receiving Presidential declarations in 1998.

4. DRI funds are intended to support the activities of other Federal agencies and cannot be used for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or the U.S. Army Corps of Engineers (Corps of Engineers).

B. Authority

1998 Supplemental Appropriations and Rescissions Act, Public Law 105–174, 112 Stat. 58, at 76–77, approved May 1, 1998.

C. Benefiting Persons of Low and Moderate Income

1. DRI funds are provided by a supplemental appropriation under the Community Development Block Grant program authority of the Act. The primary objective of that program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. States and State grant recipients should give maximum feasible priority to funding activities that benefit persons of low and moderate income.

2. A State must use more than 50 percent of its DRI funds for activities that benefit primarily persons of low and moderate income. The Secretary may waive this requirement only on a case-by-case basis and only upon making a finding of a compelling need to do so. HUD will consider such a waiver only after it receives a request from a State that includes a justification that establishes a compelling need for the waiver. The compelling need must reflect a public purpose directly related to disaster recovery, and the justification must include a determination by the State, with supporting documentation, that there is no practicable alternative course of action to otherwise targeting funds to activities which principally benefit persons of low and moderate income.

D. Definitions

Regulatory references are in title 24 of the Code of Federal Regulations (CFR), and will be cited by subsection (§), unless otherwise cited.

Act means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

Buildings for the general conduct of government means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various non-legislative functions or services provided by government at decentralized locations.

City means the following:

a. Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

b. Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

i. Possesses powers and performs functions comparable to those associated with municipalities;

ii. Is closely settled; and

iii. Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

Director means the Director of the Federal Emergency Management Agency.

Disaster means a major disaster declared by the President under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq) in Federal fiscal year 1998.

Family means all persons living in the same household who are related by birth, marriage or adoption.

FEMA means the Federal Emergency Management Agency.

Household means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

HUD means the U.S. Department of Housing and Urban Development.

Income. For the purpose of State grant recipients determining whether a family or household is of low and moderate income, such recipients may select any of the three definitions listed below for each activity. However, integrally related activities of the same type and qualifying under the same paragraph of § 570.483(b) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.483(b)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.483(b)(1)(I). Activities qualifying under § 570.483(b)(1), at the discretion of the State, must use the area income data

supplied by HUD or survey data which is methodologically sound.

a. The three definitions are as follows:

i. ''Annual income'' as defined for the Public Housing and Section 8 programs at § 5.609 (except that if the DRI assistance being provided is homeowner rehabilitation, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

ii. Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(1) Wages, salaries, tips, commissions, etc.;

(2) Self-employment income from own non-farm business, including proprietorships and partnerships;

(3) Farm self-employment income;

(4) Interest, dividends, net rental income, or income from estates or trusts;

(5) Social Security or railroad retirement;

(6) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(7) Retirement, survivor, or disability pensions; and

(8) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

iii. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

b. Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the DRI grant-assisted activity shall not be considered in calculating estimated annual income.

Indian tribe means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States that is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512) before its repeal.

Low-and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low-and moderate-income person means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Secretary means the Secretary of Housing and Urban Development.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

State means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

State grant recipient means:

A unit of general local government that receives a DRI grant through a State.

Unit of general local government means any city, county, town, township, parish, village or other general purpose political subdivision of a State; a combination of such political subdivisions recognized by the Secretary; and the District of Columbia.

Unmet need means projects identified by the Director as those which have not or will not be addressed by other Federal disaster assistance programs, and need that is not addressed by activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency, the Small Business Administration, or the Army Corps of Engineers.

E. Allocation and Expenditure of Funds

1. $130 million has been appropriated for the 1998 HUD Disaster Recovery Initiative under title II, Chapter 6 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174, 112 Stat. 58, et seq.; approved May 1, 1998) (the 1998 Supplemental Appropriations Act). These funds are available for obligation by HUD until October 1, 2001. States are responsible to HUD for the timely expenditure of funds in accordance with any expenditure deadlines HUD may include as grant agreement conditions.

2. The 1998 Supplemental Appropriations Act requires that HUD allocate funds to States, based on unmet needs identified by the director of FEMA as those which have not or will not be addressed by other Federal disaster assistance programs.

a. In calculating allocations, HUD will use data identified by FEMA from State and Federal sources as unmet needs in four areas: housing, business recovery, mitigation, and public works and facilities.

b. The allocation calculations will include appropriate weights and adjustment factors. The weightings of the unmet needs categories are as follows: housing, 40 percent; business recovery, 20 percent; mitigation, 20 percent; and public works and facilities, 20 percent.

c. Allocations will reflect the relative value of calculations among the States having disasters that receive Presidential declarations during Federal fiscal year 1998.

d. HUD has set minimum grant amounts for the allocation of funds at the lesser of $1.5 million or the amount of unmet need identified by FEMA from State sources.

e. HUD may calculate the allocation of funds to States in one or more groupings of disaster declarations, as it deems appropriate.

3. The appropriation accounting provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. With respect to the funds appropriated for the 1998 HUD Disaster Recovery Initiative, this statute requires the withdrawal from the States' lines of credit any DRI funds appropriated under the 1998 Supplemental Appropriations Act that the States have not expended before October 1, 2005. This limitation may not be waived. HUD may place shorter deadlines on the expenditure of those funds via grant agreement conditions.

4. The 1998 Supplemental Appropriations Act requires that each State administer the DRI funds ''in conjunction with its Federal Emergency Management Agency program or its community development block grants program or by the entity designated by its Chief Executive Officer to administer the HOME Investment Partnerships program.'' Whichever agency the

governor designates to administer the DRI funds must have the capacity to comply with all applicable requirements of this notice in a timely manner. Whichever State agency administers the DRI funds should coordinate with the agency or agencies that administer the other two programs named above.

F. Non-Federal Public Matching Funds Requirement

1. The 1998 Supplemental Appropriations Act (Pub. L. 105–174) requires that ''each State shall provide not less than 25 percent in non-Federal public matching funds or its equivalent value (other than administrative costs)'' for any 1998 HUD Disaster Recovery Initiative grant funds which it receives.

2. Match contributions must be made to DRI-funded recovery activities related to covered disasters.

3. Match may be provided by any public entity from non-Federal cash, real estate, or revenue resources owned or controlled by the public entity.

4. Match funds must be reasonably valued. For example, base the value of cash grants on the dollar value of the grant; value below market interest rate loans on the present discounted cash value of the amount of subsidy; value taxes forgiven for future years based on the present discounted cash value of the revenue foregone; and value a donation of real estate based on a professional appraisal.

5. The State must make match contributions before all DRI funds are expended. Match contributions must total not less than 25 percent of the disaster grant funds drawn from the State's line of credit, excluding funds drawn for administrative and planning costs.

6. States may not count administrative and planning costs toward the required non-Federal public matching funds or equivalent value.

7. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award, including any other DRI grant or Community Development Block Grant, may not count as satisfying the matching contribution requirement for the HUD Disaster Recovery Initiative.

