

Federal Register

Friday
December 18, 1998

**Now Available Online via
*GPO Access***

Free online access to the official editions of the *Federal Register*, the *Code of Federal Regulations* and other Federal Register publications is available on *GPO Access*, a service of the U.S. Government Printing Office at:

<http://www.access.gpo.gov/nara/index.html>

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

- ★ Phone: toll-free: 1-888-293-6498
- ★ Email: gpoaccess@gpo.gov

Attention: Federal Agencies

Plain Language Tools Are Now Available

The Office of the Federal Register offers Plain Language Tools on its Website to help you comply with the President's Memorandum of June 1, 1998—Plain Language in Government Writing (63 FR 31883, June 10, 1998). Our address is: <http://www.nara.gov/fedreg>

For more in-depth guidance on the elements of plain language, read "Writing User-Friendly Documents" on the National Partnership for Reinventing Government (NPR) Website at: <http://www.plainlanguage.gov>



The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see <http://www.nara.gov/fedreg>.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at <http://www.access.gpo.gov/nara>. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512-1262; or call (202) 512-1530 or 1-888-293-6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday-Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is \$555, or \$607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is \$220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is \$8.00 for each issue, or \$8.00 for each group of pages as actually bound; or \$1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 63 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
 Paper or fiche 202-512-1800
 Assistance with public subscriptions 512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:
 Paper or fiche 512-1800
 Assistance with public single copies 512-1803

FEDERAL AGENCIES

Subscriptions:
 Paper or fiche 523-5243
 Assistance with Federal agency subscriptions 523-5243

NOW AVAILABLE ONLINE

The October 1998 Office of the Federal Register Document Drafting Handbook

Free, easy online access to the newly revised October 1998 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

<http://www.nara.gov/fedreg/draftres.html>

This handbook helps Federal agencies to prepare documents for publication in the **Federal Register**.

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202-523-3447

E-mail: info@fedreg.nara.gov



Contents

Federal Register

Vol. 63, No. 243

Friday, December 18, 1998

Agricultural Marketing Service

RULES

Walnuts grown in—
California, 69994–69996

PROPOSED RULES

Prunes (dried) produced in California, 70063–70065

Agriculture Department

See Agricultural Marketing Service

See Forest Service

See Natural Resources Conservation Service

Army Department

See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention

NOTICES

Committees; establishment, renewal, termination, etc.:
Mine Safety and Health Research Advisory Committee,
70136

Meetings:

HIV and STD Prevention Advisory Committee, 70137

Coast Guard

RULES

Drawbridge operations:
California, 70018

Ports and waterways safety:

Safety zones and security zones, etc.; list of temporary
rules, 70015–70018

NOTICES

Meetings:

Houston/Galveston Navigation Safety Advisory
Committee, 70178–70179

Commerce Department

See Export Administration Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 70098

Procurement list; additions and deletions, 70098–70100

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Costa Rica, 70107
Egypt, 70107–70108
El Salvador, 70108–70109
Nepal, 70109
Pakistan, 70109–70110
Russia, 70110

Export visa requirements; certification, waivers, etc.:

Cambodia, 70110–70112

Special access and special regime programs:

Caribbean Basin countries; participating requirements;
temporary amendment, 70112–70113

Copyright Office, Library of Congress

PROPOSED RULES

Copyright arbitration royalty panel rules and procedures:

Royalty distribution and rate adjustment proceedings;
conduct, 70080–70086

Corporation for National and Community Service

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 70113

Grants and cooperative agreements; availability, etc.:

AmeriCorps* programs—

AmeriCorps Promise Fellowships, 70113–70116

Defense Department

See Engineers Corps

See Navy Department

RULES

Federal Acquisition Regulation (FAR):

Contractor personnel compensation; allowability
limitation, 70287–70288

Contractor purchasing system review exclusions, 70288

Contract quality requirements, 70289–70290

Electronic data interchange transactions; evidence of
shipment, 70291–70292

Federal Contract Compliance Programs Office national
pre-award registry, 70282–70287

Historically underutilized business zone (HUBZone)

empowerment contracting program, 70265–70281

Indefinite-quantity contracts; limits, 70282

Introduction, 70263–70265

Mandatory government source inspection, 70290

No-cost value engineering change proposals, 70290–
70291

Small entity compliance guide, 70306–70307

Technical amendments, 70292–70305

Education Department

NOTICES

Meetings:

National Educational Research Policy and Priorities
Board, 70117

Postsecondary education:

Federal Perkins loan, Federal work-study, and Federal
supplemental educational opportunity grant
programs—

Participation approval applications; filing closing date,
70251–70253

Employment Standards Administration

NOTICES

Minimum wages for Federal and federally-assisted

construction; general wage determination decisions,
70162–70163

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Grants and cooperative agreements; availability, etc.:
Energy efficient building equipment and envelope technologies, 70117-70118

Engineers Corps**NOTICES**

Environmental statements; availability, etc.:
La Paz and Mohave Counties, AZ; Alamo Lake feasibility study, 70116

Environmental Protection Agency**RULES**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Tennessee, 70022-70027

Air quality implementation plans; approval and promulgation; various States:
South Carolina, 70019-70022

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Harpin, 70027-70030

Tebufenozide, 70030-70035

PROPOSED RULES

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Tennessee, 70086-70087

Air quality implementation plans; approval and promulgation; various States:
South Carolina, 70086

Hazardous waste:

Lead-based paint debris; toxicity characteristic rule; temporary suspension, 70233-70249

Toxic substances:

Lead-based paint activities—
Identification of dangerous levels of lead; correction, 70087-70089

Lead-based paint debris; management and disposal, 70189-70233

NOTICES

Environmental statements; availability, etc.:

Agency statements—
Comment availability, 70123-70124
Weekly receipts, 70124-70125

Meetings:

Good Neighbor Environmental Board, 70125
U.S. Government Representative to Commission for Environmental Cooperation—
Governmental Advisory Committee, 70125
National Advisory Committee, 70125-70126

Pesticide programs:

Organophosphates; preliminary risk assessments, 70126-70127

Toxic and hazardous substances control:

Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
Oregon, 70127-70128

Export Administration Bureau**NOTICES**

Committees; establishment, renewal, termination, etc.:
President's Export Council, 70100

Federal Aviation Administration**RULES**

Airworthiness directives:

British Aerospace (Operations) Ltd., 69999-70001

Dassault, 70004-70005

McCauley Propeller Systems, 69996-69999

McDonnell Douglas, 70005-70009

Rolls-Royce Ltd., 70001-70002

Saab, 70002-70004

PROPOSED RULES

Airworthiness directives:

Airbus, 70068-70069

McDonnell Douglas, 70069-70071

NOTICES

Exemption petitions; summary and disposition, 70179

Meetings:

Air Traffic Procedures Advisory Committee, 70179

Federal Bureau of Investigation**NOTICES**

Communications Assistance for Law Enforcement Act:

Telecommunications services other than local exchange services, cellular, and broadband personal communications services, 70160-70162

Federal Communications Commission**RULES**

Radio and television broadcasting:

Media applications, rules, and processes streamlining; mass media facilities, minority and female ownership policies and rules; biennial regulatory review, 70040-70051

PROPOSED RULES

Common carrier services:

Telecommunications Act of 1996; implementation—
Local exchange carriers' intelligent networks; third party access; rulemaking proceeding terminated, 70089-70090

Practice and procedure:

Regulatory fees (1999 FY); assessment and collection, 70090-70093

NOTICES

Reporting and recordkeeping requirements, 70129

Federal Election Commission**PROPOSED RULES**

Contribution and expenditure limitations and prohibitions:

Limited liability companies; treatment, 70065-70068

NOTICES

Meetings; Sunshine Act, 70129

Federal Emergency Management Agency**RULES**

Flood insurance; communities eligible for sale:

Maine et al., 70037-70040

South Dakota et al., 70036-70037

NOTICES

Agency information collection activities:

Proposed collection; comment request, 70129-70130

Disaster and emergency areas:

Texas, 70130

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:

Western Systems Power Pool et al., 70120-70123

Hydroelectric projects; new docket prefix JR establishment, 70123

Applications, hearings, determinations, etc.:

Columbia Gas Transmission Corp., 70118

Northern Border Pipeline Co., 70119

Portland Natural Gas Transmission System, 70119-70120

Federal Reserve System**NOTICES**

- Banks and bank holding companies:
 Formations, acquisitions, and mergers, 70130–70131
 Permissible nonbanking activities, 70131–70132
 Correction, 70131, 70132
- Federal Reserve bank services:
 Automated Clearing House credit transactions settlement-day finality; comment request, 70132–70135

Fish and Wildlife Service**RULES**

- Endangered and threatened species:
 St. Andrew beach mouse, 70053–70062

NOTICES

- Environmental statements; availability, etc.:
 Plum Creek Timber Co., King and Kittitas Counties, WA, 70156

Forest Service**NOTICES**

- Environmental statements; notice of intent:
 Shoshone National Forest, WY, 70097

General Services Administration**RULES**

- Federal Acquisition Regulation (FAR):
 Contractor personnel compensation; allowability limitation, 70287–70288
 Contractor purchasing system review exclusions, 70288
 Contract quality requirements, 70289–70290
 Electronic data interchange transactions; evidence of shipment, 70291–70292
 Federal Contract Compliance Programs Office national pre-award registry, 70282–70287
 Historically underutilized business zone (HUBZone) empowerment contracting program, 70265–70281
 Indefinite-quantity contracts; limits, 70282
 Introduction, 70263–70265
 Mandatory government source inspection, 70290
 No-cost value engineering change proposals, 70290–70291
 Small entity compliance guide, 70306–70307
 Technical amendments, 70292–70305

Government Ethics Office**RULES**

- Executive Branch financial disclosure, qualified trusts, and certificates of divestiture:
 Technical amendments, 69991–69992
- Standards of ethical conduct for executive branch employees, 69992–69994

Health and Human Services Department

- See Centers for Disease Control and Prevention
 See Inspector General Office, Health and Human Services Department
 See National Institutes of Health

NOTICES

- Agency information collection activities:
 Proposed collection; comment request, 70135–70136
- Committees; establishment, renewal, termination, etc.:
 Chronic Fatigue Syndrome Coordinating Committee, 70136

Health Care Financing Administration

- See Inspector General Office, Health and Human Services Department

Housing and Urban Development Department**NOTICES**

- Agency information collection activities:
 Proposed collection; comment request, 70153–70154
- Fair housing enforcement; occupancy standards; policy statement, 70255–70257
- Grant and cooperative agreement awards:
 Native American rural housing and economic development initiative, 70154–70155
- Grants and cooperative agreements; availability, etc.:
 Facilities to assist homeless—
 Excess and surplus Federal property, 70155

Inspector General Office, Health and Human Services Department**NOTICES**

- Nursing home industry; compliance program guidance; comment request, 70137–70138
- Third-party medical billing companies; compliance program guidance, 70138–70152

Interior Department

- See Fish and Wildlife Service
 See National Park Service
 See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service**RULES**

- Practice and administration:
 Tax-qualified retirement plans; eligible rollover distributions; notice, consent, and election requirements, 70009–70012
- Procedure and administration:
 Abatement of interest; unreasonable errors or delays by IRS officer or employee, 70012–70015
- PROPOSED RULES**
- Income taxes and employment taxes and collection of income taxes at source:
 Retirement plans; distributions notice and consent requirements; new technologies, 70071–70079

International Trade Administration**NOTICES**

- Antidumping:
 Antifriction bearings (other than tapered roller bearings) and parts from—
 Italy, 70100–70101
 Stainless steel plate in coils from—
 Canada et al., 70101

International Trade Commission**NOTICES**

- Import investigations:
 Compact multipurpose tools, 70157
 Pressure sensitive plastic tape from—
 Italy, 70157–70158
 Prestressed concrete steel wire strand from—
 Japan, 70158–70159

Justice Department

- See Federal Bureau of Investigation

NOTICES

- Privacy Act:
 Systems of records, 70159–70160

Labor Department

- See Employment Standards Administration
 See Mine Safety and Health Administration

RULES

Nationwide employment statistics system; election process for State agency representatives for consultations with Labor Department, 70259-70262

Library of Congress

See Copyright Office, Library of Congress

Mine Safety and Health Administration**NOTICES**

Mining products; testing, evaluation, and approval; user fee adjustments, 70163-70164

National Aeronautics and Space Administration**RULES**

Federal Acquisition Regulation (FAR):

Contractor personnel compensation; allowability limitation, 70287-70288

Contractor purchasing system review exclusions, 70288

Contract quality requirements, 70289-70290

Electronic data interchange transactions; evidence of shipment, 70291-70292

Federal Contract Compliance Programs Office national pre-award registry, 70282-70287

Historically underutilized business zone (HUBZone) empowerment contracting program, 70265-70281

Indefinite-quantity contracts; limits, 70282

Introduction, 70263-70265

Mandatory government source inspection, 70290

No-cost value engineering change proposals, 70290-70291

Small entity compliance guide, 70306-70307

Technical amendments, 70292-70305

National Archives and Records Administration**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 70164-70165

National Bipartisan Commission on Future of Medicare**NOTICES**

Meetings, 70165

National Highway Traffic Safety Administration**RULES**

Insurer reporting requirements:

Insurers required to file reports; list, 70051-70053

NOTICES

Motor vehicle safety standards; exemption petitions, etc.:

General Motors Corp., 70179-70180

National Institutes of Health**NOTICES**

Meetings:

National Human Genome Research Institute, 70152-70153

National Institute on Drug Abuse, 70153

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 70093

Northeastern United States fisheries—
Atlantic sea scallop, 70093-70096

NOTICES

National Weather Service; modernization and restructuring: Weather Service offices—
Consolidation, automation, and closure certifications, 70101-70107

National Park Service**NOTICES**

Meetings:

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 70156-70157

National Science Foundation**NOTICES**

Meetings:

Geosciences Special Emphasis Panel, 70165

Vision for nanotechnology research and development; workshop, 70165

Natural Resources Conservation Service**NOTICES**

Environmental statements; availability, etc.:

Salado Creek Watershed, TX, 70097-70098

Navy Department**NOTICES**

Environmental statements; notice of intent:

Winston Churchill (DDG 81 flight IIA class destroyer); ship shock trials, 70116-70117

Nuclear Regulatory Commission**NOTICES**

Meetings:

Reactor Safeguards Advisory Committee, 70169-70170

Applications, hearings, determinations, etc.:

Niagara Mohawk Power Corp., 70166-70167

Power Authority of State of New York, 70167-70168

Vermont Yankee Nuclear Power Corp., 70168-70169

Nuclear Waste Technical Review Board**NOTICES**

Meetings, 70170

Public Health Service

See Centers for Disease Control and Prevention

See National Institutes of Health

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:

Boston Stock Exchange, Inc., 70170-70172

Cincinnati Stock Exchange, Inc., 70172-70173

National Association of Securities Dealers, Inc., 70173-70178

Surface Mining Reclamation and Enforcement Office**PROPOSED RULES**

Permanent program and abandoned mine land reclamation plan submissions:

Wyoming, 70080

Surface Transportation Board**NOTICES**

Motor carriers:

Pooling agreements—

Peter Pan Bus Lines, Inc., 70181

Peter Pan Bus Lines, Inc., et al., 70180-70181

Rail carriers:

Cost recovery procedures—
Adjustment factor, 70182

Railroad services abandonment:

Kansas City Southern Railway Co., 70182

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile
Agreements

Transportation Department

See Coast Guard

See Federal Aviation Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

Treasury Department

See Internal Revenue Service

United States Information Agency**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 70182–70183

Veterans Affairs Department**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 70183–70184

Submission for OMB review; comment request, 70184–
70187

Committees; establishment, renewal, termination, etc.:
Rehabilitation Advisory Committee, 70187

Separate Parts In This Issue**Part II**

Environmental Protection Agency, 70189–70249

Part III

Department of Education, 70251–70253

Part IV

Department of Housing and Urban Development, 70255–
70257

Part V

Department of Labor, 70259–70262

Part VI

Department of Defense, General Services Administration,
National Aeronautics and Space Administration,
70263–70307

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR	16.....70282
2634.....69991	19 (2 documents) .....70265,
2635.....69992	70292
7 CFR	22.....70282
984.....69994	26.....70265
Proposed Rules:	31.....70287
993.....70063	32.....70292
11 CFR	37.....70292
Proposed Rules:	42.....70292
110.....70065	44.....70288
14 CFR	46 (2 documents) .....70289,
39 (6 documents) .....69996,	70290
69999, 70001, 70002, 70004,	48.....70290
70005	52 (5 documents) .....70265,
Proposed Rules:	70282, 70289, 70291, 70292
39 (2 documents) .....70068,	53 (2 documents) .....70265,
70069	70292
26 CFR	49 CFR
1.....70009	544.....70051
301.....70012	50 CFR
602.....70009	17.....70053
Proposed Rules:	Proposed Rules:
1.....70071	622.....70093
35.....70071	648.....70093
29 CFR	
44.....70260	
30 CFR	
Proposed Rules:	
950.....70080	
33 CFR	
100.....70015	
117 (2 documents) .....70018	
165.....70015	
37 CFR	
Proposed Rules:	
251.....70080	
40 CFR	
52.....70019	
62.....70022	
180 (2 documents) .....70027,	
70030	
Proposed Rules:	
52.....70086	
62.....70086	
260.....70233	
261.....70233	
745 (2 documents) .....70087,	
70190	
44 CFR	
64 (2 documents) .....70036,	
70037	
47 CFR	
1.....70040	
73.....70040	
Proposed Rules:	
Ch. I.....70089	
1.....70090	
48 CFR	
Ch. 1 (2 documents) .....70264,	
70306	
1.....70292	
5.....70265	
6.....70265	
7.....70265	
8.....70265	
12.....70265	
13.....70265	
14.....70265	
15.....70265	

Rules and Regulations

Federal Register

Vol. 63, No. 243

Friday, December 18, 1998

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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209-AA00

Technical Amendments to Financial Disclosure Rule for Executive Branch Employees

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is making minor technical amendments to the executive branch financial disclosure rule at 5 CFR part 2634, which remove obsolete provisions, correct inconsistencies, clarify ambiguities, and otherwise conform the text to current practice.