8. Match contributions must be contributed permanently to a disaster-related activity. To receive match credit for the full amount of a loan made with non-Federal public funds to a DRI funded activity, all repayment, interest, or other return on the loan must be treated as CDBG program income.

9. The following are examples that do not count toward meeting a grantee's matching contribution requirement:

a. Contributions made with or derived from Federal resources of funds, regardless of when the Federal resources or funds were received or expended. CDBG funds (defined § 570.3) are Federal funds for this purpose;

b. Contributions made with or derived from private resources or funds, regardless of when the private resources or funds were received or expended;

c. The interest rate subsidy attributable to the Federal tax exemption on financing or the value attributable to Federal tax credits;

10. Contributions are credited at time the contribution is made and reported to HUD quarterly, as follows:

a. Credit a cash contribution when the funds are expended for a disaster-related activity or at the time the State awards DRI funds if the activity was completed before the award of DRI funds;

b. Credit the subsidy value of a below-market interest rate loan at the time of the loan closing;

c. Credit the value of State or local taxes, fees, or other charges that are normally and customarily imposed but waived, foregone, or deferred at the time the State or State grant recipient or other public entity officially waives, forgoes, or defers the taxes, fees, or other charges;

d. Credit the value of donated land or other real property at the time ownership of the property is transferred to the public entity carrying out the DRI-assisted or disaster-related activity;

e. Credit the direct cost of relocation payments and services at the time that the payments and services are provided.

11. For DRI-assisted projects involving more than one State, the State that makes the match contribution may decide to retain the match credit or permit the other State to claim the credit.

G. Submission Requirements

1. Prerequisites to a State's receipt of a DRI grant include a citizen participation plan; publication of its proposed Action Plan; notice and comment; and submission of an Action Plan for Disaster Recovery.

2. Each State must submit to HUD, for approval, an Action Plan for Disaster Recovery that describes:

a. The recovery needs resulting from the covered disaster;

b. The State's overall plan for recovery;

c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with DRI funds;

d. The State's method of distribution;

e. Units of general local government receiving State distributions;

f. The projected uses for the DRI funds for each unit of general local government and Indian tribe receiving State distributions; and

g. The specific sources from which the match requirement will be achieved.

3. A State must only distribute DRI funds to units of general local government, including cities (both CDBG metropolitan cities and non-metropolitan cities) and counties (including CDBG urban counties), and to Indian tribes that have the capability to carry out disaster recovery activities.

4. The State must describe monitoring standards and procedures pursuant to § 91.330 and include certifications pursuant to:

a. Section 91.325(a)(1), affirmatively furthering fair housing;

b. Section 91.325(a)(3), drug-free workplace;

c. Section 91.325(a)(4), anti-lobbying;

d. Section 91.325(a)(5), authority of the State to carry out the program;

e. Section 91.325(a)(7), acquisition and relocation, except as waived;

f. Section I.G.5.b. of this notice, citizen participation;

g. Section 91.325(b)(2), consultation with local governments;

h. Section 91.325(b)(5), compliance with anti-discrimination laws;

i. Section 91.325(b)(6), excessive force;

j. Section 91.325(b)(7), compliance with applicable laws.

5. Citizen participation a. In order to permit public examination and appraisal of the Action Plan for Disaster Recovery, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the State and State grant recipients shall in a timely manner—

i. Furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed DRI grant activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income;

ii. Publish a proposed Action Plan for Disaster Recovery in such manner to afford affected citizens and units of general local government an opportunity to examine its content and to submit comments on the proposed disaster recovery performance and on the community development performance of the grantee; and

iii. Provide citizens and units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds

received under this grant from one eligible activity to another or in the method of distribution of such funds.

In preparing the Action Plan for Disaster Recovery, the State shall consider any such comments and views and may, if it deems appropriate, modify the proposed Action Plan for Disaster Recovery. The Action Plan for Disaster Recovery shall be made available to the public, and a copy shall be furnished to HUD together with the certifications required under section I.G.4., above. Any Action Plan for Disaster Recovery may be modified or amended from time to time by the State in accordance with the same procedures required in this paragraph for the preparation and submission of such Action Plan for Disaster Recovery.

b. A DRI grant may be made only if the State certifies that it is following, and that it will require its State grant recipients to follow, a detailed citizen participation plan that:

i. Provides for and encourages citizen participation, with particular emphasis on areas in which DRI funds are proposed to be used;

ii. Provides citizens with information and records relating to the grantee's proposed use of funds, and relating to the actual use of DRI funds; and

iii. Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the State for the development and execution of its DRI Action Plan.

H. Determining Eligibility of Activities

An activity may be assisted in whole or in part with DRI funds only if all of the following requirements are met:

1. Neither the State nor its State grant recipients may use DRI funds for activities reimbursable or for which funds are made available by FEMA, SBA, or the Corps of Engineers.

2. *Compliance with national objectives.* States receiving allocations under the HUD Disaster Recovery Initiative must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities that:

a. Will benefit to low- and moderate-income families;

b. Will aid in the prevention or elimination of slums or blight; or

c. May also include activities that the State and its State grant recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

d. Consistent with the foregoing, each State and State grant recipient must ensure, and maintain evidence, that each of its activities assisted with DRI funds meets one of the three above national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.483.

3. *Compliance with the primary objective.* In using HUD Disaster Recovery Initiative funds under the authority of the Act, the State must meet the primary objective of the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. To meet the primary objective, more than 50 percent of the funds in each grant must be used for activities that principally benefit persons of low and moderate income as determined by the criteria under § 570.483(b), unless waived under section I.C.2. When calculating the percentage of funds expended for such activities:

a. Costs of administration and planning eligible under section I.H.1. of this notice will be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the DRI funds and, accordingly, shall be excluded from the calculation;

b. Funds expended for the acquisition, new construction, reconstruction, or rehabilitation of property for housing that qualifies under § 570.483(b)(3) must be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including DRI grant and non-DRI grant costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low- and moderate-income persons.

c. Funds expended for any other activities qualifying under § 570.483(b) must be counted for this purpose in their entirety.

4. *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

5. *Eligible activities.* DRI funds may be used for activities carried out by a State grant recipient that are relevant to disaster recovery, as described in this Notice. States and State grant recipients must use funds appropriated under the 1998 Supplemental Appropriations Act only for disaster relief, long-term recovery, and mitigation activities related to a covered disaster in communities affected by a Presidentially declared disaster that is designated during Federal fiscal year 1998. Such communities must be in areas included in such declarations. These funds will supplement, not replace, FEMA and other Federal funds. To the extent the use of funds does not violate the restriction at section I.H.1., eligible activities include:

a. Acquisition of real property (including the buying out of flood-prone properties and the acquisition of relocation property);

b. Relocation payments and assistance for displaced persons, businesses, organizations, and farm operations;

c. Debris removal, clearance, and demolition to the extent that these activities are not eligible under FEMA's Public Assistance program;

d. Rehabilitation or reconstruction of residential and non-residential buildings and improvements;

e. Acquisition, construction, reconstruction, or installation of public works, facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes, to the extent that these activities are not eligible under FEMA's Public Assistance program;

f. Code enforcement in deteriorated or deteriorating areas, e.g., disaster areas;

g. Assistance to facilitate homeownership among low- and moderate-income persons, e.g., downpayment assistance, interest rate subsidies, loan guarantees;

h. Provision of public services, if such services are new or an increased level of services, limiting costs to no more than 15 percent of the grant amount;

i. Activities relating to energy conservation and renewable energy resources, incorporated into recovery;

j. Provision of assistance to profit-motivated businesses to carry out economic development recovery activities that benefit the public by:

i. Creating or retaining jobs for low- and moderate-income persons;

ii. Preventing or eliminating slums and blight;

iii. Meeting urgent needs;

iv. Creating or retaining community-owned businesses;

v. Assisting businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

vi. Providing related technical assistance;

k. Planning and administration costs up to 20 percent of the grant (e.g., planning, urban environmental design and policy-planning-management-capacity building activities and payment of reasonable program administration costs for: general management, oversight and coordination; public information; fair housing activities; indirect costs charged to the HUD Disaster Recovery Initiative under a cost allocation plan prepared in accordance with OMB Circulars A–21, A–87, or A–122 as applicable; and submission of applications for Federal programs; as well as,

l. Any other activity authorized under section 105(a) of the Housing and Community Development Act of 1974, as amended, not waived by this notice or subsequently, provided that it relates to recovery from a covered Presidentially declared disaster. The Department may grant waivers permitting States and State grant recipients to undertake additional activities with DRI funds if they are consistent with the requirements of title II, chapter 6 of Public Law 105–1 after a full consideration of a waiver request.

6. *Special policies governing facilities.* The following special policies apply to:

a. *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the HUD Disaster Recovery Initiative may be provided with DRI funds even if it is part of a multiple use building containing ineligible uses, if:

i. The facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

ii. The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

b. *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with DRI funds, but charges such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities, are not permitted.

7. *Special assessments under the HUD Disaster Recovery Initiative.* The following policies relate to special assessments under the HUD Disaster Recovery Initiative:

a. *Definition of special assessment.* The term ''special assessment'' means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

b. *Special assessments to recover capital costs.* Where DRI funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

i. Special assessments to recover the DRI funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

ii. Special assessments to recover the non-DRI grant portion may be made provided that DRI funds are used to pay the special assessment in behalf of all properties owned and occupied by low- and moderate-income persons. However, DRI funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate-income persons if the State certifies that it does not have sufficient DRI funds to pay the assessments in behalf of all of the low- and moderate-income persons who are owner-occupants. Funds collected through such special assessments are not program income.

c. *Public improvements not initially assisted with DRI funds.* The payment of special assessments with DRI funds constitutes HUD Disaster Recovery assistance to the public improvement. Therefore, DRI funds may be used to pay special assessments provided:

i. The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this initiative, including environmental, citizen participation, and Davis-Bacon requirements;

ii. The installation of the public improvement meets a criterion for national objectives in paragraph I.H.2.a., b. or c.; and

iii. The requirements of paragraph I.H.7.b.ii. are met.

8. *Limitation on planning and administrative costs.*

a. No more than 20 percent of the sum of any grant to a State, plus program income, shall be expended for planning and program administrative costs under section I.H.5.k.

b. State administrative costs. The State is responsible for the administration of its HUD Disaster Recovery Initiative. The amount of DRI funds used to pay administrative costs incurred by the State in carrying out its responsibilities under this program shall not exceed 2 percent of the aggregate of the State's grant.

9. *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date. Prior to the effective date of the grant agreement, a State grant recipient may incur costs beginning on or after the incident date of the Presidentially declared disaster, and then charge those costs to DRI grant funds, provided that:

a. The State permits such use;

b. Such funds do not reimburse costs paid with other Federal grant funds; and

c. The costs and activities funded are in compliance with the requirements of this initiative and with the Environmental Review Procedures stated in 24 CFR part 58.

10. *Activities outside the jurisdiction of the unit of general local government.* DRI funds may assist an activity located outside the jurisdiction of the unit of general local government that receives the DRI funds, provided the unit of general local government determines that the activity is meeting its disaster recovery needs.

I. Guidelines for evaluating and selecting economic development projects

HUD provides guidelines to assist the recipient to evaluate and select activities to be carried out for economic development recovery purposes under paragraph H.5.j. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating projects costs and financial requirements are not. They may be found at § 570.482(e) and (f) for States and State recipients. HUD may consider the waiver of such standards on a case-by-case basis upon submission of a written justification as to why the recipient cannot meet the requirement and a proposed alternative that assures at least a minimum level of public benefit.

J. Ineligible Activities

1. *General government expenses.* Except as otherwise specifically authorized in this Notice, or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the State or unit of general local government are not eligible for assistance.

2. The following activities may not be assisted with DRI funds unless authorized under provisions of section 105(a)(15) of the Act.

a. *Purchase of equipment.* The purchase of equipment with DRI funds is generally ineligible.

i. *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of DRI funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible.

ii. *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible.

iii. *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. DRI funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A–21, A–87 or A–122, as applicable) for such items when necessary for use by a State grant recipient or its subrecipients in the administration of activities assisted with DRI funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service.

b. *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the HUD Disaster Recovery Initiative. For example, the use of DRI funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible, even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

i. Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which DRI funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

ii. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

c. *Income payments.* The general rule is that DRI funds may not be used for income payments. For purposes of the HUD Disaster Recovery Initiative, ''income payments'' means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

3. *Use of DRI funds as a non-Federal cost-share.* The use of DRI funds as a non-Federal cost-share to meet the requirements of a Federal grant-in-aid program is ineligible, except in the case of such use with respect to FEMA's Hazard Mitigation grant program (HMGP) under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended.

K. Treatment of Program Income

Any program income generated by HUD Disaster Recovery Initiative becomes program income to the State's CDBG program, not to its DRI grant. Such program income shall be returned to the State as program income for the year in which the State redistributes those funds. Therefore, any program income generated by DRI funds is to be included in cost cap calculations and program requirements for use of the CDBG funds. For States not participating in the CDBG program, program income received by the State after closeout of its grant is not subject to any Federal requirement.

L. Acquisition (Buyouts) of Flood-damaged Properties

1. *Payment of pre-flood values for buyouts.*

HUD Disaster Recovery Initiative State grant recipients have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using DRI funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

2. *Duplication of benefits and optional relocation payments with buyouts.*

a. Optional relocation assistance should only be provided to the extent necessary for displaced persons to relocate in a ''comparable replacement dwelling,'' as defined in 42 U.S.C. 4601(10) and 49 CFR 24.2(d), except as provided by HUD with prior approval on a case by case basis when sufficient cause exists due to extraordinary erosive economic impact of relocation, and shall not exceed an amount equal to the housing replacement cost minus:

i. Net proceeds from any flood insurance payment (proceeds net of the cost of documented repairs of flood damage);

ii. Personal tax savings that result from an owner's tax deduction of capital loss on displacement property;

iii. FEMA Hazard Mitigation Grant Program acquisition proceeds, and

iv. SBA disaster loan assistance.