EFFECTIVE DATE: December 18, 1998.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attn.: Mr. G. Sid Smith. A copy of the two OGE memoranda to designated agency ethics officials noted in the **SUPPLEMENTARY INFORMATION** section below may be obtained from OGE's World Wide Web Site on the Internet at <http://www.usoge.gov>, or by contacting Mr. Smith at OGE.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics, telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: The regulation at 5 CFR part 2634 was promulgated by OGE in 1992 (with various subsequent amendments), to implement the financial disclosure requirements of the Ethics Reform Act of 1989 (5 U.S.C. app., §§ 101-111) and section 201(d) of Executive Order 12674, as well as other related statutory provisions. That regulation governs both the public and confidential financial

disclosure systems for executive branch employees. As OGE and ethics officials throughout the executive branch have gained experience with these disclosure systems, a few minor amendments have become necessary, in order to correct inconsistencies, clarify ambiguities, and conform the text to current practice. Those amendments are summarized below.

The term "gift" is defined in § 2634.105(h) by restating the statutory definition and exclusions at 5 U.S.C. app., § 109(5). Another section of the regulation at § 2634.304 recognizes additional statutory exclusions and exceptions from the gift disclosure requirements. For completeness and to eliminate any doubt for filers and ethics officials, this rulemaking adds a cross-reference at the end of § 2634.105(h) to those additional exclusions, which concern gifts from relatives, personal hospitality of an individual, gifts received when the filer was not a Government employee, and items valued at \$100 or less.

Example 2 following § 2634.201(a) illustrates that an employee who is not a public filer but who serves in an acting capacity in a public filer position for more than 60 days in a calendar year must file an incumbent public financial disclosure report. In order to eliminate any confusion, this rulemaking adds a sentence at the end of Example 2 following § 2634.201(a) to note that, in addition, the employee must file a new entrant report the first time that he has served for more than 60 days in a calendar year in the position, as required by other referenced sections of the regulation.

Example 2 following § 2634.304(e) illustrates how to determine the value of a gift of dinner at a restaurant. This example has caused some misunderstanding, because the definition of "gift" in § 2634.105(h)(4) excludes food and beverages not consumed in connection with a gift of overnight lodging. Further, the note after the examples following § 2634.304(e) discusses how to determine the value of a ticket to an event which includes food, refreshments, entertainment and other benefits, but fails to account for the exclusion of food and beverages not consumed in connection with a gift of overnight lodging. In order to eliminate any ambiguity, this rulemaking removes

Example 2 following § 2634.304(e), and adds in the note after the remaining example following § 2634.304(e) a reference to the potential exclusion of food and beverages, along with guidance in determining the value thereof.

Section 2634.902 discusses transition to the new confidential financial disclosure reporting system, which became effective on October 5, 1992. That section has served its purpose and is no longer necessary. Therefore, it is removed, and the section will be reserved.

Section 2634.903(a) requires persons in positions designated for confidential disclosure reporting to file an incumbent report on or before October 31 (if they have performed the duties of their position for more than 60 days during the reporting period). Some agencies and employees have inquired whether this report must be filed if the individual leaves Government service prior to the due date. As OGE indicated in a memorandum to designated agency ethics officials on July 31, 1995 (DO-95-030), it would be consistent with the regulatory scheme not to require reports in that situation, because the regulation was not intended to require reports after a confidential filer has terminated Government service. Such a requirement exists only for filers covered by the public financial disclosure statute, which involves substantially fewer filers and serves the special purpose of public scrutiny. In order to codify the 1995 OGE interpretation, this rulemaking adds a sentence in § 2634.903(a), to indicate that incumbent reports for confidential filers are not required if the employee has left Government service prior to the report's due date.

Section 2634.904(a) defines "confidential filer" by requiring agencies to designate positions where the duties and responsibilities require the employee to participate "personally and substantially" through decision or the exercise of significant judgment in taking certain types of Government actions. Several agencies have asked for guidance as to the meaning of the term "personally and substantially." As guidance, OGE has referred them to the definitions in other OGE regulations, primarily the standards of ethical conduct at 5 CFR § 2635.402(b)(4). See OGE memorandum to designated agency ethics officials of September 14, 1994

(DO-94-031). This rulemaking codifies that advice by adding a cross-reference in § 2634.904(a)(1) to § 2635.402(b)(4). While there are similar definitions in parts 2637 and 2640 of 5 CFR, the definition in the referenced section will suffice.

Section 2634.907(a) describes the contents of confidential financial disclosure reports by referring generally to the information required for public reports in subpart C of 5 CFR part 2634. While that subpart clearly specifies in § 2634.309 that information must be included about the filer's spouse and dependent children, some agencies and confidential filers have found the reference to be misleading or obscure. In order to eliminate any confusion on that point, this rulemaking amends § 2634.907(a) by specifying that confidential filers must include information about themselves, their spouse and their dependent children.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these revisions. The notice, comment and delayed effective date are being waived because these technical amendments to certain OGE regulations concern matters of agency organization, practice and procedure. Furthermore, it is in the public interest that the obsolete provisions be removed and that ambiguous provisions be clarified as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply

because this rulemaking, involving technical amendments and corrections, does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: November 5, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of chapter XVI of 5 CFR as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.105 is amended by:
a. Removing the word "or" at the end of paragraph (h)(5);
b. Removing the period at the end of paragraph (h)(6) and adding in its place a semicolon followed by the word "or"; and
c. Adding a new paragraph (h)(7).

The addition reads as follows:

§ 2634.105 Definitions.

* * * * *
(h) * * *
(7) Exclusions and exceptions as described at § 2634.304(c) and (d).
* * * * *

§ 2634.201 [Amended]

3. Section 2634.201 is amended by adding the sentence "In addition, he must file a new entrant report the first time he serves more than 60 days in a calendar year in the position, in accordance with § 2634.201(b) and § 2634.204(c)(1)." at the end of Example 2 following paragraph (a).

§ 2634.304 [Amended]

4. Section 2634.304 is amended by removing Example 2 following paragraph (e), redesignating Example 1 as Example following paragraph (e), and adding the sentence "The value of food and beverages may be excludable under § 2634.105(h)(4), if applicable, by making a good faith estimate, or by determining their actual cost from the

caterer, restaurant, or similar source." at the end of the note after the newly redesignated Example following paragraph (e).

§ 2634.902 [Removed and Reserved]

5. Section 2634.902 is removed and reserved.

§ 2634.903 [Amended]

6. Section 2634.903 is amended by adding the new sentence "This requirement does not apply if the employee has left Government service prior to the due date for the report." following the first sentence of the text in paragraph (a).

§ 2634.904 [Amended]

7. Section 2634.904 is amended by adding the words "(as defined in § 2635.402(b)(4) of this chapter)" following the words "personally and substantially" in the introductory text of paragraph (a)(1).

§ 2634.907 [Amended]

8. Section 2634.907 is amended by adding the words "about himself, his spouse and his dependent children," following the word "information" in the introductory text of paragraph (a).

[FR Doc. 98-33442 Filed 12-17-98; 8:45 am]
BILLING CODE 6345-01-U

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendments.

SUMMARY: The Office of Government Ethics is amending portions of the regulation governing standards of ethical conduct for executive branch employees which concern gifts from outside sources, to conform with interpretive advice and to improve clarity.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: On August 4, 1998, the Office of Government Ethics (OGE) published proposed minor amendments to the standards of ethical conduct for executive branch employees (5 CFR part 2635), to codify interpretive advice and clarify intended meaning in

subpart B (Gifts From Outside Sources). See 63 FR 41476-41477. No comments to that proposed rulemaking were received. Therefore, OGE is herewith publishing the proposed amendments as a final rule, with no changes, effective January 19, 1999. A summary of the amendments follows.

Sections 2635.202 and 2635.203 of the standards of ethical conduct regulation, as promulgated for codification at 5 CFR part 2635 in 1992, implemented the general ban on soliciting or accepting gifts from certain prohibited sources and gifts given because of an employee's official position. The amendment to § 2635.203(e) in this current rulemaking clarifies the meaning of gifts given because of the employee's official position, by revising the text and adding a new Example 2. The existing definition had been applied too broadly by some, in OGE's view, to encompass gifts based on mere happenstance that the recipient is a Government employee. The amended text and new example clarify that gifts given because of official position only describe those gifts which are motivated by the status, authority, or duties associated with the employee's Federal position.

Section 2635.204 of the standards of ethical conduct regulation, as promulgated in 1992, established certain exceptions to the gift ban in § 2635.202. The introductory text of existing § 2635.204 notes that a gift accepted under one of the exceptions will not be deemed to violate the fourteen general principles of ethical behavior contained in § 2635.101(b) and Executive Order 12674. Some ethics officials and employees had misunderstood the primary intent of this statement, which is that appearance concerns will not preclude use of the gift exceptions or require an employee to reject a gift which otherwise falls within one of the exceptions. The amendment to this text in the current rulemaking highlights the appearance standard as the primary principle among the fourteen that will not be deemed to override acceptance of a gift under one of the exceptions. This will further the original intent of promoting consistency in application of the gift rules, while recognizing that appearance concerns are already built into the various exceptions. A cautionary statement remains in the introductory text of § 2635.204 as promulgated in 1992, to alert employees that it may sometimes be prudent not to accept gifts even though permitted, and § 2635.202(c)(3) continues to limit the over-frequent acceptance of gifts that might appear to use public office for private gain.

Section 2635.204(a) of the standards of ethical conduct regulation, as promulgated in 1992, provided an exception to the general gift ban, for gifts aggregating \$20 or less "per occasion." Some ethics officials and employees had been uncertain whether this meant that all gifts at a particular event must be aggregated, or only gifts from each source at that event. The amendment to the text of this section and new Example 5 clarify that the exception was intended to allow acceptance of gifts aggregating \$20 or less "per source per occasion." This would not, however, permit an employee to accept a gift worth more than \$20 toward which several sources at an event or occasion have each contributed \$20 or less, because a gift is not divisible for acceptance purposes unless it consists of distinct and separate items, as suggested in the remaining original text in § 2635.204(a).

Executive Order 12866

In promulgating these final rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities, because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: October 26, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2635 of subchapter B of chapter XVI of title 5 of

the Code of Federal Regulations, as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2635.203 is amended by revising paragraph (e) and adding a new Example 2 after that paragraph to read as follows:

§ 2635.203 Definitions.

* * * * *

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

* * * * *

Example 2: Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

* * * * *

3. The undesignated introductory text of § 2635.204 is amended by revising the first sentence to read as follows:

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 2635.101(b), including appearances.

* * *

* * * * *

4. Paragraph (a) of § 2635.204 is amended by adding the words "per source" before the words "per occasion"

in the first sentence, and by adding a new Example 5 after paragraph (a) to read as follows:

§ 2635.204 Exceptions.

* * * * *
 (a) * * *
 * * * * *

Example 5: During off-duty time, an employee of the Department of Defense (DOD) attends a trade show involving companies that are DOD contractors. He is offered a \$15 computer program disk at X Company's booth, a \$12 appointments calendar at Y Company's booth, and a deli lunch worth \$8 from Z Company. The employee may accept all three of these items because they do not exceed \$20 per source, even though they total more than \$20 at this single occasion.

* * * * *

[FR Doc. 98-33555 Filed 12-17-98; 8:45 am]
 BILLING CODE 6345-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99-984-1 FR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1998-99 and subsequent marketing years from \$0.0116 to \$0.0133 per kernelweight pound of certified merchantable walnuts. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 19, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901; Fax: (559) 487-5906; or

George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 205-6632, or E-mail: Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the

district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 1998-99 and subsequent marketing years from \$0.0116 to \$0.0133 per kernelweight pound of certified merchantable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997-98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 11, 1998, and unanimously recommended 1998-99 expenditures of \$2,620,274 and an assessment rate of \$0.0133 per kernelweight pound of certified merchantable walnuts. In comparison, last year's budgeted expenditures were \$2,391,289. The assessment rate of \$0.0133 is \$0.0017 higher than the rate currently in effect. The quantity of assessable walnuts for 1998-99 is estimated at 198,000,000 kernelweight pounds, which is 9,000,000 kernelweight pounds less than 1997-98. With the anticipated decrease in assessable walnuts and increased budget expenditures, a higher assessment rate is needed to generate sufficient revenue to administer the program for the 1998-99 marketing year as shown in the following table.

	Assessment income	1998-99 budget	Difference
Current Rate—\$0.0116	\$2,296,800	\$2,620,274	-\$323,474
New Rate—\$0.0133	2,633,400	2,620,274	+\$13,126

The following table compares major budget expenditures recommended by the Board for the 1998-99 and 1997-98 marketing years:

Budget expense categories	1998-99	1997-98
General Expenses	\$246,643	\$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. As mentioned earlier, merchantable certifications for the year are estimated at 198,000,000 kernelweight pounds which should provide \$2,663,400 in assessment income. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year (§ 984.69).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is

needed. Further rulemaking will be undertaken as necessary. The Board's 1998-99 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 48 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Last year, as a percentage, 33 percent of the handlers shipped over 2.4 million

kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds. Based on an average price of \$2.10 per kernelweight pound at point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 1998-99 and subsequent marketing years from \$0.0116 to \$0.0133 per kernelweight pound of certified merchantable walnuts. The Board unanimously recommended 1998-99 expenditures of \$2,620,274 and an assessment rate of \$0.0133 per kernelweight pound of certified merchantable walnuts. The assessment rate of \$0.0133 is \$0.0017 higher than the current rate. The quantity of assessable walnuts for the 1998-99 marketing year is estimated at 198,000,000 kernelweight pounds. Thus, the \$0.0133 rate should provide \$2,633,400 in assessment income and be adequate to meet this year's expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year (§ 984.69).

The following table compares major budget expenditures recommended by the Board for the 1998-99 and 1997-98 marketing years:

Budget expense categories	1998-99	1997-98
General Expenses	\$246,643	\$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The higher assessment rate is needed to provide sufficient revenue to administer the program for the 1998-99 marketing year as shown in the following table.

	Assessment income	1998-99 budget	Difference
Current Rate—\$0.0116	\$2,296,800	\$2,620,274	-\$323,474
New Rate—\$0.0133	2,633,400	2,620,274	+\$13,126

The Board reviewed and unanimously recommended 1998-99 expenditures of \$2,620,274 which included increases in administrative and office expenses, and production research salary, and a decrease for research programs. Prior to arriving at this budget, the Board considered information and recommendations from various sources, such as the Board's Budget and Personnel Committee, the Research Committee, and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. After a desired expenditure level was determined, the assessment rate of \$0.0133 per kernelweight pound of assessable walnuts was determined by dividing the total recommended budget by the quantity of assessable walnuts, estimated at 198,000,000 kernelweight pounds for the 1998-99 marketing year. This is approximately \$13,000 above the anticipated expenses, which the Board determined to be acceptable.

A review of historical information and information pertaining to the current marketing year indicates that the grower price for the 1998-99 season could range between \$1.45 and \$1.58 per kernelweight pound of walnuts. Therefore, the estimated assessment revenue for the 1998-99 marketing year as a percentage of total grower revenue should be less than one percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 11, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements

on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on November 3, 1998 (63 FR 59246). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending November 18, 1998, was provided for interested persons to respond to the proposal. No comments were received. Another proposed rule duplicating the earlier proposal was published on November 6, 1998 (63 FR 59891). The duplicate proposal also provided a 15-day comment period which ended November 23, 1998. No comments were received in response to the duplicate proposal.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the marketing year began on August 1, 1998, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such marketing year; (3) handlers are aware of this rule which was recommended at a public meeting; and (4) a 15-day comment period was provided for interested persons to provide input on the assessment rate increase and no comments were received.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 1998, an assessment rate of \$0.0133 per kernelweight pound is established for California merchantable walnuts.

Dated: December 14, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-33574 Filed 12-17-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-34-AD; Amendment 39-10939, AD 98-25-13]

RIN 2120-AA64

Airworthiness Directives; McCauley Propeller Systems Models 2A36C23/84B-0 and 2A36C82/84B-2 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McCauley Propeller Systems (formerly McCauley Accessory Division, The Cessna Aircraft Company)

Models 2A36C23/84B-0 and 2A36C82/84B-2 propellers. This action supersedes priority letter AD 89-26-08 that currently requires penetrant inspections for cracks in the propeller blade threaded retention area, and modifying the propeller hub to a red dye filled configuration. This action adds an explanatory note to better define the AD applicability and makes minor adjustments to compliance section language to reflect current AD practice. This amendment is prompted by reports of confusion from operators as to if the AD is applicable to their particular model propeller. The actions specified by this AD are intended to prevent possible cracks in the propeller blade threaded retention area from progressing to blade separation, which can result in loss of aircraft control.

DATES: Effective January 4, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-34-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from McCauley Propeller Systems, 3535 McCauley Dr., PO Drawer 5053, Vandalia, OH 45377; telephone (937) 890-5246, fax (937) 890-6001. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294-7132; fax (847) 294-7834.

SUPPLEMENTARY INFORMATION: On December 20, 1989, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 89-26-08, applicable to McCauley Propeller Systems (formerly McCauley Accessory Division, The Cessna Aircraft

Company) Models 2A36C23/84B-0 and 2A36C82/84B-2 propellers, which requires penetrant inspections for cracks in the propeller blade threaded retention area, and modifying the propeller hub to a red dye filled configuration. That action was prompted by reports of cracks in the propeller blade threaded retention area. That condition, if not corrected, could result in possible cracks in the propeller blade threaded retention area from progressing to blade separation, which can result in loss of aircraft control.

Since the issuance of that priority letter AD, the FAA has received reports of confusion from operators as to if the AD is applicable to their particular model propeller.

The FAA has reviewed and approved the technical contents of McCauley Service Letter (SL) 1989-5, dated November 14, 1989, that describes procedures for propeller disassembly and modification of the propeller hub assembly to red dye filled configuration, and McCauley Service Manual No. 720415, Revision No. 1, dated May 1972, Chapter I, Page 4-6, Paragraph 4-6, that describes procedures for penetrant inspections for cracks in the propeller blade threaded retention area.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD supersedes priority letter AD 89-26-08 to add an explanatory note to better define the AD applicability and makes minor adjustments to compliance section language to reflect current AD practice. The actions are required to be accomplished in accordance with the service information described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be

considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-34-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

98-25-13 McCauley Propeller Systems:

Amendment 39-10939, Docket No. 98-ANE-34-AD. Supersedes AD 89-26-08.

Applicability: McCauley Propeller Systems (formerly McCauley Accessory Division, The Cessna Aircraft Company) Models 2A36C23/84B-0 and 2A36C82/84B-2 propellers installed on, but not limited to, Raytheon (formerly Beech) 35-B33, 35-A33, 35-33, 35-C33, 35-C33A, 36, A36, A45, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B Model aircraft, and S35, V35, V35A, V35B series aircraft.

Note 1: This AD applies to each propeller 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

propellers 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 possible cracks in the propeller blade threaded retention area from progressing to blade separation, which can result in loss of aircraft control, accomplish the following penetrant inspection and modification of the below listed hub models, in accordance with the compliance schedule as indicated, in which hours refer to time-in-service:

	Compliance schedule of propeller inspection and modification
Propeller hub model 2A36C23-()-(), regardless of blade model type, installed on flight training airplanes and/or acrobatic category airplanes: Greater than 400 hours or 59 calendar months since last overhaul/penetrant inspection or installed new; or prior time-in-service unknown. Less than or equal to both 400 hours and 59 calendar months since last overhaul/penetrant inspection or installed new.	Within the next 100 hours or one (1) calendar month after the effective date of this AD, whichever occurs first. Prior to the accumulation of 500 hours or 60 calendar months since last overhaul/penetrant inspection or installed new, whichever occurs first.
Propeller hub model 2A36C23-()-(), regardless of blade model, installed on other than flight training airplanes and/or acrobatic category airplanes: Greater than 900 hours or 59 calendar months since last overhaul/penetrant inspection or installed new; time-in-service unknown. Less than or equal to both 900 hours and 59 calendar months since last overhaul/penetrant inspection or installed new.	Within the next 200 hours, or at the next annual inspection, or within 12 calendar months after the effective AD, whichever occurs first. Prior to the accumulation of 1100 hours or 60 calendar months since last overhaul/penetrant inspection or installed new, whichever occurs first.
Propeller hub model 2A36C82-()-(), regardless of blade model installed on all category airplanes: Greater than 1300 hours or 59 calendar months since last overhaul/penetrant inspection or installed new; prior time-in service unknown. Less than or equal to both 1300 hours and 59 calendar months since last overhaul/penetrant inspection or installed new.	Within the next 200 hours, or at the next annual inspection, or within 12 calendar months after the effective date of this AD, whichever occurs first. Prior to the accumulation of 1500 hours or 60 calendar months since last overhaul/penetrant inspection or installed new, whichever occurs first.

Note 2: The parentheses used in the above list indicate the presence or absence of an additional letter(s) which vary the basic hub model designation. These letter(s) define minor changes that do not affect interchangeability or eligibility, and therefore, this AD still applies regardless of whether these letters are present or absent on the hub model designation.

Note 3: For propellers which have incorporated an oil-filled configuration with red dye and have been designated as hub Model 2A36C23-()-G or Model 2A36C82-()-G at initial production; or prior manufactured propellers which have been modified to an oil-filled configuration with red dye and reidentified as hub Model 2A36C23-()-()G or Model 2A36C82-()-()G, this airworthiness directive (AD) requires compliance with paragraph (d) only.

Note 4: Flight training airplanes for purposes of complying with this AD are defined as airplanes which are used currently for flight training instruction.

Note 5: The "calendar month" compliance times stated in this AD allow the performance of the required action to be extended to the last day of the month in which compliance is required. Example, a required inspection and modification of 60 months from last overhaul/penetrant inspection that was performed on December 15, 1985, would allow the penetrant inspection and modification to be performed no later than December 31, 1990.

(a) Perform disassembly in accordance with McCauley Service Letter (SL) 1989-5, dated November 14, 1989, and penetrant inspect for cracks in the propeller blade threaded retention area in accordance with McCauley Service Manual No. 720415,

Revision No. 1, dated May 1972, Chapter I, Page 4-6, Paragraph 4-6.

(b) If any indication of a crack is found, prior to further flight, remove propeller assembly and replace with a serviceable unit, complying with paragraph (c) below, or an equivalent initial production oil filled hub Model with red dye.

(c) Modify propeller hub assembly Model 2A36C23-()-() to Model 2A36C23-()-()G, and Model 2A36C82-()-() to Model 2A36C82-()-()G, as appropriate to contain oil with a red dye and reidentify in accordance with McCauley SL 1989-5, dated November 14, 1989.

Note 6: The modification of the propeller hub assembly to contain oil with a red dye provides an "on-condition" (in-service) means of early crack detection to prevent a blade separation and also improves lubrication and corrosion protection.

(d) If red dye is observed in service on hub Models in compliance with paragraph (c), or on an equivalent initial production oil filled hub Model with red dye, before further flight, or if in flight land as soon as practicable, as applicable, determine source of leakage in accordance with McCauley SL 1989-5, dated November 14, 1989. In the event the inspection reveals a crack, remove propeller assembly and replace with a serviceable oil filled hub Model with red dye.

(e) Report in writing any cracks found to the Manager, Chicago Aircraft Certification Office, within ten (10) days of the inspection. Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.

(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, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 7: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(h) The actions required by this AD shall be accomplished in accordance with the following McCauley service documents:

Document No.	Page	Date
Service letter 1989-5A:		
Cover	1	July 16, 1990.
Section A	1-4	July 16, 1990.
Section B	1	July 16, 1990.
Section C	1	July 16, 1990.
Section D	1-3	July 16, 1990.
Section E	1-6	July 16, 1990.
Section F	1-8	July 16, 1990.
Section G	1	July 16, 1990.
Section H	1,2	July 16, 1990.
Section I	1	July 16, 1990.
Total pages..	28	Undated.
Service manual 720415, Chapter 1.	4-6	
Total pages.	1	

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 McCauley Propeller Systems, 3535 McCauley Dr., PO Drawer 5053, Vandalia, OH 45377; telephone (937) 890-5246, fax (937) 890-6001. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment supersedes priority letter AD 89-26-08, issued December 20, 1989.

(j) This amendment becomes effective on January 4, 1999.

Issued in Burlington, Massachusetts, on December 4, 1998.

David A. Downey,

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

[FR Doc. 98-33028 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-122-AD; Amendment 39-10946; AD 98-26-05]

RIN 2120-AA64

Airworthiness Directives; British Aerospace (Operations) Limited Model B.121 Series 1, 2, and 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace (Operations) Limited (British Aerospace) Model B.121 Series 1, 2, and 3 airplanes. This AD requires repetitively inspecting (using visual methods) the internal and external surfaces of the brake torque tube assemblies in the cockpit area for cracks. This AD also requires obtaining and incorporating repair procedures for any brake torque tube assembly found cracked. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct cracks in the brake torque tube assemblies, which could result in

reduced brake efficiency with possible reduced and/or loss of airplane control.

DATES: Effective January 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 29, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from British Aerospace (Operations) Limited, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-122-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6932; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model B.121 Series 1, 2, and 3 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 14, 1998 (63 FR 49050). The NPRM proposed to require repetitively inspecting (using visual methods) the internal and external surfaces of the brake torque tube assemblies in the cockpit area for cracks. The NPRM also proposed to require obtaining and incorporating repair procedures for any brake torque tube assembly found cracked. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Jetstream Aircraft Ltd. PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995. Accomplishment of the proposed repair, if necessary, would be required in accordance with procedures

obtained from the manufacturer through the FAA, Small Airplane Directorate.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2 airplanes in the U.S. registry will be affected by the initial inspection required by this AD, that it will take approximately 5 workhours per airplane to accomplish this initial inspection, and that the average labor rate is approximately \$60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be \$600, or \$300 per airplane. These figures only take into account the costs of the initial inspection and do not take into account the costs for any repetitive inspections or the costs associated with repairing or replacing any cracked torque tube assemblies found during any inspection required by this AD. The FAA has no way of determining how many torque tube assemblies will be found cracked or how many repetitive inspections each owner/operator will incur over the life of the affected airplanes.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive (AD) to read as follows:

98-26-05 British Aerospace (Operations) Limited: Amendment 39-10946; Docket No. 97-CE-122-AD.

Applicability: Model B.121 Series 1, 2, and 3 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To detect and correct cracks in the brake torque tube assemblies, which could result in reduced brake efficiency with possible reduced and/or loss of airplane control, accomplish the following:

(a) Upon accumulating 3,300 hours time-in-service (TIS) on each brake torque tube

assembly or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 600 hours TIS, visually inspect each brake torque tube assembly for cracks. Accomplish this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Aircraft Ltd. PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995.

(b) If a crack(s) is found during any inspection required by paragraphs (a) or (b)(2) of this AD, prior to further flight, accomplish the following:

(1) Obtain repair instructions from the manufacturer through the FAA, Small Airplane Directorate, at the address specified in paragraph (d) of this AD; and

(2) Incorporate these repair instructions, and continue to reinspect at intervals not to exceed 600 hours TIS.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Jetstream Aircraft Ltd. PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995, should be directed to British Aerospace (Operations) Limited, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. 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.

(f) The inspection required by this AD shall be done in accordance with Jetstream Aircraft Ltd. PUP Service Bulletin No. B121/103, ORIGINAL ISSUE: October 26, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace (Operations) Limited, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British AD 003-10-95, not dated.

(g) This amendment becomes effective on January 29, 1999.

Issued in Kansas City, Missouri, on December 9, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33244 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-01-AD; Amendment 39-10947; AD 98-26-07]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Limited, Bristol Engines Division, Viper Models Mk.521 and Mk.522 Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce Limited, Bristol Engines Division, (R-R) Viper Models Mk.521 and Mk.522 turbojet engines, that requires replacement of certain high pressure (HP) fuel pumps with an improved design which is more tolerant of reduced lubricity fuel caused by water contamination. This amendment is prompted by reports of HP fuel pump drive shaft failures resulting in in-flight engine shutdowns. These failures have been attributed to the reduced lubricity properties of fuel which is contaminated by water. The actions specified by this AD are intended to prevent HP fuel pump failures, which can result in an in-flight engine shutdown.

DATES: Effective February 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 16, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Limited, Bristol Engines Division, Technical Publications Department CLS-4, P.O. Box 3, Filton, Bristol, BS34 7QE England; telephone 117-979-1234, fax 117-979-7575. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7176, fax (781) 238-7199.

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 Rolls-Royce Limited, Bristol Engines Division, (R-R) Viper Models Mk.521, and Mk.522 turbojet engines was published in the **Federal Register** on April 13, 1998 (63 FR 17972). That action proposed to require replacement of certain HP fuel pumps with improved pumps in accordance with Rolls-Royce Service Bulletins (SB's) No. 73-A115 and 73-A118.

The United Kingdom (UK) Civil Aviation Authority (CAA) classified these SB's mandatory and issued AD's 003-02-96 and 004-02-96 in order to assure the airworthiness of these engines in the UK. Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters state that the AD should apply only if the applicable engines are installed in specific aircraft. One commenter states that the AD should be so limited because the failures have occurred on only one particular aircraft design. The FAA disagrees. The AD applies to the engine models that appear in the applicability section, regardless of the aircraft on which the engines are installed. Engine installation eligibility may be determined either by the aircraft's original or amended type certificate or a supplemental type certificate. In addition, fuel pump failures have occurred on more than one aircraft design. This AD does not implicate the fuel pump design, but reflects the FAA's determination that the unsafe condition is likely to exist or develop on other engines of the same type design.

One commenter states that a calendar end-date should be added to proposed paragraph (a) in order to capture fuel pumps on engines operated by low utilization users at an earlier time than the proposed requirement of 160 hours TIS, the next shop visit, or the next fuel pump removal. The FAA agrees. The compliance time is revised to require fuel pump replacement at least by 18 months after the effective date of the AD.

One commenter states that the proposed AD would allow engines that

are currently not installed on an aircraft and which contain the old standard of pump to be installed on an aircraft without having the fuel pumps replaced. The FAA concurs in part. While the proposed definition of "shop visit" would seem to include any engine installation, the FAA has clarified that definition to prevent engines that are not installed on an aircraft on the effective date of the AD from being operated without having the fuel pumps replaced.

One commenter asks that the service bulletin (SB) references be updated to specify the latest revisions and dates to make certain that the latest SB's, work hours per engine, and fuel pump part numbers (P/N's) are referenced in this AD. The FAA concurs. The SB references have been updated to reflect the latest revisions to the SB's. Therefore, the number of work hours has been updated to include 4 hours per installed engine, 8 hours per airplane, and 3 hours per uninstalled engine. Finally, the compliance section has been updated to include additional fuel pump P/N's MGBB.134, MGBB.145 and MGBB.169. The addition of these part numbers does not increase the scope of the AD as the number of affected engines remains the same.

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

There are approximately 280 engines of the affected design in the worldwide fleet. The FAA estimates that 104 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine installed on an airplane, 8 hours per airplane, or 3 hours per uninstalled engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$18,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$1,896,960.

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:

98-26-07 AD Rolls-Royce Limited, Bristol Engines Division: Amendment 39-10947 Docket 98-ANE-01-AD.

Applicability: Rolls-Royce Limited, Bristol Engines Division, (R-R) Viper Model Mk.521 turbojet engine with high pressure (HP) fuel pump, part numbers (P/N's) MGBB.167 or MGBB.134 installed, and Model Mk 522 turbojet engine with HP fuel pump MGBB.137, MGBB.145, MGBB.168, or MGBB.169 installed. These engines are installed on but not limited to Raytheon (formerly British Aerospace, Hawker Siddeley) Model DH.125 series and BH.125 series 400A airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent HP fuel pump failures, which can result in an in-flight engine shutdown accomplish the following:

(a) Remove from service affected HP fuel pumps, and replace with serviceable HP fuel pumps, at the earliest of the following: prior to 160 hours time in service (TIS) after the

effective date of this AD, at the next shop visit after the effective date of this AD, at the next HP fuel pump removal after the effective date of this AD, or prior to 18 months after the effective date of this AD, as follows:

(1) For HP fuel pumps installed on R-R Viper Mk.521 engines, replace HP fuel pumps P/N MGBB.167 or MGBB.134 with serviceable fuel pump P/N MGBB.182, in accordance with R-R SB No. 73-A118, Revision 1, dated August 1997.

(2) For HP fuel pumps installed on R-R Viper Mk.522 engines, replace HP fuel pumps P/Ns MGBB.137 or MGBB.145 with serviceable fuel pump MGBB.183, or HP fuel pump P/N's MGBB.168 or MGBB.169 with serviceable fuel pump P/N MGBB.184, in accordance with R-R SB No. 73-A115, Revision 2, dated August 1997.

(b) For the purpose of this AD, a shop visit is defined as the induction of an engine into the shop for any reason, including, but not limited to, the installation of an engine on an aircraft.

(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, Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following Rolls-Royce SB's:

Document No.	Pages	Revision	Date
RR SB 73-A115	1-4	2	August 1997.
Total pages: 4			
RR SB 73-A118	1-4	1	August 1997.
Total pages: 4			

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 Rolls-Royce Limited, Bristol Engines Division, Technical Publications Department CLS-4, P.O. Box 3, Filton, Bristol, BS34 7QE England; telephone 117-979-1234, fax 117-979-7575. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 16, 1998.

Issued in Burlington, Massachusetts, on December 9, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-33243 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-239-AD; Amendment 39-10951; AD 98-26-11]

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 end-pieces of the expansion chamber attenuator (ECA) for the standby pump of the Number 2 hydraulic system with new, improved end-pieces. 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 leakage of hydraulic fluid from the Number 2 hydraulic system due to failure of the end-pieces of the ECA, which could result in loss of nose wheel steering, flap operation, normal landing gear operation, and reduced redundancy in the brake and flight controls systems.