3. *Buyout of undamaged properties.*

Many buyout projects contain some properties that were undamaged by the floods. Local administrators sometimes seek to offer buyouts to owners of undamaged properties to maximize clearance of the floodplain. Purchase of such properties with DRI funding is permitted if the properties are incidental to the project as a whole.

4. *Ownership and maintenance of acquired property.*

Any property acquired with DRI funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be

dedicated and maintained for compatible uses in perpetuity.

5. *Future Federal assistance to owners remaining in floodplain.*

a. Section 582 of the National Flood Insurance Reform Act of 1994 (in Title V of Pub. L. 103–325) (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

b. Section 582 also implies a responsibility for a grantee that receives DRI funds or that, under section 122 of the Act, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

c. *Duty to notify.* In the event of the transfer of any property described in paragraph e., the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

i. Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

ii. Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

d. *Failure to notify.* If a transferor fails to make notification and, subsequent to the transfer of the property:

i. The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

ii. The property is damaged by a flood disaster; and

iii. Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage,

iv. the transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

e. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

f. The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' This prohibition applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (i.e., earthquakes, fire, wind, etc.). The term ''flood disaster area'' is defined in section 582(d)(2) to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

M. Other Program Requirements

1. *General.* This section II.M. enumerates laws that HUD will treat as applicable to the HUD Disaster Recovery Initiative grants to States and State grant recipients, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which HUD has enforcement responsibility. The absence of mention herein of any other statute for which HUD does not have direct enforcement responsibility is not intended to be taken as an indication that, in HUD's opinion, such statute or Executive Order is not applicable to activities assisted with DRI funds. States are governed by applicable laws.

2. *Labor standards.* In part because Davis-Bacon requirements are not applicable to FEMA disaster grants, it is necessary to clarify the applicability of Davis-Bacon requirements in relationship to the use of DRI funds in disaster recovery efforts. This section of this Notice addresses Davis-Bacon applicability to use of DRI funds to reimburse property owners for construction work either completed or in process at the time use of those funds is contemplated.

In accordance with Section 110(a) of the Act, construction work financed in whole or in part with DRI funds is subject to Federal labor standards provisions including the payment of Davis-Bacon Act prevailing wage rates. Additionally, such work is subject to the requirements of the Copeland Act governing the certification and submission of weekly payroll reports and prohibiting kick-backs and other impermissible deductions from wages, and the overtime requirements of the Contract Work Hours and Safety Standards Act. The requirements found in Department of Labor (DOL) regulations for Davis-Bacon administration and enforcement (29 CFR parts 1, 3, 5, 6, and 7) also apply.

a. *Applicability.* DRI activities are subject to program policies and parameters for Federal labor standards applicability at § 570.603. The labor provisions apply to rehabilitation of residential property only if such property contains 8 or more units.

b. *Volunteers.* Section 110(b) of the Act provides for the use of volunteer labor on construction work subject to Federal labor standards. Volunteers may be utilized to the extent permitted under the regulations in 24 CFR part 70.

c. *Work in progress.* In accordance with 29 CFR 1.6(g), if DRI funds are approved after start of construction (e.g., rehabilitation), Davis-Bacon requirements apply to the construction work. In such cases, the appropriate Davis-Bacon wage decision and contract standards must be incorporated into the contract specifications retroactively to the date of award or to the start of construction, if there is no contract award. However, HUD may request, and the DOL may approve, a wage determination effective on the date the DRI funding is approved (i.e., not retroactively to the start of construction), provided that HUD considers and DOL agrees that it is necessary and proper in the public interest to prevent injustice or undue hardship, and provided further that there is no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate.

d. *Reimbursement for completed construction work.* When DRI funds are proposed to reimburse property owners for construction work performed and fully completed as disaster damage rehabilitation, Federal labor standards provisions (i.e., Davis-Bacon wage rates and related requirements) are not

applicable to the completed work provided that:

i. Neither the owner nor the unit of general local government contemplated use of or reimbursement by DRI funds for the rehabilitation(s) before or during the time construction work was underway; and

ii. No other Federal funding requiring the payment of Davis-Bacon wage rates was used to carry out the work.

In these cases, the use of DRI funds to reimburse owners for completed rehabilitation does not constitute financing of construction work within the meaning of the labor standards provisions of section 110 of the Act.

e. *Davis-Bacon Streamlining.* The HUD Office of Labor Relations has instituted a number of streamlining measures that significantly reduce the paperwork/recordkeeping burdens commonly attributed to Davis-Bacon projects. In addition, Labor Relations headquarters and field staff are committed to providing expedited processing on all matters related to DRI activities.

Note that most forms of DRI assistance to homeowners would not trigger Davis-Bacon requirements. Grantees should contact Richard S. Allan, Assistant to the Secretary for Labor Relations (Acting), or Jade M. Banks at (202) 708–0370 for assistance in determining whether and to what extent Davis-Bacon requirements apply to specific activities undertaken with DRI funds. Information about Federal labor standards provisions and HUD programs is also available on the HUD Homepage at: http://www.hud.gov/olr/olr__int2.html.

3. *National Flood Insurance Program.* State DRI grants are subject to sections 102(a) and 202(a) of the Flood Disaster Protection Act, respectively for the requirements for assisted property owners to purchase flood insurance and the effect of nonparticipation of the community in the flood insurance program. These requirements cannot be waived.

a. State grant recipients may not use HUD Disaster Recovery Initiative funding in flood hazard areas for acquisition or construction projects in communities that have been identified by FEMA as nonparticipating, noncompliant communities under the National Flood Insurance Program. Specific guidance can be found in the references in section I.M.3.b. Listings of participating, nonparticipating, and suspended communities are in the FEMA Federal Insurance Administration's ''National Flood Insurance Program Community Status Book,'' available on the World Wide Web at http://www.fema.gov/home/fema/csb.htm for viewing or downloading. FEMA's revised publication, ''Mandatory Purchase of Flood Insurance Guidelines,'' reflecting new provisions of the National Flood Insurance Reform Act of 1994 is also available on the World Wide Web at http://www/fema.gov/nfip/mpurfi.htm.

b. Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 4003(a)), one year or more after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of FEMA as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of a State's Action Plan for Disaster Recovery, funds shall not be expended for acquisition or construction purposes in an area that has been identified by FEMA as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79, or less than a year has passed since FEMA notification to the community regarding such hazards; and, where the community is participating, flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a).)