DATES: Effective January 22, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1999.

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 October 15, 1998 (63 FR 55346). That action proposed to require replacement of the end-pieces of the expansion chamber attenuator (ECA) for the standby pump of the Number 2 hydraulic system with new, improved end-pieces.

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 3 work hours per airplane to accomplish the required replacement, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$820 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$3,000, or \$1,000 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:

98-26-11 Saab Aircraft AB: Amendment 39-10951. Docket 98-NM-239-AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers -004 through -099 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hydraulic fluid from the Number 2 hydraulic system due to failure of the end-pieces of the expansion chamber attenuator (ECA), which could result in loss of nose wheel steering, flap operation, normal landing gear operation, and reduced redundancy in the brake and flight controls systems, accomplish the following:

(a) Within 4 months after the effective date of this AD, replace the two end-pieces of the ECA of the standby pump for the Number 2 hydraulic system with new, improved end-pieces constructed of steel, in accordance with Saab Service Bulletin 2000-29-016, dated April 17, 1998.

(b) As of the effective date of this AD, no person shall install on any airplane any ECA having P/N 7329114-691.

(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 2000-29-016, dated April 17, 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 (SAD) 1-126, dated April 20, 1998.

(f) This amendment becomes effective on January 22, 1999.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33392 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-221-AD; Amendment 39-10950; AD 98-26-10]

RIN 2120-AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 20 Series Airplanes, Fan Jet Falcon Series Airplanes, and Fan Jet Falcon Series D, E, and F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Mystere-Falcon 20 series airplanes, Fan Jet Falcon series airplanes, and Fan Jet Falcon Series D, E, and F series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with certain emergency procedures associated with an engine fire, or a rear compartment fire or overheat conditions. 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 fire from spreading throughout the airplane due to an engine fire, or with a rear compartment fire or overheat conditions.

DATES: Effective January 22, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. 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 all Dassault Model Mystere-Falcon 20 series airplanes, Fan Jet Falcon series airplanes, and Fan Jet Falcon Series D, E, and F series airplanes was published in the **Federal Register** on October 15, 1998 (63 FR 55348). That action proposed to require revising the Airplane Flight Manual (AFM) to provide the flight crew with certain emergency procedures associated with an engine fire, or a rear compartment fire or overheat conditions.

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 197 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 AFM revision, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$11,820, 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:

98-26-10 Dassault Aviation: Amendment 39-10950. Docket 98-NM-221-AD.

Applicability: All Model Mystere-Falcon 20 series airplanes, Fan Jet Falcon series airplanes, and Fan Jet Falcon Series D, E, and F series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is aware of the emergency procedures associated with an engine fire, or with a rear compartment fire or overheat conditions, and to prevent fire from spreading throughout the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations Section and Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM) by accomplishing the action specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model Mystere-Falcon 20 series airplanes: Insert a copy of Dassault 731 Falcon Retrofit 20 Airplane Flight Manual DTM30528, Revision 10, dated January 20, 1998, into the AFM.

(2) For Model Fan Jet Falcon series airplanes and Model Fan Jet Falcon Series D, E, and F series airplanes: Insert a copy of the Dassault Fan Jet Falcon Airplane Flight Manual DTM589/590/591/592, Revision 49, dated January 20, 1998, into the AFM.

(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 Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 1: 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 AFM revision shall be done in accordance with Dassault Fan Jet Falcon Airplane Flight Manual DTM589/590/591/592, Revision 49, dated January 20, 1998; or Dassault 731 Falcon Retrofit 20 Airplane Flight Manual DTM30528, Revision 10, dated January 20, 1998; as applicable, which contain the following list of effective pages:

AFM revision referenced and date	Page No.	Revision level shown on page
DTM589/590/591/592	Falcon 20, 20D, 20E, 20F, Title Pages	49
Revision 49, January 20, 1998	Table of Contents, Pages 1, 2	49
	Section 2, sub-section 01, Pages 1-6	49
DTM30528	List of Effective Pages	10
Revision 10, January 20, 1998	Pages 1-22	10

(Note: The issue date of Revision 49 of DTM589/590/591/592, and Revision 10 of DTM30528 is indicated only on the Title Page; no other page of the document is dated.)

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 Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. 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 2: The subject of this AD is addressed in French airworthiness directive 98-114-023(B), dated March 11, 1998.

(e) This amendment becomes effective on January 22, 1998.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33390 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-06-AD; Amendment 39-10949; AD 98-26-09]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) airplanes, that requires a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. This amendment is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners and doorstops of the doorjamb of the forward passenger door. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and

consequent reduced structural integrity of the airplane.

DATES: Effective January 22, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5324; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) airplanes was published in the **Federal Register** on April 20, 1998 (63 FR 19423). That action proposed to require a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary.

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

Support for the Proposal

One commenter supports the proposed rule.

Request To Withdraw Proposed Rule

One commenter states that, while it has found cracking in the area of the forward passenger door doorjamb over the past 15 years, findings have tapered off. The commenter has found cracking through its FAA-approved maintenance program, and continues to monitor the area through that program. The commenter has not found a crack in the area adjacent to a modified doorjamb. The area is not hidden and is presently inspected at each "C" check. The commenter believes the forward passenger door doorjamb is being maintained at a safe level without the need of "an AD note."

The FAA infers from these remarks that the commenter requests the proposed rule be withdrawn. The FAA does not concur. Based on fatigue and damage tolerance analyses of cracked forward passenger door doorjamb conducted by the manufacturer, the FAA finds that issuance of this final rule is necessary to ensure an adequate level of safety for the affected fleet.

Request To Extend Compliance Time

The same commenter requests that the FAA extend the proposed compliance time for inspections of previously modified doorjamb from 3,000 to 3,500 landings. The commenter indicates that this increase would help bridge the inspection requirements into its maintenance program. The commenter states that an added 500 landings will not cause the condition of the doorjamb to develop into an unsafe condition with the doorjamb modified previously. The commenter adds that since the proposed grace period for the initial (one-time visual) inspection is 3,575 landings, the compliance time for inspections of modified doorjamb should not be any different.

The FAA concurs with the commenter's request. Following careful consideration of this comment, and in light of the commenter's statement that no cracking has been found in the area adjacent to a modified doorjamb during "C" check inspections, the FAA considers that an extension of the repetitive inspection interval to 3,500 landings will not compromise safety. Paragraphs (c)(1) and (d) of this final rule have been revised accordingly.

Request To Revise Inspection Intervals

Another commenter requests that the proposed initial inspection intervals be changed to correspond with those presently in the DC-9 Supplemental Inspection Document (SID) program u-3 that is, initial inspections should be required within a 3-year interval after the effective date of the AD or prior to the accumulation of 48,000 total landings, whichever occurs later, and repetitive intervals should remain at 3,575 landings.

The FAA does not concur. The FAA has determined that cracking of the forward passenger door doorjamb is fatigue related. The initial and repetitive inspection intervals were calculated based on fatigue and damage tolerance analyses. The FAA considers that revising the compliance time as suggested by the commenter will not address the identified unsafe condition in a timely manner.

Request To Revise DC-9 SID Program

One commenter requests that, prior to issuance of the final rule, the DC-9 SID program be revised to eliminate the inspection requirements of the SID in the area addressed by this proposed AD. The commenter states that such revision will eliminate confusion between the SID program and this proposed AD.

The FAA does not concur that the SID program should be revised prior to issuance of this final rule. The actions required by this AD area necessary to detect and correct the identified unsafe condition. Following issuance of the final rule, the manufacturer may revise the DC-9 SID program. However, to eliminate any confusion between this AD and the SID program, the FAA has added a new paragraph (f) to this final rule to specify that accomplishment of the actions required by this AD constitutes terminating action for the requirements of AD 96-13-03, amendment 39-9671 (61 FR 31009, June 19, 1996), for the affected PSE. Since this new paragraph is being added, the FAA has removed "NOTE 4" of the proposed AD since it is no longer necessary.

Request To Revise Paragraph (e) of the Proposed Rule

One commenter requests that paragraph (e) of the proposed rule be revised to require that, if the visual inspection required by paragraph (a) of the AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with FAA-approved repairs other than those specified in the DC-9 Structural Repair Manual (SRM) or Service Rework Drawing, prior to further flight, an initial low frequency eddy current (LFEC) inspection of the fuselage skin adjacent to the repair should be accomplished. If no cracks are detected, repair should be required within 6 months; if any crack is detected, repair should be required prior to further flight. [As proposed, paragraph (e) requires that operators repair, prior to further flight, in accordance with a method approved by the FAA if the visual inspection required by paragraph (a) of the AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously, but not in accordance with the McDonnell Douglas DC-9 SRM or the Service Rework Drawing.]

The commenter states that, as proposed, the requirement will cause an unnecessary operational impact since FAA-approved, non-standard SRM repairs are known to exist in this area of the doorstops and corners. The commenter indicates that obtaining approval for such repairs prior to further flight will be time consuming and will result in an unwarranted, extended groundtime for affected airplanes. The commenter believes that its recommendation will ensure that an equivalent level of safety is maintained while minimizing the operational impact to operators. The commenter adds that this will allow ample time to document and submit the repair to the manufacturer for a damage tolerance review and subsequent approval by the FAA.

The FAA does not concur with the commenter's request. The FAA, in conjunction with the manufacturer, has conducted further analysis concerning this issue. The FAA has determined that previous repairs of the forward passenger door doorjamb that were not accomplished in accordance with the DC-9 SRM or Service Rework Drawing, or that were not approved by the FAA, are not considered to be FAA-approved repairs; accomplishment of the initial LFEC inspection of the fuselage skin adjacent to those existing repairs would not detect any crack under the repairs.

Because cracking under the repairs could grow rapidly once it emerges from under the repairs, the FAA does not consider that an acceptable level of safety can be assured simply by determining that cracking has not yet emerged from under the repairs. Therefore, any doorjamb that were modified previously in accordance with non-FAA-approved repairs must be repaired prior to further flight in accordance with a method approved by the FAA.

Request To Revise Cost Impact Information

One commenter states that the FAA has underestimated the cost impact of the proposed AD. The commenter indicates that the proposed low frequency eddy current or high frequency eddy current inspection will require a minimum of 4 work hours per airplane for setup, accomplishment, and teardown. Additionally, the commenter believes that the full modification will require approximately 500 to 600 work hours per airplane.

The FAA concurs partially. The manufacturer has advised the FAA that the modification will require approximately 30 work hours, as estimated in the proposed AD. No change to the final rule has been made in this regard. However, the manufacturer indicates that the eddy current inspection will require approximately 1.5 work hours per airplane. In light of this information, the FAA has revised the cost impact information, below, to specify that approximately 2 work hours per airplane will be required to accomplish the inspection, as necessary.

Change to Service Bulletin Citation

Since the issuance of the proposed rule, the FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9-53-280, Revision 01, dated July 30, 1998. This revision of the service bulletin is essentially identical to the original issue, which was cited in the proposed AD as the appropriate source of service information for accomplishment of the actions specified in the AD. Revision 01 simply deletes from the effectivity of the service bulletin Model MD-80 series airplanes that are not affected. This revision also changes the lead time for availability of kits to 150 days. This final rule has been revised to include Revision 01 of the service bulletin as an additional source of service information.

Conclusion

After careful review of the available data, including the comments noted

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

Cost Impact

There are approximately 1,001 airplanes of the affected design in the worldwide fleet. The FAA estimates that 656 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 visual inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the visual inspection of this AD on U.S. operators is estimated to be \$39,360, or \$60 per airplane.

Should an operator be required to accomplish the LFEC or x-ray inspection, it 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 any necessary LFEC or x-ray inspection specified in this AD on U.S. operators is estimated to be \$60 per airplane, per inspection cycle.

Should an operator be required to accomplish the HFEC inspection, it will take approximately 2 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of any necessary HFEC inspection specified in this AD on U.S. operators is estimated to be \$120 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification, it will take approximately 30 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately between \$490 and \$1,775 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of any necessary modification specified in this AD on U.S. operators is estimated to be between \$2,290 and \$3,575 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:

98-26-09 McDonnell Douglas: Amendment 39-10949. Docket 98-NM-06-AD.

Applicability: Model DC-9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) airplanes, as listed in McDonnell Douglas Service Bulletin DC9-53-280, Revision 01, dated July 30, 1998; 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 (g) of this AD. The request should include an assessment of

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the doorstops and corners of the doorjamb of the forward passenger door, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words "repair" and "modify/modification" in this AD and the referenced service bulletin are used interchangeably.

(a) Prior to the accumulation of 48,000 total landings, or within 3,575 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9-53-280, dated December 1, 1997, or Revision 01, dated July 30, 1998,

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9-53-280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have not been modified*, prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the forward passenger door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9-53-280, dated December 1, 1997, or Revision 01, dated July 30, 1998.

(1) Group 1, Condition 1. If no crack is detected during any LFEC or x-ray inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with the service bulletin.

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,575 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

(ii) *Option 2.* Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb, in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, prior to further flight, repair it in accordance with a method

approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 0.50 inch or less in length: Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 0.5 inch in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9-53-280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with the McDonnell Douglas DC-9 Structural Repair Manual (SRM), using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9-53-280, dated December 1, 1997, or Revision 01, dated July 30, 1998.

(1) *Option 1.* Prior to the accumulation of 28,000 landings after accomplishment of the modification, or within 3,500 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(1) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(2) *Option 2.* Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after the accomplishment of the modification, perform

a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9-53-280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have been modified* previously in accordance with McDonnell Douglas DC-9 SRM or Service Rework Drawing, using an aluminum doubler, prior to the accumulation of 28,000 landings after the accomplishment of the modification, or within 3,500 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9-53-280, dated December 1, 1997, or Revision 01, dated July 30, 1998.

(1) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (d) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (d) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9-53-280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have been modified* previously, but not in accordance with McDonnell Douglas DC9 SRM or the Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(f) Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.031 (reference McDonnell Douglas Model DC-9 Supplemental Inspection Document) required by AD 96-13-03, amendment 39-9671.

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

Note 4: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(i) Except as provided by paragraphs (b)(1)(ii)(B), (b)(2)(ii), (b)(3), (c)(1)(ii), (c)(2)(ii), (d)(2), and (e) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9-53-280, dated December 1, 1997; or McDonnell Douglas Service Bulletin DC9-53-280, Revision 01, dated July 30, 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 The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on January 22, 1999.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33389 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8796]

RIN 1545-AU05

Notice, Consent and Election Requirements of Sections 411(a)(11) and 417 for Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations that provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements under section 417 for qualified retirement plans. These regulations finalize proposed regulations published in the **Federal Register** on September 22, 1995. In order to avoid delay in the

commencement of distributions, the regulations generally allow distributions to commence, with spousal consent if required, in less than 30 days after a participant receives a notice of distribution rights if the participant affirmatively so elects to have the distributions commence. The regulations affect employers that maintain qualified plans, and participants and beneficiaries in those plans.

DATES: These regulations are effective December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1471. Responses to this collection of information are mandatory.

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 burden per respondent is .011 hours.

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 this 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 document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(a)(11) and section 417(e). These regulations finalize proposed regulations that were published as a notice of proposed rulemaking (EE-24-93) (REG-209626-93) in the **Federal Register** (60 FR 49236) on September 22, 1995. The notice of proposed rulemaking states that the text of the proposed regulations

is the same as the text of temporary regulations which were published in the **Federal Register** (60 FR 49218) on the same day. A public hearing was held on the temporary regulations on April 24, 1996.

As indicated in Announcement 98-87 (1998-40 I.R.B. 11), the temporary regulations automatically expired in September, 1998, pursuant to section 7805(e). Announcement 98-87 provides, however, that plan sponsors may rely upon the identical proposed regulations until they are amended or finalized.

Prior to the issuance of the proposed regulations, § 1.411(a)-11(c) provided that a participant's consent to a distribution under section 411(a)(11) was not valid unless the participant received a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Section 1.417(e)-1 set forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights required under section 417(a)(3) (QJSA explanation).

Temporary regulations providing guidance on the amendment to section 402(f) made by the Unemployment Compensation Amendments of 1992 (UCA), published in October 1992, generally prescribed this 90/30-day time period for purposes of the notice requirement under that section. In the preamble to the UCA temporary regulations, the IRS and Treasury requested comments on the appropriateness of this time period for section 411(a)(11), as well as for section 402(f).

In response to comments on the 90/30-day time period, the proposed regulations modified the 30-day time period for purposes of sections 411(a)(11) and 417. Under the proposed regulations, if, after having received the notice of distribution rights described in § 1.411(a)-11, a participant affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution is made less than 30 days after the notice was provided to the participant.

The proposed regulations under section 417 made the same change to § 1.417(e)-1 and also provided a more limited modification to the 30-day time period in § 1.417(e)-1. The reception to this change to the 30-day period for purposes of section 417 was generally favorable.

Commentators expressed concern about the restatement in the proposed regulations of the statutory requirement that the QJSA explanation be provided before the annuity starting date because

this requirement precluded retroactive annuity payments for any period before the explanation was provided.

Subsequently, section 1451 of the Small Business Job Protection Act of 1996, Public Law 104-188, 110 Stat. 1755 (SBJPA) added section 417(a)(7) to the Internal Revenue Code effective for plan years beginning on or after January 1, 1997. Section 417(a)(7) permits the plan to provide the QJSA explanation after the annuity starting date.