N. Waiver of statutory and regulatory requirements that would otherwise apply to the HUD Disaster Recovery Initiative

1. Title II, Chapter 6 of the 1998 Supplemental Appropriations Act, provides that in administering these amounts, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute. As noted, the Secretary may not waive statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, or labor standards. Also, as provided in implementing language in section I.C.2. in this notice, the statute requires that more than 50 percent of the funds must benefit primarily persons of low and moderate income unless HUD makes a finding, based on a State's request, that there is a compelling need to waive such requirement. The procedures set forth in this notice reflect the waiver of the statutory and regulatory requirements that the Secretary considered necessary for the implementation of the HUD Disaster Recovery Initiative, and that are authorized to be waived under title II, Chapter 6 of the 1998 Supplemental Appropriations. The statutory and regulatory requirements that have been waived pertain to requirements governing consolidated planning submissions, CDBG program requirements, acquisition and relocation requirements, and other program related requirements. Elsewhere in today's **Federal Register**, HUD has published a notice listing the specific statutory and regulatory requirements that have been waived and setting forth the reasons for the waivers. With respect to the waivers of these statutory and regulatory requirements, no further action need be taken by the grantees.

2. HUD may issue additional waivers (beyond those already waived by the Secretary in the implementation of this initiative) deemed appropriate under this authority. HUD will consider additional waivers on a case-by-case basis, as requested by grantees. Such waivers will receive expedited review.

3. States and State grant recipients should give priority to projects that benefit low- and moderate-income individuals to the maximum extent practicable.

II. Ensuring the Public Trust

A. Program Administrative, Recordkeeping and Reporting Requirements

The program administrative requirements at §§ 570.489–570.492, which are not otherwise waived, shall apply, except that, with respect to reporting:

1. States must submit a Performance Evaluation Report (PER) pursuant to 24 CFR 91.520, separately for the HUD Disaster Recovery Initiative, similar in all other respects to that which is required for the CDBG program regulated at 24 CFR part 570. HUD will compile this PER for the HUD Disaster Recovery Initiative from the quarterly reports submitted under paragraph 2. below, except that, with the final quarterly report submitted prior to grant closeout, States must also include with

the PER a special narrative that discusses how the State assured that activities met the requirements of this notice with respect to the buyout of structures in a disaster area.

2. Congress has required that quarterly reports be submitted regarding the actual projects, localities and needs for which funds have been provided. HUD must also receive reporting information for program management purposes. Therefore, each State must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, non-HUD Disaster Recovery Initiative Federal source and funds, numbers of properties and housing units, and numbers of low- and moderate-income households. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Initiative Grant Reporting system. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the overall percent of benefit to low- and moderate-income persons . HUD has sought approval from OMB for new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165, which expires on May 31, 2001. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

B. Cost Principles

1. *Direct and indirect cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A–87, ''Cost Principles for State, Local and Indian Tribal Governments;'' A–122, ''Cost Principles for Non-profit Organizations;'' or A–21, ''Cost Principles for Educational Institutions,'' as applicable.[1] All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under the HUD Disaster Recovery Initiative, except for the following:

i. Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

ii. Fines and penalties (including punitive damages) are unallowable costs to the HUD Disaster Recovery Initiative.

iii. Pre-award costs for State grant recipients are limited to those authorized under § 570.489(b).

2. *Uniform administrative requirements and cost principles.* The State and State grant recipients, their agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of OMB Circulars A–87 and A–133 (implemented at 24 CFR part 45), as applicable. States shall also comply with the applicable requirements of § 570.489 that are not otherwise waived or modified by this notice.

3. *Consultant activities.* Consulting services are eligible for assistance for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

a. *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with DRI funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties that detail the responsibilities, standards, and compensation.

b. *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in § 570.489(g) and are not subject to the Level IV limitation.

C. Public Law 88–352 and Public Law 90–284; Affirmatively Furthering Fair Housing; Executive Order 11063

1. The following requirements apply to HUD Disaster Recovery Initiative:

a. Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

b. Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, for each grantee receiving a DRI grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within the State, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard and assuring that State grant recipients comply with their certifications to affirmatively further fair housing.

2. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

D. Section 109 of the Act

1. No person in the United States shall on the ground of race, color, religion, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with DRI funds made available pursuant to the Act. ''Funded in whole or in part with HUD community development funds'' means that DRI funds have been transferred by the State grant recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. The term ''State grant recipient'' means recipient as defined in section I.D.

2. *Specific discriminatory actions prohibited and corrective actions.*

a. A recipient may not, under any program or activity, directly or through contractual or other arrangements, on the ground of race, color, religion, national origin, or sex:

i. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.

ii. Provide any facilities, services, financial aid or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity.

iii. Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to

[1] These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998–9999 or (800) 483–2209 (TTY) or on the Internet at ''www.whitehouse.gov/WH/EOP/omb#doc''.

receipt of any service or benefit under the program or activity.

iv. Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

v. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition that the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

vi. Deny an individual an opportunity to participate in a program or activity as an employee.

b. A recipient may not use criteria or methods of administration that have the effect of subjecting persons to discrimination on the basis of race, color, religion, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, religion, national origin, or sex.

c. A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds, may not make selections of such site or location that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, religion, national origin, or sex; or that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act.

d.i. In administering a program or activity funded in whole or in part with DRI funds regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word ''previously'' does not exclude current discriminatory practices.

ii. In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with DRI funds, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, religion, national origin or sex.

iii. After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited from taking any eligible action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

e. Notwithstanding anything to the contrary, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

3. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with DRI funds. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8.

E. Environmental Review Requirements

1. Prior to the commitment of any DRI funds, grantees must comply with the regulations in 24 CFR part 58. These regulations require: the analysis of potential environmental impacts; consultation with interested parties; and public notification of the results of the analysis and intent to request release of funds from HUD. State grant recipients must assume the responsibility for environmental reviews under the Disaster Recovery Initiative. States administering DRI funds must assume the responsibilities set forth in § 58.18 for overseeing the State grant recipients' compliance with environmental review requirements, including receiving requests for release of funds (RROF) and environmental certifications form State grant recipients and objections from government agencies and the public in accordance with subject H of 24 CFR part 58. The State must forward to the responsible HUD field office the environmental certification, the RROF and any objections received, and must recommend to HUD whether to approve or disapprove the certification and RROF.

2. *Disaster recovery assistance in a floodplain.*

a. The State grant recipient must follow the eight-step decision-making process required by Executive Order 11988, Floodplain Management, as codified for HUD programs at § 55.20. The Order covers the proposed acquisition, construction, improvement, disposition, financing, and use of property in a floodplain. Other related Federal environmental laws and authorities noted at § 58.5 may also apply.

b. The Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) jointly issued a memorandum on February 18, 1997 entitled '' Floodplain Management and Procedures For Evaluation and Review of Levee and Associated Restoration Projects,'' which emphasizes the need to consider nonstructural alternatives, e.g., ''buyouts,'' in flood disaster recovery activities and the need for coordination among all levels of government.

3. Environmental assessments and reviews may be tiered to eliminate duplication and to save time and resources. For other Federal programs, environmental assessments and reviews are not carried out by the State grant recipients as they are for the HUD Disaster Recovery Initiative, but are usually undertaken by Federal staff or contractors. Therefore, the State grant recipients must coordinate with other Federal agencies, e.g., FEMA, to tier environmental assessments and reviews for activities funded by programs of both Federal agencies.

4. *Joint environmental assessments between HUD and other Federal agencies.*

a. In addition to the provisions of § 58.33, the following special procedures may be employed when HUD and other Federal agencies jointly fund a project related to recovery from a covered disaster.

b. A State grant recipient administering Federal environmental requirements for the HUD Disaster Recovery Initiative may enter into cooperating agreements with other Federal agencies to prepare an environmental assessment for a HUD Disaster Recovery Initiative-funded project. The cooperating agreement will identify the project, all Federal agencies party to the agreement (including the State grant recipient acting for HUD under the provisions of 24 CFR part 58), which agency will be the lead agency and prepare the environment assessment, and the scope of the assessment, including the size and area of potential impact. The lead agency will prepare the assessment, using its own CEQ-approved procedures, and

conduct all required reviews, consultations and public notifications under applicable related laws and authorities.

c. The provisions of 24 CFR part 58 would apply if a State grant recipient administering a HUD-funded program that is subject to part 58 (e.g., the HUD Disaster Recovery Initiative) is the lead agency.

d. If the State grant recipient that assumes the HUD environmental review responsibilities is not the lead agency, then that government must review the completed environmental assessment that was prepared by a lead agency under the cooperating agreement. If the review of the document determines that the information is not accurate or complete or does not meet the requirements of 24 CFR part 58, a State grant recipient administering the provisions of 24 CFR part 58 must reject the assessment and prepare its own independent assessment as required in 24 CFR part 58. A State grant recipient acting as a cooperating agency remains responsible for review under authorities that may be unique to HUD-assisted projects under part 58, i.e., HUD environmental standards in 24 CFR part 51 and HUD policy regarding toxic or hazardous materials. However, if a lead agency's assessment meets the requirements of part 58, except for a lack of coverage of these particular areas, the cooperating agency need not reject the assessment. In these cases, the cooperating agency may add its own review of these areas and its own findings regarding the overall environmental impact of the project.

e. If an assessment showing no significant environmental impact is adopted by a State grant recipient administering the provisions of 24 CFR part 58, it must formally record its adoption pursuant to § 58.38, prepare a statement that the proposed HUD funding of the proposed project produces no significant environmental impact (FONSI), and follow the provisions for release of funds as stated in subpart H of 24 CFR part 58, including notice to the public and the statutory waiting period.

F. Displacement, Relocation, Acquisition, and Replacement of Housing

1. *General policy for minimizing displacement.* Consistent with the other goals and objectives of the HUD Disaster Recovery Initiative, and the Executive Order on Floodplain Management, a State shall assure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this program.

2. *Relocation assistance for displaced persons at URA levels.*

a. A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

b. *Displaced person.*

i. For purposes of paragraph 2. of this section, the term ''displaced person'' means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this initiative. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(1) After notice by the State grant recipient to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this initiative that are later provided or granted.

(2) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph 2.b.i.(1) or (2), if the State grant recipient determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(4) If the person is the tenant-occupant of a dwelling unit and any one of the following two situations occurs:

(a) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(b) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

ii. Notwithstanding the provisions of paragraph 2.b.i., the term ''displaced person'' does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the State grant recipient must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date of the notice described in paragraph 2.b.i.(1) or (2) of this section, but who received a written notice of the expected displacement before occupancy.

(3) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(4) A person who the State grant recipient determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

iii. A grantee (or State or State recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

3. *Optional relocation assistance.* In connection with the use of DRI funds for buyouts, a State may permit a State grant recipient to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph 2. The State may also permit the State grant recipient to provide relocation assistance to persons receiving assistance under paragraph 2. of this section at levels in excess of those required by this paragraph. Unless such assistance is provided under State or local law, the State grant recipient shall provide such assistance only upon the basis of a written determination that the assistance is appropriate. The State grant recipient must adopt a written policy available to the public that describes the relocation assistance that the State grant recipient has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

4. *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

5. *Appeals.* If a person disagrees with the determination of the State grant recipient concerning the person's eligibility for, or the amount of, a relocation payment under this section,

the person may file a written appeal of that determination with that government. The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low-or moderate-income household that has been displaced from a dwelling, where grant, loan or guarantee funds are provided by a State, may file a written request for further review of the State grant recipient's decision to the State.

6. *Responsibility of the State.*

a. The State is responsible for ensuring compliance with these requirements, notwithstanding any third party's contractual obligation to the State grant recipient to comply with the provisions of this section. For purposes of State DRI funds, the State shall require State grant recipients to certify that they will comply with the requirements of this section.

b. The cost of assistance required under this section may be paid from local public funds, funds provided under this initiative, or funds available from other sources.

c. The State and State grant recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

G. Employment and Contracting Opportunities

1. Grantees shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) and the implementing regulations at 41 CFR chapter 60; and

2. Though requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, are waived, HUD encourages each grantee to give priority to the hiring of local low and moderate income persons and contractors in carrying out its disaster recovery activities.

3. *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.*

a. The State and State grant recipient must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

b. Affirmative steps include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance of SBA and the Minority Business Development Agency of the U.S. Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.

H. Lead-Based Paint

States shall comply with the provisions of § 570.487(c).

I. Architectural Barriers Act and the Americans with Disabilities Act

1. The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this initiative after December 11, 1995, and that meets the definition of ''residential structure'' as defined in 24 CFR 40.2 or the definition of ''building'' as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

2. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

J. Constitutional Prohibition

1. In accordance with First Amendment church/State principles, as a general rule, DRI grant assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

2. The following restrictions and limitations therefore apply to the use of DRI funds.

a. DRI funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or purposes that will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph 2.b. of this section with respect to rehabilitation and under paragraph 2.d. of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with DRI funds at no more than fair market value for a non-religious use.

b. DRI funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

i. The building (or portion thereof) that is to be improved with the HUD Disaster Recovery Initiative assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

ii. The HUD Disaster Recovery Initiative assistance is provided to the lessee (and not the lessor) to make the improvements;

iii. The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

iv. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

v. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

vi. The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

vii. The lessee must remit the amount received from the lessor under paragraph b.vi. of this section to the recipient or subrecipient from which the DRI funds were derived.

viii. The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph c.

c. As a general rule, DRI funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the State grant recipient or subrecipient from which the DRI funds are derived that, in connection with the provision of such services:

i. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

ii. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

iii. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

iv. Where the public services provided under paragraph 2.c. are carried out on property owned by the primarily religious entity, DRI funds may also be used for minor repairs to such property that are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the DRI grant expenditure for the public services.

K. Political Activities

DRI funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with DRI funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

L. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients

The requirements set forth in 24 CFR part 24 apply to this program.