After consideration of the comments, these final regulations generally adopt the provisions of the proposed regulations. However, the final regulations under section 417 have been modified to provide that, for plan years beginning after December 31, 1996, the requirement that the QJSA explanation be provided before the annuity starting date does not apply to the extent provided under section 417(a)(7).

Explanation of Provisions

1. Overview of Statutory Provisions

Section 411(a)(11) provides that, if the value of a participant's accrued benefit exceeds \$5,000, a qualified plan generally may not distribute the benefit to the participant without the participant's consent.

Section 401(a)(11) requires that certain distributions be made in the form of a qualified joint and survivor annuity (QJSA) unless, in accordance with section 417, the participant waives the QJSA and elects a different form of benefit. Profit-sharing plans and stock bonus plans that meet the requirements of sections 401(a)(11)(B)(iii)(I) through (III) are not subject to the survivor annuity requirements of sections 401(a)(11) and 417.

Section 417 sets forth the requirements applicable to a waiver of the QJSA. Section 417(a) requires the participant to obtain the consent of the participant's spouse, if any, to any waiver of the QJSA and election of a form of benefit other than a QJSA. Any election made by the participant must be revocable during the 90-day period ending on the annuity starting date. Section 417(a)(3) requires that, within a reasonable period of time before the participant's annuity starting date, a plan provide the participant with a notice explaining the participant's right to the QJSA and the participant's right to waive the QJSA (QJSA explanation).

Section 417(a)(7)(B), added by SBJPA, codified the provision in the proposed regulations which provides that a plan may permit a participant to elect (with applicable spousal consent) a distribution with an annuity starting date after the QJSA explanation was

provided but before 30 days have elapsed, as long as the distribution commences more than seven days after the explanation was provided. As discussed above, section 417(a)(7)(A) further provides that a plan is permitted to provide the QJSA explanation after the annuity starting date if the distribution commences at least 30 days after such explanation was provided, subject to the same waiver of the 30-day minimum waiting period. This is intended to allow retroactive payments of benefits which are attributable to the period before the explanation.

2. Waiver of 30-day Period for QJSA Explanation

The proposed regulations permit a plan administrator (where not inconsistent with the terms of the plan) to commence distributions before the end of the 30-day time period after the QJSA explanation is provided, if certain requirements are met. Specifically, after an affirmative distribution election, with any applicable spousal consent, the plan may permit the distribution to commence at any time more than seven days after the QJSA explanation was provided to the participant. Any distribution election must remain revocable until the later of the annuity starting date or the expiration of the seven-day period that begins the day after the QJSA explanation is provided. For example, if a married participant receives the explanation of the QJSA on November 28 and elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate single life annuity, the annuity starting date is permitted to be December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date.

Most commentators expressed approval of this change to the 30-day waiting period. However, one commentator indicated that this change would create an incentive for participants to pressure their spouses to consent to any waiver of the QJSA as quickly as possible. Because it has been codified by section 417(a)(7)(B), the final regulations retain this waiver provision.

3. Provision of QJSA Explanation After Annuity Starting Date

The proposed regulations provide that the annuity starting date must be a date after the explanation of the QJSA is provided to the participant, but may precede the date the participant affirmatively elects a distribution or the date the distribution commences. Commentators indicated that this rule

disadvantaged participants because it does not allow a retroactive annuity starting date to a date before the QJSA explanation was provided. However, prior to its amendment by SBJPA, the plain language of section 417 required the QJSA explanation to be provided before the annuity starting date.

As discussed above, section 1451 of the SBJPA added section 417(a)(7)(A) to the Code. That section provides that a plan may provide the QJSA explanation after the annuity starting date and that the applicable election period shall not end before the 30th day after the date on which the explanation is provided. Thus, section 417(a)(7)(A) allows retroactive payments of benefits which are attributable to the period before the QJSA explanation is provided. Accordingly, the final regulations provide that, for plan years beginning after December 31, 1996, the requirement that the QJSA explanation be provided before the annuity starting date does not apply to the extent provided under section 417(a)(7).

Section 417(a)(7)(A) provides that the Secretary may by regulations limit its application except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

4. Use of Electronic Media for Notices and Consent

Comments on the proposed regulations requested that the IRS and Treasury clarify the extent to which plans may use new technologies, including electronic media, for providing notices under sections 402(f), 411(a)(11) and 417, and for receiving participant and beneficiary consents and elections under sections 411(a)(11) and 417. Subsequently, section 1510 of the Taxpayer Relief Act of 1997 (TRA '97) provided generally for the Secretary of the Treasury to issue guidance concerning the use of new technologies in the administration of retirement plans. Announcement 98-62 (1998-29 I.R.B. 13) requested comments on the guidance described in section 1510.

After consideration of the comments on the proposed regulations and Announcement 98-62, the IRS and Treasury have decided to propose regulations regarding the use of electronic media to provide notices under sections 402(f), 411(a)(11), and section 3405(e)(10) and for receiving participant consent under section 411(a)(11). Those proposed regulations are set forth in a notice of proposed

rulemaking published elsewhere in this issue of the **Federal Register**.

5. 90-day Time Period

Comments on the proposed regulations requested an expansion of the 90-day time period, and the IRS and the Treasury have decided to propose changes to the 90/30-day period for providing notices under sections 402(f) and 411(a)(11). These changes are included in the proposed regulations on the use of new technologies, which are set forth in a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

6. Effective Dates

The regulations apply to distributions on or after September 22, 1995. However, plan sponsors and plan administrators may rely on the regulations under section 411(a)(11) as though they were included in the final regulations under section 411(a)(11) published in 1988-2 C.B. 48.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Robert Walsh, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. 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 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.411(a)-11 is amended as follows:

1. Paragraph (c)(2)(ii) is revised.
2. Paragraphs (c)(2)(iii), (c)(2)(iv), (c)(2)(v) and (c)(8) are added.

The revision and additions read as follows:

§ 1.411(a)-11 Restriction and valuation of distributions.

* * * * *

- (c) * * *
- (2) * * *

(ii) Written consent of the participant to the distribution must not be made before the participant receives the notice of his or her rights specified in this paragraph (c)(2) and must not be made more than 90 days before the date the distribution commences.

(iii) A plan must provide participants with notice of their rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided that the following requirement is met. The plan administrator must provide information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (c)(2)(iii)) the participant has a right to at least 30 days to consider whether to consent to the distribution.

(iv) For purposes of satisfying the requirements of this paragraph (c)(2), the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)-20, Q&A-10, for the date the distribution commences.

(v) See § 1.401(a)-20, Q&A-24 for a special rule applicable to consents to plan loans.

* * * * *

(8) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent

requirements of this section. See § 601.601(d)(2)(ii)(b) of this chapter.

* * * * *

§ 1.411(a)-11T [Removed]

Par. 3. Section 1.411(a)-11T is removed.

Par. 4. Section 1.417(e)-1 is amended as follows:

1. Paragraph (b)(3) is revised.
2. Paragraph (b)(4) is added.

The revision and addition read as follows:

§ 1.417(e)-1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(3) *Time of consent.* (i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date (except as otherwise provided by section 417(a)(7) for plan years beginning after December 31, 1996). However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the annuity starting date is less than 30 days after the written explanation was provided to the participant, provided that the following requirements are met:

(A) The plan administrator provides information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (b)(3)(ii)) the participant has a right to at least 30 days to consider whether to waive the QJSA and consent to a form of distribution other than a QJSA.

(B) The participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant (except as otherwise provided by section 417(a)(7) for plan years beginning after December 31, 1996). However, the plan may permit the annuity starting date to be before the date that any affirmative distribution

election is made by the participant and before the date that the distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section.

(D) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(iii) The following example illustrates the provisions of this paragraph (b)(3):

Example. Employee E, a married participant in a defined benefit plan who has terminated employment, is provided with the explanation of the QJSA on November 28.

Employee E elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate distribution in the form of a single life annuity. The plan may permit Employee E to receive payments with an annuity starting date of December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date. The plan can make the remaining monthly payments on the first day of each month thereafter in accordance with its regular payment schedule.

(iv) The additional rules of this paragraph (b)(3) concerning the notice and consent requirements of section 417 apply to distributions on or after September 22, 1995. For distributions before September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in § 1.417(e)-1(b)(3) in effect prior to September 22, 1995 (see § 1.417(e)-1(b)(3) in 26 CFR Part 1 revised as of April 1, 1995) apply.

(4) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(b) of this chapter.

* * * * *

§ 1.417(e)-1T [Amended]

Par. 5. In § 1.417(e)-1T, paragraphs (b)(3) and (4) are removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, the table in paragraph (c) is amended by removing the entry for 1.411(a)-11T and adding the following entries in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.411(a)-11	1545-1471
* * * * *	* * * * *
1.417(e)-1	1545-1471
* * * * *	* * * * *

John M. Dalrymple,
Acting Deputy Commissioner of Internal Revenue.

Approved: December 2, 1998.

Donald C. Lubick,
Assistant Secretary of the Treasury.
[FR Doc. 98-32938 Filed 12-17-98; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8789]

RIN 1545-AV32

Abatement of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the abatement of interest attributable to unreasonable errors or delays by an officer or employee of the IRS in performing a ministerial or managerial act. The final regulations reflect changes to the law made by the Tax Reform Act of 1986 and the Taxpayer Bill of Rights 2. The final regulations affect both taxpayers requesting abatement of certain interest and IRS personnel responsible for administering the abatement provisions.

DATES: *Effective Date:* These regulations are effective December 18, 1998.

Applicability Date: For dates of applicability, see § 301.6404-2(d).

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) relating to the abatement of interest attributable to unreasonable errors or delays by an officer or employee of the IRS under section 6404(e)(1) of the Internal

Revenue Code. Section 6404(e)(1) was enacted by section 1563(a) of the Tax Reform Act of 1986 (1986 Act) (Public Law 99-514 (100 Stat. 2762) (1986)) and amended by section 301 of the Taxpayer Bill of Rights 2 (TBOR2) (Public Law 104-168 (110 Stat. 1452) (1996)).

Section 6404(e)(1) applies only to interest on taxes of a type for which a notice of deficiency is required by section 6212, that is, income tax, estate tax, gift tax, generation-skipping transfer tax, and certain excise taxes. Requests for abatement of interest should be made on Form 843, "Claim for Refund and Request for Abatement." For more information, see Publication 556, "Examination of Returns, Appeal Rights, and Claims for Refund."

As enacted by the 1986 Act, section 6404(e)(1) provided that the IRS may abate interest attributable to any error or delay by an officer or employee of the IRS (acting in an official capacity) in performing a ministerial act. The legislative history accompanying the Act provided:

The committee intends that the term 'ministerial act' be limited to nondiscretionary acts where all of the preliminary prerequisites, such as conferencing and review by supervisors, have taken place. Thus, a ministerial act is a procedural action, not a decision in a substantive area of tax law.

H.R. Rep. No. 426, 99th Cong., 1st Sess. 845 (1985); S. Rep. No. 313, 99th Cong., 2d Sess. 209 (1986).

Further, Congress did not intend that the abatement of interest provision "be used routinely to avoid payment of interest." H.R. Rep. No. 426, 99th Cong., 1st Sess. 844 (1985); S. Rep. No. 313, 99th Cong., 2d Sess. 208 (1986). Rather, Congress intended abatement of interest to be used in instances "where failure to abate interest would be widely perceived as grossly unfair." Id.

In TBOR2, Congress amended section 6404(e)(1) to permit the IRS to abate interest attributable to any unreasonable error or delay by an officer or employee of the IRS (acting in an official capacity) in performing a managerial act as well as a ministerial act.

Pursuant to the legislative history accompanying TBOR2, a managerial act includes a loss of records or a personnel management decision such as the decision to approve a personnel transfer, extended leave, or extended training. See H.R. Rep. No. 506, 104th Cong., 2d Sess. 27 (1996). The legislative history of TBOR2 distinguished a managerial act from a general administrative decision and provided that interest would not be abated for delays resulting from general administrative decisions. For example,

the taxpayer could not claim that the IRS's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system resulted in an unreasonable delay in the Service's action on the taxpayer's tax return, and so the interest on any subsequent deficiency should be waived. The amendments to section 6404(e)(1) are effective for interest accruing with respect to deficiencies or payments for taxable years beginning after July 30, 1996.

On August 13, 1987, the IRS published temporary regulations (TD 8150) in the **Federal Register** (52 FR 30162) relating to the definition of ministerial act for purposes of abatement of interest. A notice of proposed rulemaking (LR-34-87) cross-referencing the temporary regulations was also published in the **Federal Register** for the same day (52 FR 30177). No public hearing regarding these regulations was requested or held.

On January 8, 1998, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-209276-87) under section 6404(e)(1) withdrawing the prior notice of proposed rulemaking and repropounding a modified version of the prior notice to incorporate the changes made by TBOR2 (63 FR 1086).

One written comment was received on the proposed regulations. No public hearing regarding these regulations was requested or held. After consideration of the written comment, the proposed regulations published on January 8, 1998, are adopted with minor changes by this Treasury decision.

Public Comments

A comment letter was received proposing that a special effective date rule be added to the regulations applicable to the abatement of interest on estate tax. The comment letter noted that because estate tax is not imposed with respect to a taxable year, it is difficult to apply the effective date rule in the proposed regulations to estate tax.

The comment letter also recommended that *Example 11* be clarified to provide more detailed guidance in determining the amount of interest the IRS should abate. Further, the comment letter recommended that *Example 12* be eliminated because errors in performing all interest computations should be considered ministerial. Finally, because it may be difficult for taxpayers to determine whether there has been delay by the IRS in performing a ministerial or managerial act, the comment letter recommended that the regulations authorize the Taxpayer Advocate to investigate on behalf of taxpayers the

manner in which the IRS processed their cases. The commentator believes that this would assist taxpayers in filing requests for interest abatement.

Explanation of Provisions

In accordance with the first recommendation made in the comment letter, the final regulations include special effective date rules applicable to the abatement of interest on estate tax, gift tax, and generation-skipping transfer tax. The final regulations apply if the death occurred after July 30, 1996, or if the gift was made or the generation-skipping transfer occurred after December 31, 1996.

The other recommendations made in the comment letter are not adopted. The Treasury Department and the IRS believe that *Example 11* does not need any clarification and that *Example 12* is essentially correct as written (however, this Treasury decision makes minor modifications to *Example 12*). Finally, the Treasury Department and the IRS believe that it is not necessary for the regulations to authorize the Taxpayer Advocate to assist taxpayers in regard to interest abatement claims. Taxpayers who seek abatement of interest should file Form 843. If the taxpayer believes the IRS has improperly denied the request for abatement, the taxpayer may seek the assistance of the Taxpayer Advocate without specific authorization in the regulations. Also, the taxpayer may file a petition in the Tax Court under section 6404(g) to obtain judicial review of the denial of the request for abatement.

The final regulations add a new example (*Example 13*) to the regulations. This example clarifies that if the examination of a taxpayer's return is delayed, and both the actions of the taxpayer and those of the IRS contribute to the overall delay, the IRS cannot abate interest attributable to delay caused by the taxpayer. However, the IRS may abate interest attributable to unreasonable delay in the performance of a ministerial or managerial act if no significant aspect of this delay is attributable to the taxpayer.

Finally, the final regulations make obsolete Rev. Proc. 87-42 (1987-2 C.B. 589). Rev. Proc. 87-42 provides instructions for requesting interest abatement under section 6404(e) and examples illustrating the definition of *ministerial act*. The guidance provided by Rev. Proc. 87-42 is no longer needed. The instructions for requesting interest abatement are included in the instructions to Form 843.

Effect on Other Documents

Rev. Proc. 87-42 (1987-2 C.B. 589) is hereby terminated as of December 18, 1998.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the IRS submitted the notice of proposed rulemaking preceding these regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is David B. Auclair of the Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order for Section 301.6404-2 to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 301.6404-2 also issued under 26 U.S.C. 6404; * * *
Par. 2. Section 301.6404-2 is added to read as follows:

§ 301.6404-2 Abatement of interest.

(a) *In general.* (1) Section 6404(e)(1) provides that the Commissioner may (in the Commissioner's discretion) abate the assessment of all or any part of interest on any—

(i) Deficiency (as defined in section 6211(a), relating to income, estate, gift, generation-skipping, and certain excise taxes) attributable in whole or in part to

any unreasonable error or delay by an officer or employee of the Internal Revenue Service (IRS) (acting in an official capacity) in performing a ministerial or managerial act; or

(ii) Payment of any tax described in section 6212(a) (relating to income, estate, gift, generation-skipping, and certain excise taxes) to the extent that any unreasonable error or delay in payment is attributable to an officer or employee of the IRS (acting in an official capacity) being erroneous or dilatory in performing a ministerial or managerial act.

(2) An error or delay in performing a ministerial or managerial act will be taken into account only if no significant aspect of the error or delay is attributable to the taxpayer involved or to a person related to the taxpayer within the meaning of section 267(b) or section 707(b)(1). Moreover, an error or delay in performing a ministerial or managerial act will be taken into account only if it occurs after the IRS has contacted the taxpayer in writing with respect to the deficiency or payment. For purposes of this paragraph (a)(2), no significant aspect of the error or delay is attributable to the taxpayer merely because the taxpayer consents to extend the period of limitations.

(b) *Definitions*—(1) *Managerial act* means an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act. Further, a general administrative decision, such as the IRS's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system, is not a managerial act for which interest can be abated under paragraph (a) of this section.