M. Procurement

When procuring property or services to be paid for in whole or in part with DRI funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for State grant recipients, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by section II.N. of this notice and § 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations. The State may adopt procurement standards in § 85.36, and may adopt procurement standards in § 85.36 for its State grant recipients that are also CDBG entitlement communities regardless of whether the State adopts such standards for other State grant recipients.

N. Conflict of Interest

1. *Applicability.* In the procurement of supplies, equipment, construction, and services by the States, State grant recipients, and subrecipients, the conflict of interest provisions in section II.M. shall apply. In all cases not governed by section II.M., this section II.N. shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with DRI funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

2. *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph 3. of this section who exercise or have exercised any functions or responsibilities with respect to HUD Disaster Recovery Initiative-assisted activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

3. *Persons covered.* The conflict of interest provisions for paragraph 2. apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a State grant recipient, or of any designated public agencies, or subrecipients which are receiving DRI funds.

4. *Exceptions: Threshold requirements.* Upon written request by the State, an exception to the provisions of paragraph 2. of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the State grant recipient provided the State shall fully document its determination in compliance with all requirements of paragraph 4.a., including the State's position with respect to each factor at paragraph 5., and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or State grant recipient, as appropriate. An exception may be considered only after the State or State grant recipient, as appropriate, has provided the following:

a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

b. An opinion of the attorney for the State or the State grant recipient, as appropriate, that the interest for which the exception is sought would not violate State or local law.

5. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph 4. have been satisfactorily met, the cumulative effect

of the following factors, where applicable, shall be considered:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

b. Whether an opportunity was provided for open competitive bidding or negotiation;

c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in this paragraph 5.;

f. Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

O. Performance Reviews and Dispute Resolution and Enforcement Actions

The provisions of 24 CFR subpart I apply to States, regarding HUD review of grantee performance, resolution of disputes regarding grantee performance, and adjudicative, remedial and enforcement actions that HUD may take to resolve noncompliance matters.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the 1998 HUD Disaster Recovery Initiative are as follows: 14.219; 14.228.

Dated: October 19, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–28436 Filed 10–21–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4398–N–02]

1998 HUD Disaster Recovery Initiative; Waivers and Modifications of Requirements for Community Development Block Grant Funds Under the 1998 Supplemental Appropriations and Rescissions Act

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers and modifications.

SUMMARY: Elsewhere in today's **Federal Register**, HUD published a notice governing the allocation and use of funds under the 1998 Disaster Recovery Initiative. In implementing this Initiative, HUD is authorized by statute to waive statutory and regulatory requirements. This notice lists the provisions being waived and provides justifications for these waivers.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Title II, Chapter 6 of the 1998 Supplemental Appropriations and Rescissions Act (the Act), appropriates $130 million in Community Development Block Grant (CDBG) funds to use for disaster relief, long-term recovery, and mitigation in communities affected by Presidentially declared natural disasters designated during fiscal year 1998.

With respect to these supplemental funds, the Act provides that Secretary of HUD, except as provided in the next proviso,

''may waive or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds and would not be inconsistent with the overall purpose of the statute: *Provided further,* That the Secretary may waive the requirements that activities benefit persons of low- and moderate-income, except that at least 50 percent of the funds under this head must benefit primarily persons of low- and moderate-income unless the Secretary makes a finding of compelling need.''

In conjunction with these statutory provisions and pursuant to 24 CFR 5.110, the Department has determined that it has good cause to waive certain regulatory provisions governing the use of Disaster Recovery Initiative funds. Therefore, to facilitate the use of the Disaster Recovery Initiative funds appropriated under Chapter 6 of the Act, the following provisions have been waived for the reasons set forth below. These waivers apply to activities funded under the Act with Disaster Recovery Initiative funds.

Consolidated Submissions for Community Planning and Development Programs

Description of Requirements Waived

Citizen participation requirements at 42 U.S.C. 5304(a), 42 U.S.C. 5306(d)(5)(C), 24 CFR 91.115(c), to the extent that expedited amendment of the State's Consolidated Plan is necessary to ensure timely delivery of assistance, except that grantees must provide alternative procedures for public notice of funding availability, as approved by HUD.

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary.

The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), and 24 CFR 91.320.

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. These requirements concern the submission of an Annual Action Plan (for States receiving annual allocations of regular CDBG funding). 42 U.S.C. 5304(m) contains the requirement for submission of a Community Development Plan describing a grantee's priority non-housing community development needs. Section I.G. of the **Federal Register** notice, published elsewhere in today's **Federal Register**, implementing the Disaster Recovery Initiative establishes streamlined, alternative planning and submission requirements for Disaster Recovery Initiative funding which meet the intent of the Cranston-Gonzalez National Affordable Housing Act and the Housing and Community Development Act. All State grantees that receive formula allocations of CDBG funding have already met the statutory

and regulatory requirements for the five-year strategic plan in the Consolidated Plan.

Citizen participation requirements at 42 U.S.C. 5304(a)(2) and (a)(3)(A) through (E), 24 CFR 91.110 and 91.115, and 24 CFR 570.486(a).

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. Section I.G. of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes streamlined, alternative citizen participation requirements for Disaster Recovery Initiative funding which meet the intent of the National Affordable Housing Act and the Housing and Community Development Act. Such requirements provide for public notice, appraisal, examination, and comment on the activities proposed for the use of DRI funds, but do not specifically require public hearings.

Community Development Block Grant Program

Description of Requirements Waived

Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A) and 24 CFR 570.484 (for States) that 70 percent of funds, over a period not to exceed three years, are for activities that benefit low and moderate income persons.

Justification: Grantees should give maximum feasible priority to funding activities that benefit persons of low and moderate income. Because the damage to community development and housing is without regard to income, and income-producing jobs are often lost following a disaster for a period of time, it is important to give grantees maximum flexibility to carry out recovery activities within the confines of the CDBG program national objectives, which are not waived. Also, with mitigation activities such as the buyout of flood prone properties, it is within the community's interest and consistent with Federal disaster and floodplain policy to reduce the risks to health and safety and to lessen future disaster damage and related costs by buying out all properties with areas at risk, rather than taking a patchwork approach. Section I.C.2 of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes requirements for complying with the statutory mandate that each grantee's program principally (at least 50%) benefit low- and moderate-income persons.

Requirements at 42 U.S.C. 5305(a) and 24 CFR 570.482(a) through (d), concerning activities eligible for funding under the Disaster Recovery Initiative.

Justification: To give maximum flexibility to grantees in addressing the wide variety of needs resulting from natural disasters, the Department has established alternative requirements for eligible activities at section I.H. of the **Federal Register** notice implementing the Disaster Recovery Initiative. These requirements will ensure compliance with the eligibility requirements of the Act and will ensure accountability in the use of funds.

Modifying 42 U.S.C. 5305(a)(9) to prohibit the use of DRI funds as a non-Federal cost-share to meet the requirements of a Federal grant-in-aid program, except in the case of such use with respect to FEMA's Hazard Mitigation grant program (HMGP) under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended, or except as may be permitted by waiver of this restriction on a case-by-case basis.

The 50 percent of downpayment limitation on direct homeownership assistance for low or moderate income homebuyers at 42 U.S.C. 5305(a)(24)(D).

Justification: Required to provide additional assistance to low/moderate income disaster victims in instances in which direct homeownership assistance with 50 percent of a downpayment is insufficient.

Provisions of 42 U.S.C. Chapter 69—Community Development and 24 CFR part 570 that would prohibit States electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities and to Indian tribes, including 42 U.S.C. 5306(d)(1) and (2)(A) and 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in nonentitlement areas and to Indian tribes.

Justification: This provides the State the flexibility necessary to meet a wide range of recovery needs in any areas of the State, including those in entitlement communities and on Indian reservations, that have been affected by the disaster.

Requirements at 24 CFR 570.480(a), 570.481(a) and 570.486(b).

Justification: These provisions describe requirements which are specific to States' administration of CDBG funding for non-entitlement areas. 24 CFR 570.480(a) indicates that other subparts of Part 570 are generally not applicable to the State CDBG program; 24 CFR 570.481(a) indicates that HUD will defer to States' interpretations of the definitions of terms contained in 42 U.S.C. 5300 *et. seq.*; 24 CFR 570.486(b) governs activities serving beneficiaries outside the jurisdiction of the unit of general local government. The Act permits HUD to specify alternative requirements for purposes of the Disaster Recovery Initiative. Where possible, the **Federal Register** notice implementing the Disaster Recovery Initiative retains the administrative flexibility provided to States in the State CDBG program.

Requirements of 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a)(1) concerning the use of Disaster Recovery Initiative funds for State administrative costs, including matching funds requirements.

Justification: Waiving these provisions would prevent undue hardship on States and would further the purposes of disaster recovery, by eliminating the requirement that Disaster Recovery Initiative funds spent on State administrative costs be matched with State funding. Paragraph I.H.8.b. of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes alternative requirements for States' use of funds for costs incurred in administering this funding.

The provisions at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), for the State CDBG program, that require States to allow units of local government to retain program income. All program income will be returned to the State and will become program income for the year in which the State redistributes those funds.

Justification: Waiver of this provision will also allow States to quickly utilize all program income for other eligible activities, except that for States not participating in the CDBG program, program income received by a State after closeout of its grant shall not be subject to any Federal requirement.

Requirements of 42 U.S.C. 5306(d)(2)(C)(iii) concerning restrictions on a State's ability to limit activities eligible for funding.

Justification: Waiving these requirements will increase State grantees' flexibility in prioritizing and responding to disaster recovery needs.

Acquisition and Relocation Requirements for CDBG Disaster Supplemental Funds

Description of Requirements Waived

One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and 24 CFR 570.488, 570.606(c) and 42.375(a), for low and moderate income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation. Requires

that all occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to a use other than as low/moderate income dwelling units in connection with a CDBG activity must be replaced with low/moderate income dwelling units. These requirements are waived provided the grantee assures HUD it will use all resources at its disposal, including DRI funds authorized to be used for a program of optional relocation assistance under 42 U.S.C. 505(a)(11), to ensure no displaced homeowner will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

Justification: Not waiving this provision would discourage grantees from demolition and clearance of dwelling units that would otherwise be appropriate for CDBG assistance. Such inaction would inhibit recovery efforts and add to health and safety problems.

Relocation requirements at 42 U.S.C. 5304(d)(2)(iii) and (iv) and 24 CFR 570.606(c) and 42.350(e), to permit a grantee to meet all or part of its obligation to provide relocation benefits to displaced persons under sections 204 and 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et. seq) (URA). The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and that agency will thus be eliminated.

Justification: FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(iii) and (iv) and implementing regulations at 24 CFR 570.606(c)(2). These alternative relocation benefits, available to low- and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA, respectively. The waiver assures uniform and equitable treatment for all such tenants under the URA, as qualified by this waiver.

Requirements at 49 CFR 24.2(d)(8)(ii), 24.402(b)(2) and 24.404, to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income.

Justification: The failure to suspend these requirements would impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

Requirements of Sections 204 and 205 of the URA, and 49 CFR Part 24, to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter who elects to relocate to rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

Justification: Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. The change conforms URA policy with Section 104(d) relocation assistance.

Requirements of Section 202(b) of the URA and 49 CFR 24.302, to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a ''moving expense and dislocation allowance'' based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that are reasonable for the jurisdiction and take into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.303(a)(1).

Justification: Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

Requirements of Section 414 of the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5181) so that Uniform Relocation Act provisions do not apply when a homeowner displaced by the disaster is assisted. Section 414 States: ''Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.''

Justification: Failure to waive section 414 would impede disaster recovery, discouraging grantees from the acquisition, demolition or rehabilitation of disaster-damaged housing because of excessive costs that would result from replacement housing payments made to former homeowners displaced by the disaster. Homeowners actually displaced by a HUD-assisted disaster recovery project will continue to receive URA assistance. Homeowners displaced by the disaster may apply for assistance under available disaster recovery programs.

Other Applicable Requirements

Requirements of 12 U.S.C. 1701u, 24 CFR 570.607(b) and 24 CFR part 135, concerning the requirements of Section 3 of the Housing and Urban Development Act of 1968.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs. However, in the **Federal Register** notice implementing the Disaster Recovery Initiative funding, HUD encourages grantees to give priority to the hiring of local low- and moderate-income persons and contractors in carrying out its activities.

Requirements of 24 CFR 570.612 and 24 CFR part 52, concerning applicability of Executive Order 12372 regarding intergovernmental consultation and review of activities proposed for Federal funding.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs.

Dated: October 19, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–28437 Filed 10–21–98; 8:45 am]

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H.R. 449/P.L. 105–263

Southern Nevada Public Land Management Act of 1998 (Oct. 19, 1998; 112 Stat. 2343)

H.R. 930/P.L. 105–264

Travel and Transportation Reform Act of 1998 (Oct. 19, 1998; 112 Stat. 2350)

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Great Lakes Fish and Wildlife Restoration Act of 1998 (Oct. 19, 1998; 112 Stat. 2358)

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Federal Employees Health Care Protection Act of 1998 (Oct. 19, 1998; 112 Stat. 2363)

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Gallatin Land Consolidation Act of 1998 (Oct. 19, 1998; 112 Stat. 2371)

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Library of Congress Bicentennial Commemorative Coin Act of 1998 (Oct. 19, 1998; 112 Stat. 2378)

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Migratory Bird Hunting and Conservation Stamp Promotion Act (Oct. 19, 1998; 112 Stat. 2381)

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Federal Activities Inventory Reform Act of 1998 (Oct. 19, 1998; 112 Stat. 2382)

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Year 2000 Information and Readiness Disclosure Act (Oct. 19, 1998; 112 Stat. 2386)

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