(2) *Ministerial act* means a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

(c) *Examples*. The following examples illustrate the provisions of paragraphs (b) (1) and (2) of this section. Unless otherwise stated, for purposes of the examples, no significant aspect of any error or delay is attributable to the taxpayer, and the IRS has contacted the

taxpayer in writing with respect to the deficiency or payment. The examples are as follows:

Example 1. A taxpayer moves from one state to another before the IRS selects the taxpayer's income tax return for examination. A letter explaining that the return has been selected for examination is sent to the taxpayer's old address and then forwarded to the new address. The taxpayer timely responds, asking that the audit be transferred to the IRS's district office that is nearest the new address. The group manager timely approves the request. After the request for transfer has been approved, the transfer of the case is a ministerial act. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay in transferring the case.

Example 2. An examination of a taxpayer's income tax return reveals a deficiency with respect to which a notice of deficiency will be issued. The taxpayer and the IRS identify all agreed and unagreed issues, the notice is prepared and reviewed (including review by District Counsel, if necessary), and any other relevant prerequisites are completed. The issuance of the notice of deficiency is a ministerial act. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay in issuing the notice.

Example 3. A revenue agent is sent to a training course for an extended period of time, and the agent's supervisor decides not to reassign the agent's cases. During the training course, no work is done on the cases assigned to the agent. The decision to send the revenue agent to the training course and the decision not to reassign the agent's cases are not ministerial acts; however, both decisions are managerial acts. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay resulting from these decisions.

Example 4. A taxpayer appears for an office audit and submits all necessary documentation and information. The auditor tells the taxpayer that the taxpayer will receive a copy of the audit report. However, before the report is prepared, the auditor is permanently reassigned to another group. An extended period of time passes before the auditor's cases are reassigned. The decision to reassign the auditor and the decision not to reassign the auditor's cases are not ministerial acts; however, they are managerial acts. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay resulting from these decisions.

Example 5. A taxpayer is notified that the IRS intends to audit the taxpayer's income tax return. The agent assigned to the case is granted sick leave for an extended period of time, and the taxpayer's case is not reassigned. The decision to grant sick leave and the decision not to reassign the taxpayer's case to another agent are not ministerial acts; however, they are managerial acts. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay caused by these decisions.

Example 6. A revenue agent has completed an examination of the income tax return of a taxpayer. There are issues that are not agreed upon between the taxpayer and the IRS. Before the notice of deficiency is prepared and reviewed, a clerical employee misplaces the taxpayer's case file. The act of misplacing the case file is a managerial act. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay resulting from the file being misplaced.

Example 7. A taxpayer invests in a tax shelter and reports a loss from the tax shelter on the taxpayer's income tax return. IRS personnel conduct an extensive examination of the tax shelter, and the processing of the taxpayer's case is delayed because of that examination. The decision to delay the processing of the taxpayer's case until the completion of the examination of the tax shelter is a decision on how to organize the processing of tax returns. This is a general administrative decision. Consequently, interest attributable to a delay caused by this decision cannot be abated under paragraph (a) of this section.

Example 8. A taxpayer claims a loss on the taxpayer's income tax return and is notified that the IRS intends to examine the return. However, a decision is made not to commence the examination of the taxpayer's return until the processing of another return, for which the statute of limitations is about to expire, is completed. The decision on how to prioritize the processing of returns based on the expiration of the statute of limitations is a general administrative decision. Consequently, interest attributable to a delay caused by this decision cannot be abated under paragraph (a) of this section.

Example 9. During the examination of an income tax return, there is disagreement between the taxpayer and the revenue agent regarding certain itemized deductions claimed by the taxpayer on the return. To resolve the issue, advice is requested in a timely manner from the Office of Chief Counsel on a substantive issue of federal tax law. The decision to request advice is a decision concerning the proper application of federal tax law; it is neither a ministerial nor a managerial act. Consequently, interest attributable to a delay resulting from the decision to request advice cannot be abated under paragraph (a) of this section.

Example 10. The facts are the same as in *Example 9* except the attorney who is assigned to respond to the request for advice is granted leave for an extended period of time. The case is not reassigned during the attorney's absence. The decision to grant leave and the decision not to reassign the taxpayer's case to another attorney are not ministerial acts; however, they are managerial acts. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay caused by these decisions.

Example 11. A taxpayer contacts an IRS employee and requests information with respect to the amount due to satisfy the taxpayer's income tax liability for a particular taxable year. Because the employee fails to access the most recent data, the employee gives the taxpayer an incorrect amount due.

As a result, the taxpayer pays less than the amount required to satisfy the tax liability. Accessing the most recent data is a ministerial act. The Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable error or delay arising from giving the taxpayer an incorrect amount due to satisfy the taxpayer's income tax liability.

Example 12. A taxpayer contacts an IRS employee and requests information with respect to the amount due to satisfy the taxpayer's income tax liability for a particular taxable year. To determine the current amount due, the employee must interpret complex provisions of federal tax law involving net operating loss carrybacks and foreign tax credits. Because the employee incorrectly interprets these provisions, the employee gives the taxpayer an incorrect amount due. As a result, the taxpayer pays less than the amount required to satisfy the tax liability. Interpreting complex provisions of federal tax law is neither a ministerial nor a managerial act. Consequently, interest attributable to an error or delay arising from giving the taxpayer an incorrect amount due to satisfy the taxpayer's income tax liability in this situation cannot be abated under paragraph (a) of this section.

Example 13. A taxpayer moves from one state to another after the IRS has undertaken an examination of the taxpayer's income tax return. The taxpayer asks that the audit be transferred to the IRS's district office that is nearest the new address. The group manager approves the request, and the case is transferred. Thereafter, the taxpayer moves to yet another state, and once again asks that the audit be transferred to the IRS's district office that is nearest that new address. The group manager approves the request, and the case is again transferred. The agent then assigned to the case is granted sick leave for an extended period of time, and the taxpayer's case is not reassigned. The taxpayer's repeated moves result in a delay in the completion of the examination. Under paragraph (a)(2) of this section, interest attributable to this delay cannot be abated because a significant aspect of this delay is attributable to the taxpayer. However, as in *Example 5*, the Commissioner may (in the Commissioner's discretion) abate interest attributable to any unreasonable delay caused by the managerial decisions to grant sick leave and not to reassign the taxpayer's case to another agent.

(d) *Effective dates—(1) In general.* Except as provided in paragraph (d)(2) of this section, the provisions of this section apply to interest accruing with respect to deficiencies or payments of any tax described in section 6212(a) for taxable years beginning after July 30, 1996.

(2) *Special rules—(i) Estate tax.* The provisions of this section apply to interest accruing with respect to deficiencies or payments of—

(A) Estate tax imposed under section 2001 on estates of decedents dying after July 30, 1996;

(B) The additional estate tax imposed under sections 2032A(c) and

2056A(b)(1)(B) in the case of taxable events occurring after July 30, 1996; and

(C) The additional estate tax imposed under section 2056A(b)(1)(A) in the case of taxable events occurring after December 31, 1996.

(ii) *Gift tax.* The provisions of this section apply to interest accruing with respect to deficiencies or payments of gift tax imposed under chapter 12 on gifts made after December 31, 1996.

(iii) *Generation-skipping transfer tax.* The provisions of this section apply to interest accruing with respect to deficiencies or payments of generation-skipping transfer tax imposed under chapter 13—

(A) On direct skips occurring at death, if the transferor dies after July 30, 1996; and

(B) On inter vivos direct skips, and all taxable terminations and taxable distributions occurring after December 31, 1996.

§ 301.6404–2T [Removed]

Par. 3. Section 301.6404–2T is removed.

Approved: October 20, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–33123 Filed 12–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG–1998–4895]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between July 1, 1998 and September 30, 1998, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** may not have been possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between July 1, 1998 and September 30, 1998, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at <http://dms.dot.gov>, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Junior Grade Mark Cunningham, Office of Regulations and Administrative Law, telephone (202) 267–6233. For questions on viewing, or on submitting material to The docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation (202) 866–9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones.

Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The

safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period

July 1, 1998 and September 30, 1998, unless otherwise indicated.

Dated: December 15, 1998.

Michael L. Emge,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

COTP docket	Location	Type	Effective date
GUAM 98-001	NAVAL ANCHORAGE B, APRA HARBOR, GUAM.	SAFETY ZONE	7/4/98
GUAM 98-002	WATERS INSIDE APRA OUTER HARBOR, GUAM.	SAFETY ZONE	8/26/98
HOUSTON-GALVESTON 98-008	HOUSTON, TX	SAFETY ZONE	7/4/98
HUNTINGTON 98-004	KANAWHA RIVER, M. 83 TO 90	SAFETY ZONE	7/19/98
JACKSONVILLE 98-061	ATLANTIC OCEAN, MAYPORT, FL	SAFETY ZONE	9/23/98
NEW ORLEANS 98-011	MISSISSIPPI RIVER, M. 94 TO 95	SAFETY ZONE	7/4/98
NEW ORLEANS 98-012	NEW ORLEANS, LA	SAFETY ZONE	7/4/98
NEW ORLEANS 98-013	KENNER, LA	SAFETY ZONE	7/4/98
NEW ORLEANS 98-014	MISSISSIPPI RIVER, M. 94 TO 95	SAFETY ZONE	7/16/98
NEW ORLEANS 98-016	LWR MISSISSIPPI RIVER, M. 94 TO 95	SAFETY ZONE	7/15/98
NEW ORLEANS 98-017	MISSISSIPPI RIVER, M. 94 TO 95	SAFETY ZONE	7/26/98
NEW ORLEANS 98-020	LWR MISSISSIPPI RIVER, M. 94 TO 96	SAFETY ZONE	8/15/98
NEW ORLEANS 98-022	LAKE WASHINGTON	SAFETY ZONE	7/22/98
PADUCAH 98-002	OHIO RIVER, M. 970 TO 974	SAFETY ZONE	9/17/98
PADUCAH 98-003	OHIO RIVER, M. 901 TO 904	SAFETY ZONE	9/18/98
PADUCAH 98-004	MISSISSIPPI RIVER, M. 929 TO 931	SAFETY ZONE	9/17/98
PORT ARTHUR 98-009	NECHES RIVER, BEAUMONT, TX	SAFETY ZONE	7/4/98
PRINCE WILLIAM SOUND 98-001	PRINCE WILLIAM SOUND	SAFETY ZONE	9/21/98
SAN DIEGO 98-017	SAN DIEGO, CA	SAFETY ZONE	8/26/98
SAN FRANCISCO 98-020	SAN FRANCISCO BAY, SAN FRANCISCO, CA	SAFETY ZONE	7/26/98
SAN FRANCISCO BAY 97-007	SAN FRANCISCO BAY, CA	SAFETY ZONE	7/4/98
SAN FRANCISCO BAY 98-017	CUISUN BAY, CA	SAFETY ZONE	7/21/98
SAN FRANCISCO BAY 98-022	SAN FRANCISCO, CA	SAFETY ZONE	9/13/98
SAN JUAN 98-052	SAN JUAN, PUERTO RICO	SAFETY ZONE	8/18/98
SAN JUAN 98-057	SAN JUAN, PUERTO RICO	SAFETY ZONE	9/9/98
SAN JUAN 98-060	VIRGIN ISLANDS	SAFETY ZONE	9/20/98
SAVANNAH 98-040	CALIBOGUE SOUND, HILTON HEAD ISLAND, SC.	SAFETY ZONE	7/4/98
ST. LOUIS 98-001	MISSISSIPPI RIVER, M. 179.2 TO 182.5	SAFETY ZONE	9/9/98
TAMPA 98-063	TAMPA BAY, FL	SAFETY ZONE	9/23/98

QUARTERLY REPORT

District docket	Location	Type	Effective date
01-98-002	LWR HUDSON RIVER, NEW YORK	SAFETY ZONE	9/13/98
01-98-049	HEMPSTEAD HARBOR, NEW YORK	SAFETY ZONE	7/11/98
01-98-059	HUDSON RIVER, NEW YORK	SAFETY ZONE	7/18/98
01-98-068	WESTERN LONG ISLAND SOUND, RYE, NEW YORK.	SAFETY ZONE	7/4/98
01-98-075	NORTH HAVEN, ME	SAFETY ZONE	8/8/98
01-98-077	NEW YORK HARBOR, NEW YORK	SAFETY ZONE	7/16/98
01-98-081	BOSTON HARBOR, BOSTON, MA	SAFETY ZONE	7/23/98
01-98-086	HUDSON RIVER, NEW YORK	SAFETY ZONE	7/19/98
01-98-088	HUDSON RIVER, NEW YORK	SAFETY ZONE	8/1/98
01-98-094	BURNTCOAT HARBOR, SWANS ISLAND, ME	SAFETY ZONE	7/3/98
01-98-095	CASTINE HARBOR, CASTINE, ME	SAFETY ZONE	7/4/98
01-98-096	PASSAMAQUODDY BAY, EASTPORT, ME	SAFETY ZONE	7/4/98
01-98-098	BOSTON HARBOR, BOSTON, MA	SAFETY ZONE	7/25/98
01-98-099	NEW YORK HARBOR, LOWER BAY	SAFETY ZONE	7/11/98
01-98-100	NEW YORK HARBOR, UPPER BAY	SAFETY ZONE	7/18/98
01-98-106	NEWPORT, RI	SAFETY ZONE	8/7/98
01-98-109	HAMMERSMITH FARM, NEWPORT, RI	SAFETY ZONE	7/28/98
01-98-110	FORE RIVER, PORTLAND, ME	SAFETY ZONE	8/10/98
01-98-111	NEW YORK HARBOR, UPPER BAY	SAFETY ZONE	8/20/98
01-98-118	BEVERLY HARBOR, BEVERLY, MA	SAFETY ZONE	8/2/98
01-98-119	PENOBSCOT RIVER, BUCKSPORT, ME	SAFETY ZONE	8/15/98
01-98-120	BAR HARBOR, ME	SAFETY ZONE	8/8/98

QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
01-98-121	HUDSON RIVER, MANHATTAN, NY	SAFETY ZONE	8/20/98
01-98-126	CASCO BAY, PORTLAND, ME	SAFETY ZONE	8/8/98
01-98-132	PENOBSCOT BAY, ROCKPORT, ME	SAFETY ZONE	8/20/98
01-98-135	HUDSON RIVER, COLD SPRING, NY	SAFETY ZONE	9/12/98
01-98-136	NEW YORK HARBOR, UPPER BAY	SAFETY ZONE	9/12/98
01-98-137	FALMOUTH, MA	SAFETY ZONE	9/6/98
01-98-142	NEWPORT, RI	SAFETY ZONE	9/18/98
01-98-143	PISCATAQUA RIVER, PORTSMOUTH, NH	SAFETY ZONE	9/11/98
01-98-145	NEW YORK HARBOR, UPPER BAY	SAFETY ZONE	9/28/98
01-98-149	NEWPORT, RI	SAFETY ZONE	9/23/98
01-98-150	BAR HARBOR, ME	SAFETY ZONE	9/19/98
01-98-153	EAST RIVER, NEW YORK	SAFETY ZONE	9/20/98
05-98-052	CAFE FEAR RIVER, SOUTHPORT, NC	SAFETY ZONE	7/4/98
05-98-054	SMITH CREEK, ORIENTAL, NC	SAFETY ZONE	7/4/98
05-98-064	PATAPSCO RIVER, BALTIMORE, MD	SAFETY ZONE	7/25/98
05-98-068	NORFOLK HARBOR, NORFOLK, VA	SAFETY ZONE	7/25/98
05-98-070	ELIZABETH RIVER, PORTSMOUTH, VA	SAFETY ZONE	8/11/98
05-98-077	HARBOR PARK, NORFOLK, VA	SAFETY ZONE	9/4/98
05-98-078	HARBOR PARK, NORFOLK, VA	SAFETY ZONE	9/5/98
05-98-079	PORT OF WILMINGTON, NC	SAFETY ZONE	8/25/98
05-98-086	VIRGINIA BEACH, VA	SAFETY ZONE	9/25/98
05-98-087	VIRGINIA BEACH, VA	SAFETY ZONE	9/26/98
07-98-023	SAN JUAN, PR	REG NAV AREA	8/10/98
07-98-039	CHARLESTON, SC	SAFETY ZONE	8/8/98
07-98-045	CHARLESTON, SC	SPECIAL LOCAL	7/4/98
07-98-050	JOHNS RIVER, JACKSONVILLE, FL	SPECIAL LOCAL	7/14/98
07-98-053	SAN JUAN, PUERTO RICO	SPECIAL LOCAL	7/19/98
07-98-055	BAHIA DE PONCE, PUERTO RICO	SPECIAL LOCAL	9/13/98
08-98-056	TENNESSEE RIVER, M. 645 TO 649	SPECIAL LOCAL	9/7/98
08-98-057	TENNESSEE RIVER, M. 324 TO 344.5	SPECIAL LOCAL	8/30/98
08-98-039	OHIO RIVER, M. 469.2 TO 470.5	SPECIAL LOCAL	7/4/98
08-98-042	TENNESSEE RIVER, M. 157 TO 159	SPECIAL LOCAL	7/5/98
08-98-050	OHIO RIVER, M. 557 TO 558	SPECIAL LOCAL	9/4/98
09-98-017	LAKE MUSKEGON, MUSKEGON, MI	SAFETY ZONE	7/1/98
09-98-020	LAKE, MICHIGAN	SAFETY ZONE	7/3/98
09-98-026	LAKE MICHIGAN, MUSKEGON, MI	SAFETY ZONE	7/17/98
09-98-027	LAKE MICHIGAN, NORTH BEACH, MI	SAFETY ZONE	7/18/98
09-98-028	LAKE MICHIGAN, MICHIGAN CITY, IN	SAFETY ZONE	7/11/98
09-98-031	LAKE MICHIGAN, MICHIGAN CITY, IN	SAFETY ZONE	7/19/98
09-98-032	ST. JOSEPH, MI	SAFETY ZONE	7/16/98
09-98-033	CHICAGO, IL	SAFETY ZONE	7/16/98
09-98-034	BLACK RIVER, SOUTH HAVEN, MI	SAFETY ZONE	7/24/98
09-98-035	KALAMAZOO LAKE AND RIVER, SUAGATUCK, MI	SAFETY ZONE	7/25/98
09-98-036	WHITE LAKE, WHITEHALL, MI	SAFETY ZONE	7/25/98
09-98-039	NORTH PIER, SOUTH HAVEN, MI	SAFETY ZONE	8/8/98
09-98-040	GRAND RIVER, GRAND HAVEN, MI	SAFETY ZONE	8/1/98
09-98-041	LAKE MICHIGAN, HAMMOND, IN	SAFETY ZONE	7/28/98
09-98-044	LAKE MICHIGAN, NEW BUFFALO, MI	SAFETY ZONE	8/1/98
09-98-045	LAKE MICHIGAN, CHICAGO, IL	SAFETY ZONE	8/2/98
09-98-046	LAKE MICHIGAN, MICHIGAN CITY, IN	SAFETY ZONE	8/28/98
09-98-047	LAKE MICHIGAN, PENWATER, MI	SAFETY ZONE	8/15/98
09-98-048	NAVY PIER, CHICAGO, IL	SAFETY ZONE	8/22/98
09-98-049	LAKE MICHIGAN, GRAND HAVEN, MI	SAFETY ZONE	8/23/98
13-98-005	COMMENCEMENT BAY, TACOMA, WA	SAFETY ZONE	7/5/98
13-98-013	COLUMBIA RIVER, KENNEWICK, WA	SAFETY ZONE	7/4/98
13-98-014	COLUMBIA RIVER, ASTORIA, OR	SAFETY ZONE	7/4/98
13-98-015	COLUMBIA RIVER, VANCOUVER, WA	SAFETY ZONE	7/4/98
13-98-016	COLUMBIA RIVER, RAINIER, OR	SAFETY ZONE	7/11/98
13-98-017	COLUMBIA RIVER, ST. HELENS, OR	SAFETY ZONE	7/4/98
13-98-018	GRAYS HARBOR, WESTPORT, WA	SAFETY ZONE	7/4/98
13-98-019	WILLAMETTE RIVER, PORTLAND, OR	SAFETY ZONE	7/4/98
13-98-020	WILLAMETTE RIVER, PORTLAND, OR	SAFETY ZONE	7/4/98
13-98-021	CHEHALIS RIVER, ABERDEEN, WA	SAFETY ZONE	7/4/98
13-98-022	LAKE WASHINGTON, SEATTLE, WA	SPECIAL LOCAL	8/6/98
13-98-024	LAKE WASHINGTON, SEATTLE, WA	SAFETY ZONE	8/6/98
13-98-025	COLUMBIA RIVER, ASTORIA, OR	SAFETY ZONE	8/8/98
13-98-027	WILLAMETTE RIVER, PORTLAND, OR	SAFETY ZONE	8/14/98
13-98-028	WILLAMETTE RIVER, PORTLAND, OR	SAFETY ZONE	8/31/98
13-98-029	COLUMBIA RIVER, PORTLAND, OR	SECURITY ZONE	9/12/98
13-98-030	WILLAMETTE RIVER, PORTLAND, OR	SECURITY ZONE	9/12/98

QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
13-98-031	WILLAMETTE RIVER, PORTLAND, OR	SECURITY ZONE	9/12/98
13-98-032	ELLIOTT BAY, SEATTLE, WA	SECURITY ZONE	9/13/98
13-98-033	COMMENCEMENT BAY, TACOMA, WA	SAFETY ZONE	9/18/98
13-98-034	COMMENCEMENT BAY, TACOMA, WA	SAFETY ZONE	9/18/98

[FR Doc. 98-33590 Filed 12-17-98; 8:45 am]
BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11-98-011]

RIN 2115-AE47

Drawbridge Operation Regulations; Sacramento River, CA-160 Highway Bridge at Isleton, Solano County, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the U.S. Coast Guard (USCG) has issued a temporary deviation to regulations governing opening of the California Department of Transportation (Caltrans) bascule bridge over the Sacramento River at Isleton, CA (the Isleton Bridge). The deviation specifies the east leaf of the bridge need not open for the passage of vessels from January 4, 1999 through January 15, 1999. The purpose of this deviation is to allow Caltrans to remove, fabricate and replace mechanical drive bearings for the bridge lifting mechanism.

DATES: Effective period of the deviation is 9:00 a.m. January 4, 1999 through 5:00 p.m. January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50-6, Coast Guard Island, Alameda, CA 94501-5100, telephone (510) 437-3515.

SUPPLEMENTARY INFORMATION: On October 22, 1998, CalTrans requested to close the east leaf of the bridge from November 30, 1998 through December 11, 1998. With one leaf operation, the horizontal clearance through the bridge, at the waterline, is 100 feet (30.5 meters). The Coast Guard contacted commercial operators who might be affected by this change in operation. A local marine contractor advised their vessel requiring 73 feet horizontal clearance was scheduled to work upstream of Isleton until mid December, 1998 and asked that the bridge repairs

be delayed. The USCG noted that the Caltrans Tower Bridge in Sacramento, on the same waterway, was scheduled to close for repair on January 1, 1999. The USCG noted also that marine interests had been advised of the work at Tower Bridge, and since they had not objected to it, they would likely not object to work during the same time period at Isleton. On November 3, 1998, the Coast Guard asked CalTrans if they would agree to postpone the work until after January 1, 1999. CalTrans rescheduled the work from January 4 through January 15, 1999. The USCG now anticipates that the economic consequences of this deviation will be minimal. The 100 ft. horizontal clearance with one leaf operation will provide sufficient clearance for other vessels requiring passage, hence it will not pose an economic burden for waterway users. The deviation from these regulations is authorized in accordance with 33 CFR 117.35. Existing operating regulations in 33 CFR 117.189 require on-demand bridge openings from 9 a.m. to 5 p.m. November 1 through April 30 annually, and on four hours advance notice at all other times during that period.

Dated: December 11, 1998.

C.D. Wurster,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 98-33593 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11-98-009]

RIN 2115-AE47

Drawbridge Operation Regulations; Sacramento River, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation to the regulations governing operation of the California Department of Transportation (Caltrans)

vertical lift bridge (Tower Bridge), which spans the Sacramento River at mile 59.0 (km 95.0) between Sacramento, Sacramento County, and West Sacramento, Yolo County, California. The deviation specifies that the bridge need not open for the passage of vessels from January 1, 1999 through February 28, 1999. The deviation is needed to allow Caltrans and its contractors to replace the control system. The work requires the bridge to remain closed throughout the period. The Coast Guard will require the bridge be opened in emergencies if at least 4 hours advance notice is given.

DATES: Effective period of the deviation is January 1, 1999 through February 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50-6 Coast Guard Island, Alameda, CA 94501-5100, telephone (510) 437-3515.

SUPPLEMENTARY INFORMATION: The Coast Guard anticipates that the economic consequences of this deviation will be minimal. The bridge provides 30 feet vertical clearance over Mean High Water in the closed position. Recreational and commercial vessel traffic is limited during the winter, and most recreational vessels can transit the bridge without a bridge opening. Similarly, many of the emergency response vessels can transit the closed bridge, and the 4-hour emergency opening provision would enable the bridge to open for larger marine equipment needed for such emergencies as levee repair or other flood fighting efforts. With adequate Local Notice to Mariners and Broadcast Notice to Mariners notification, commercial vessel operators should have ample time to plan transits accordingly. This deviation from the normal operating regulations in 33 CFR 117.189 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: December 11, 1998.

C.D. Wurster,

Captain, U.S. Coast Guard Acting Commander, Eleventh Coast Guard District.

[FR Doc. 98-33592 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[SC-035-1-9833a;FRL-6204-1]

Approval and Promulgation of Implementation Plans; South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Cherokee County ozone maintenance area portion of the South Carolina Air Quality Implementation Plan or State Implementation Plan (SIP) submitted on June 27, 1998, through the South Carolina Department of Health and Environmental Control (SC DHEC). This SIP revision updates the emissions inventory and emissions budget established in the Cherokee County Ozone Maintenance Plan for conducting transportation conformity analyses in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule is effective February 16, 1999 without further notice, unless EPA receives adverse comment by January 19, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Lynorae Benjamin at Region 4 EPA Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. 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 SC-035-9833. 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), EPA, 401 M Street, SW, Washington, DC 20460.

EPA, Region 4 Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

SC DHEC, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin at (404) 562-9040. Reference file SC-035-9833.

SUPPLEMENTARY INFORMATION: The following sections: Background, Analysis of the State's Submittal, and Final Action, provide additional information concerning the revisions to the Cherokee County Ozone Maintenance Area portion of the South Carolina SIP.

I. Background

On November 6, 1991, Cherokee County was designated by EPA as a marginal nonattainment area because of multiple exceedances in 1988 of the National Ambient Air Quality Standard (NAAQS) for ozone at the air quality monitor located in the Cowpens National Battle Field. After three consecutive years of satisfactory air quality data, Cherokee County was redesignated to attainment for the one hour ozone standard on December 15, 1992. A maintenance plan for Cherokee County was submitted to and approved by EPA to help assure continued attainment of the ozone standard. MOBILE model 4.1 (the current model at that time) was used to estimate the emissions inventory and emissions budgets for the maintenance plan.

Any update to the mobile emissions budget must use the latest planning assumptions including the currently approved version of the mobile model. The update contained in this SIP submittal uses MOBILE 5a, the currently specified model for use in the preparation or revision of implementation plans in maintenance areas, to estimate emissions inventory and emissions budgets.

II. Analysis of the State's Submittal

As stated previously, this SIP submittal is based on MOBILE 5a, the currently specified model for use in the preparation or revision of implementation plans in maintenance areas, to estimate the emissions inventory and emissions budget levels. This revision also incorporates the addition of an emissions safety margin to the on-road emissions source category. The safety margin is made possible by an emissions reduction in the area source category for nitrogen

oxides (NO_x) and volatile organic compounds (VOC) emissions from residential wood burning. The previous SIP submittal overestimated emissions from residential wood burning. Furthermore, the previous SIP submittal used a projected population growth from 1990 to 2002 of 11.6 percent based on the 1992 South Carolina Statistical Abstracts. More recent data from the 1995 South Carolina Abstracts indicate that the projected growth rate will be 12.5 percent for that period of time.

The CAA, as amended in 1990, defines conformity to an implementation plan as conformity to the plan's purpose of reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Specifically, the CAA requires that transportation improvement programs (TIP) and long range transportation plans that are federally funded or approved 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 plan and programs must be consistent with estimates of emissions from a maintenance plan.

This SIP contains comprehensive inventories for VOC, NO_x, and carbon monoxide (CO) emissions for the Cherokee County Maintenance Area. The inventories include point sources, area sources, on-road mobile, non-road mobile, and biogenic sources, including the safety margin. The emissions safety margin and the on-road emissions source category, combined, comprise the total conformity emissions budget.

The following tables list a summary of the CO, NO_x, and VOC emissions for 1990, as well as a projection of these emissions for 2002. The 1990 data was taken from the "1990 Base Year Ozone Emissions Inventory for Cherokee County, South Carolina Nonattainment Area," March 1995. The on-road mobile source projections are based on MOBILE 5a modeling. All other projections are based on population growth from the 1995 South Carolina Statistical Abstracts. The projected population growth from 1990 to 2002 is 12.5 percent.

CHEROKEE COUNTY MAINTENANCE AREA—SUMMARY: DAILY AND ANNUAL EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

Pollutant	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
VOC	43.47	42.33	42.41	10,148.40	9,739.86	9,772.69
NO _x	9.38	9.24	9.15	3,439.30	3,388.29	3,357.73
CO	74.23	46.64	44.24	30,096.10	20,338.60	19,527.31

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL VOC EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

VOC Emissions	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
Point Sources	2.02	2.23	2.27	614.10	677.97	690.86
Area Sources	3.79	4.19	4.27	1,596.40	1,762.43	1,795.95
On-road Mobile	6.11	4.32	4.28	2,229.20	1,578.37	1,563.29
Non-road Mobile	0.23	0.25	0.26	71.10	78.49	79.99
Biogenic Sources	31.32	31.32	31.32	5,637.60	5,637.60	5,637.60
Safety margin	NA	0.01	0.01	NA	5.00	5.00
Total	43.47	42.32	42.41	10,148.40	9,739.86	9,772.69

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL NO_x EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

NO _x Emissions	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
Point Sources	0.82	0.91	0.93	270.20	298.30	303.98
Area Sources	0.21	0.23	0.24	147.10	162.40	165.49
On-road Mobile	7.79	7.45	7.34	2,843.90	2,720.97	2,677.91
Non-road Mobile	0.55	0.61	0.62	178.10	196.62	200.36
Biogenic Sources	NA	NA	NA	NA	NA	NA
Safety margin	NA	0.03	0.03	NA	10.00	10.00
Total	9.37	9.23	9.16	3,439.30	3,388.29	3,357.74

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL CO EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

CO Emissions	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
Point Sources	0.26	0.29	0.29	83.20	91.85	93.60
Area Sources	5.84	6.45	6.57	5,319.70	5,872.95	5,984.66
On-road Mobile	64.92	36.36	33.77	23,695.80	13,272.67	12,326.98
Non-road Mobile	3.20	3.53	3.60	997.40	1,101.13	1,122.08
Biogenic Sources	NA	NA	NA	NA	NA	NA
Total	74.22	46.63	44.23	30,096.10	20,338.60	19,527.32

III. Final Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revision of the Federally approved SIP for conformance with the provisions of the Amendments enacted on November 15, 1990, and the Transportation Conformity Rule promulgated on November 24, 1993 and amended on August 15, 1997. The Agency has determined that this request conforms to those requirements. Therefore, this action updates and revises the emissions inventory and

emissions budget for the Cherokee County Ozone Maintenance Area.

EPA is publishing this rule without 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 February 16, 1999 without further notice unless the Agency receives

relevant adverse comments by January 19, 1999.

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 for this rule. Any 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 February 16, 1999 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 plan 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, "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, 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, or EPA consults with those governments. If EPA complies by consulting, E.O. 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, 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 does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, 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, or EPA consults with those governments. If EPA complies by consulting, E.O. 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, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding South Carolina's audit privilege and penalty immunity law, South Carolina—"S.C. Code Ann. §§ 4857-57-10 *et seq.* (Supp. 1996) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other CAA program resulting from the effect of South Carolina's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by a state audit privilege or immunity law.

G. 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.

There are exceptions for actions that involve source specific regulations and actions that contain the "good cause" clause for making the action effective sooner than 60 days.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 1999. 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 oxides, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 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 PP—South Carolina

2. Section 52.2120, paragraph (e) is added to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) EPA-approved South Carolina non-regulatory provisions.

Provision	State effective date	EPA approval date	Comments
Cherokee County Ozone Attainment Demonstration and Ten-year Maintenance Plan.	06/26/98	December 18, 1998.	
Narrative of the "Emissions Inventory Projections for Cherokee County".	06/26/98	December 18, 1998.	

[FR Doc. 98-33471 Filed 12-17-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN 183-1-9824a; FRL-6204-4]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 State Plan for Nashville/Davidson County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on December 24, 1996, for implementing and enforcing

the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW). See 40 CFR part 60, subpart Cb. EPA is also approving the Section 111(d) State Plan for Nashville/Davidson County submitted on December 24, 1996, for implementing and enforcing the EG applicable to existing MSW landfills. See 40 CFR part 60, subpart Cc.

DATES: This direct final rule is effective on February 16, 1999 without further notice, unless EPA receives significant, material, and adverse comment by January 19, 1999. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Steven M.

Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN 183-1-9824a. The Region 4 office may have additional documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Steven M. Scofield, 404/562-9034.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531. 615/532-0554

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville and Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203. 615/340-5653

FOR FURTHER INFORMATION CONTACT: Scott Davis at 404/562-9127 or Steven M. Scofield at 404/562-9034.

SUPPLEMENTARY INFORMATION:

MWCs

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. See 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. See 60 FR 65414.

This action approves the State Plan submitted by the State of Tennessee for the Nashville and Davidson County

Metropolitan Health Department (MHD) to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

The Tennessee Department of Environment and Conservation submitted correspondence on May 21, 1997, certifying there are no MWCs under the direct jurisdiction of the State of Tennessee. The State submitted to EPA on December 24, 1996, the following in their 111(d)/129 State Plan for implementing and enforcing the emission guidelines for existing MWCs under their direct jurisdiction in the State of Tennessee: Legal Authority; Enforceable Mechanism; Inventory of MWC Plants/Units; MWC Emission Inventory; Emission Limits; Compliance Schedule; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments; Submittal of Progress Reports to EPA; and applicable Tennessee statutes, Metropolitan Nashville and Davidson County Government statutes, and MHD agency regulations. The State submitted its plan before the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the MHD plan covers both large and small MWC units. As a result of the *Davis* decision and subsequent vacatur order, there are no emission guidelines promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of the MHD plan for MWCs addresses only those parts of the MHD plan which affect large MWC units. Small units are not subject to the requirements of the federal rule and not part of this approval. Until EPA again promulgates emission guidelines for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of the MHD plan is based on finding that: (1) the MHD provided adequate public notice of public hearings for the proposed rulemaking which allows the MHD to implement and enforce the EG for large MWCs, and (2) the MHD also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission

reports of owners and operators; and make emission data publicly available.

In Appendix 1 of the plan, the MHD cites the following references for the legal authority: State of Tennessee Codes Annotated 68-201-115, "Local Pollution Control Programs," 10-7-503, "Records Open to Public Inspection-Exceptions," and 10-7-504, "Inspection of Records;" Metropolitan Code of Laws, Article 10, "Public Health and Hospitals," Chapter 1, "Public Health" of the Charter of the Metropolitan Government, Chapter 10.56, Air Pollution Control," Section 10.56.090, "Board-Powers and Duties," Section 10.56.150, "Nuisance Declared-Injunctive Relief," Section 10.56.290, "Measurement and Reporting of Emissions," Section 2.36 "Health Department," and Section 2.36.130 "Records and Proceedings-Public Inspection Authorized When." These statutes and regulations are approved as being at least as protective as the federal requirements for existing large MWC units.

In Appendix 2 of the plan, the MHD cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in the MHD Pollution Control Division's Regulation No. 12, "Regulation for Control of Municipal Waste Combustors," are approved as being at least as protective as the federal requirements contained in subpart Cb for existing large MWC units.

The State submitted compliance schedules and legally enforceable increments of progress for each large MWC under their direct jurisdiction in the State of Tennessee. This portion of the plan has been reviewed and approved as being at least as protective as federal requirements for existing large MWC units.

The State submitted an emission inventory of all designated pollutants for each large MWC under their direct jurisdiction in the State of Tennessee. This portion of the plan has been reviewed and approved as meeting the federal requirements for existing large MWC units.

The MHD plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable their agency to judge the compliance status of the facilities. The MHD also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards

that apply, available to the general public. The State submitted MHD's Regulation No. 12 to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These MHD rules have been reviewed and approved as being at least as protective as federal requirements for existing large MWC units.

As stated on page 5 of the plan, the MHD will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR 60, subpart B. This portion of the plan has been reviewed and approved as meeting the federal requirement for State Plan reporting.

MSW Landfills

I. Background

Under section 111(d) of the Act, EPA has established procedures whereby states submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which states must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a NSPS that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a state, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). See 61 FR 9905-9944. The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation.

The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the state within nine months after publication of the EG (by December 12, 1996).

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association v. Browner, et al.* No. 96-1152 (D.C. Cir), in accordance with section 113(g) of the Act. See 62 FR 60898. It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Accordingly, the currently promulgated MSW landfill EG was used as a basis by EPA for review of section 111(d) plan submittals.

This action approves the section 111(d) plan submitted by the State of Tennessee for the Nashville and Davidson County, Tennessee, MHD to implement and enforce subpart Cc.

II. Discussion

The State submitted to EPA on December 24, 1996, the following in their section 111(d) plan for implementing and enforcing the emission guidelines for existing MSW landfills in Nashville and Davidson County, Tennessee: Legal Authority; Enforceable Mechanism; Inventory of MSW Landfills; MSW Landfill Emission Inventory; Emission Limits; Compliance Schedule; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments; Submittal of Progress Reports to EPA; and applicable Tennessee statutes, Metropolitan Nashville and Davidson County

Government statutes, and MHD agency regulations.

The approval of the MHD plan is based on finding that: (1) the MHD provided adequate public notice of public hearings for the proposed rulemaking which allows the MHD to implement and enforce the EG for MSW landfills; and (2) the MHD also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In Appendix 1 of the plan, the MHD cites the following references for the legal authority: State of Tennessee Codes Annotated 68-201-115, "Local Pollution Control Programs," 10-7-503, "Records Open to Public Inspection-Exceptions," and 10-7-504, "Inspection of Records;" Metropolitan Code of Laws, Article 10, "Public Health and Hospitals," Chapter 1, "Public Health" of the Charter of the Metropolitan Government, Chapter 10.56, "Air Pollution Control," Section 10.56.090, "Board-Powers and Duties," Section 10.56.150, "Nuisance Declared-Injunctive Relief," Section 10.56.290, "Measurement and Reporting of Emissions," Section 2.36 "Health Department," and Section 2.36.130 "Records and Proceedings-Public Inspection Authorized When." These statutes and regulations are approved as being at least as protective as the federal requirements for existing MSW landfills.

In Appendix 2 of the plan, the MHD cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in the MHD Pollution Control Division's Regulation No. 16, "Regulation for Control of Municipal Waste Landfills," are approved as being at least as protective as the federal requirements contained in subpart Cc for existing MSW landfills.

The MHD adopted compliance schedules in Regulation No. 16 for each existing MSW landfill to be in compliance within 12 months of the effective date of their implementing regulation (November 12, 1996). All other compliance times for affected MSW landfills in Regulation No. 12 comply with the compliance timelines of the EG. This portion of the plan has been reviewed and approved as being at

least as protective as federal requirements for existing MSW landfills.

The State submitted an emission inventory of all designated pollutants for each MSW landfill in Nashville and Davidson County, Tennessee. This portion of the plan has been reviewed and approved as meeting the federal requirements for existing MSW landfills.

The MHD plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable their agency to judge the compliance status of the facilities. The MHD also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. The State submitted MHD's Regulation No. 16 to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These MHD rules have been reviewed and approved as being at least as protective as federal requirements for existing MSW landfills.

As stated on page 2 of the plan, the MHD will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR 60, subpart B. This portion of the plan has been reviewed and approved as meeting the federal requirement for plan reporting.

Consequently, EPA finds that the MHD plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The MHD did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this plan as it relates to those sources.

Final Action

EPA is approving the Sections 111(d)/129 State Plan for Nashville/Davidson County submitted by the State of Tennessee for implementing and enforcing the EG applicable to existing MWCs with capacity to combust more than 250 tons per day of MSW. EPA is also approving the Section 111(d) State Plan for Nashville/Davidson County for implementing and enforcing the EG applicable to existing MSW landfills, except for those existing MSW landfills located in Indian Country. MSW landfills located in other Tennessee counties will be addressed in separate

rulemaking. As provided by 40 CFR 60.28(c), any revisions to the State plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this rule without 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 February 16, 1999 without further notice unless the Agency receives relevant adverse comments by January 19, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and 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. Only parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 16, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under 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 EPA complies by consulting, E.O. 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 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 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 EPA complies by consulting, E.O. 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.”

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

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 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 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**. 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 February 16, 1999. 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: July 30, 1998.

Winston A. Smith,

Acting Regional Administrator, Region 4.

Part 62 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart RR—Tennessee

2. Subpart RR is amended by adding a new § 62.10626 and a new undesignated center heading to read as follows: Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan).

§ 62.10626 Identification of plan.

(a) Identification of plan. Tennessee Designated Facility Plan (Section 111(d) plan).

(b) The plan was officially submitted as follows:

(1) Metropolitan Nashville and Davidson County Tennessee's Implementation Plan For Municipal Waste Combustors, submitted on December 24, 1996, by the State of Tennessee Department of Environment and Conservation.

(2) Metropolitan Nashville and Davidson County Tennessee's Plan For Implementing the Municipal Solid Waste Landfill Emission Guidelines, submitted on December 24, 1996, by the State of Tennessee Department of Environment and Conservation.

(c) Designated facilities. The plan applies to existing facilities in the following categories of sources:

(1) Existing municipal waste combustors.

(2) Existing municipal solid waste landfills.

3. Subpart RR is amended by adding a new § 62.10627 and a new undesignated center heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.10627 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW) at the following MWC sites:

(a) Nashville Thermal Transfer Corporation, Nashville, Tennessee.

4. Subpart RR is amended by adding a new § 62.10628 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10628 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 98-33481 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300750; FRL-6040-5]

RIN 2070-AB78

Harpin; Temporary/Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a temporary/time-limited tolerance exemption for residues of the biological pesticide Harpin in or on all food commodities when applied for the broad spectrum control of various bacterial, fungal, and viral plant diseases. EDEN Bioscience Corporation submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) requesting the temporary/time-limited tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of Harpin. The tolerance exemption will expire on October 31, 2000.

DATES: This regulation is effective December 18, 1998. Objections and requests for hearings must be received by EPA on or before February 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP-300750], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP

(Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300750], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP-300750]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Diana M. Horne, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th fl., Crystal Mall 2 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-8367, e-mail: Horne.Diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1998 (63 FR 50903) (FRL-6026-1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition (PP 8F4975 and subsequently changed to 9G5043). This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the FQPA of 1996. The petition requested that 40 CFR part 180 be amended by establishing a temporary/time-limited tolerance exemption for residues of Harpin.

Two comments were received urging the issuance of the Experimental Use Permit (69834-EUP-1) and temporary tolerance exemption for Harpin protein. An additional commenter raised questions regarding whether adequate field testing has been done to justify the acreage requested in the EUP; the nature of Harpin protein and the inert ingredients used in the formulation; the nature, if any, of consequences to beneficial microflora and potential impacts on the development of pathogen resistance; and whether degradation data support the contention that residues are expected to be negligible. The Agency has received summaries on a subset of approximately 200 field trials conducted by the registrant on a broad range of crops in the United States, Mexico, and the Peoples Republic of China. Harpin proteins are generally heat stable, glycine-rich and, in nature, elicit defense mechanisms within the host plant. While specific inert ingredients utilized in pesticide formulations are considered confidential business information (CBI), those used in Harpin formulations are food grade materials, or contained in lists of inert ingredients cleared for food use by the Agency. Regarding the mechanism of action of Harpin protein on plant disease organisms, evidence has been presented which suggests no direct antimicrobial activity. Instead, the protein has been described in the published literature as inducing systemic acquired immunity, a coordinated cascade of defense reactions, within the host plant. Thus, Harpin has extremely limited potential for direct toxicity to pathogens or beneficial microorganisms, or for the development of pathogen resistance. Finally, environmental fate studies submitted in support of this temporary tolerance exemption indicate that the protein is UV-labile, and subject to degradation by proteases produced by ubiquitous microflora on leaf surfaces and in water. Degradation studies indicate a half-life of less than 48 hours where Harpin was applied at 30-40 times the proposed field rate. Moreover, using current detection methodology, the active ingredient was undetectable immediately following foliar application at standard rates.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) defines

“safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...” EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Harpin is a naturally occurring protein derived from the plant pathogenic bacterium *Erwinia amylovora* (*E. amylovora*), the causative agent for fire blight disease. Because of its role in plant host-parasite relationships, Harpin is presumed to have been present in *E. amylovora* for as long as the bacterium has been involved in the fire blight disease. As such, Harpin protein has been constantly produced and secreted by *E. amylovora* in or on edible fruits such as apple and pear with no apparent adverse effects on humans.

EDEN has conducted studies to evaluate the mammalian toxicology of the Harpin protein. The results of these studies indicate that Harpin is a Toxicity Category III substance and that it poses no significant human health risks. No toxicity was observed in either of the acute oral toxicity studies conducted with the Harpin technical grade active ingredient (TGAI) or a concentrated Harpin TGAI. Acute oral LD₅₀ values for both Harpin protein technical and concentrated Harpin protein technical were greater than

2,000 mg/kg in the rat (Toxicity Category III based on the maximum dose administered). The 4-hour LC₅₀ for Harpin was determined to be greater than 2 mg/L in an acute inhalation study with rats. EDEN has not observed any incidents of Harpin-induced hypersensitivity in individuals exposed to Harpin during research, production, and/or field testing. The Harpin end product produced minimally and mildly irritating results in the eye irritation and dermal irritation studies, respectively.

The proteinaceous nature of Harpin, in combination with its lack of acute toxicity, lends an additional measure of safety because when proteins are toxic, they are generally known to act via acute mechanisms and at very low dose levels. Therefore, because no significant adverse effects were observed, even at the limit doses, Harpin is not considered to be an acutely toxic protein.

III. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Residues of Harpin protein were virtually undetectable within 3–10 days following application to treated plant surfaces and in water. Based on these preliminary studies and other submitted information, it is unlikely that appreciable Harpin residues would accumulate in the environment. Because of the low rate of application and rapid degradation of Harpin in the environment, residues of Harpin in or on treated raw agricultural commodities are expected to be negligible. Moreover, because Harpin exhibits no mammalian toxicity, any dietary exposure, if it occurred, would not be harmful to humans.

2. *Drinking water exposure.* Residues of Harpin are unlikely to occur in drinking water, due to the low application rate of the product and its rapid degradation in soil and water and on foliar surfaces.

B. Other Non-Occupational Exposure

The use pattern and acreage proposed for turf application may increase exposure to Harpin; however, with the demonstrated lack of mammalian toxicity and rapid environmental

degradation of this protein, such exposure will not be harmful to humans.

IV. Cumulative Effects

Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of Harpin protein and no information that indicates that toxic effects would be cumulative with any other compounds. Moreover, Harpin does not exhibit a toxic mode of action in its target pests or diseases.

V. Determination of Safety for U.S. Population, Infants and Children

Harpin's lack of toxicity has been demonstrated by the results of acute toxicity testing in mammals in which Harpin caused no adverse effects when dosed orally and via inhalation at the limit dose for each study. Thus, the aggregate exposure to Harpin over a lifetime should pose negligible risks to human health. Based on lack of toxicity and low exposure, there is a reasonable certainty that no harm to adults, infants, or children will result from aggregate exposure to Harpin residue. Exempting Harpin from the requirement of a tolerance should pose no significant risk to humans or the environment.

VI. Other Considerations

A. Endocrine Disruptors

Neither the Agency nor EDEN Bioscience Corporation has any information to suggest that Harpin will adversely affect the endocrine system.

B. Analytical Method(s)

An analytical method for residues is not applicable, since the petitioner has requested a temporary exemption from the requirement of a tolerance.

C. Codex Maximum Residue Level

There are no tolerances, exemptions from tolerance, or Maximum Residue Levels issued for Harpin outside of the United States.

VII. Objections and Hearing Requests

The new section 408(g) of the FFDCA provides essentially the same process for persons to “object” to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) and as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can

be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 16, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the hearing clerk, at the address given under the "Addresses" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

A record has been established for this rulemaking under docket control number [OPP-300750]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division(7502C), Office of

Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in ADDRESSES at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629), February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In additions, since tolerance exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

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

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the

preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

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

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 1, 1998.

Stephen L. Johnson

Deputy Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

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

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

2. Section 180.1204 is added to read as follows:

§ 180.1204 Harpin protein; exemption from the requirement of a temporary tolerance.

The biological pesticide Harpin is exempted from the requirement of a temporary tolerance when applied

under the terms of Experimental Use Permit 69834-EUP-1, for the broad spectrum control of various bacterial, fungal, and viral plant diseases when used on all food commodities. The exemption from the requirement of a tolerance will expire on October 31, 2000.

[FR Doc. 98-33629 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300766; FRL-6049-4]

RIN 2070-AB78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide in or on eggs; grass, forage; grass, hay; hogs, fat; hogs, kidney; hogs, liver; hogs, meat; hogs, mby; peanuts; peanut, hay; peanuts, meal; peanut, oil; poultry, fat; poultry, meat; poultry, mby; rice, bran; rice, grain; rice, hulls; rice, straw; and sweet potatoes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pasture land, peanuts, rice, and sweet potatoes. This regulation establishes maximum permissible levels for residues of tebufenozide in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on December 31, 2000.

DATES: This regulation is effective December 18, 1998. Objections and requests for hearings must be received by EPA on or before February 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300766], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations

Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300766], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300766]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6463, e-mail: Madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide, tebufenozide in or on eggs at 0.01 part per million (ppm); grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mby at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mby 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25. These

tolerances will expire and are revoked on December 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by

EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Tebufenozide on Certain Commodities and FFDCA Tolerances

During the 1998 growing season several states (Arkansas, Louisiana, Oklahoma, and Texas) availed themselves of the authority to declare a crisis exemption to use tebufenozide for control of armyworms (*Spodoptera sp.*) on pasture land, peanuts, rice, and sweet potatoes. Due to the mild winter, severe drought and unusually hot summer in the southern United States, many growers experienced heavy infestations of armyworm. The use of tebufenozide to control armyworm is in accordance with 40 CFR part 166, Subpart C.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide in or on pasture land, peanuts, rice, and sweet potatoes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether tebufenozide meets EPA's registration requirements for use on or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebufenozide, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of tebufenozide on eggs at 0.01 part per million (ppm); grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mby at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mby 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information

concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed below.

B. Toxicological Endpoint

1. *Acute toxicity.* No toxicological endpoint has been identified for acute toxicity. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neurological or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (limit-dose) during gestation to pregnant rats or rabbits.

2. *Short- and intermediate-term toxicity.* No toxicological endpoints have been identified for short- and intermediate-term toxicity. No dermal or systemic toxicity was seen in rats administered 15 dermal applications at 1,000 mg/kg/day (limit dose) over 21 days with either technical tebufenozide or 23% active ingredient formulation. Despite hematological effects seen in the dog study, similar effects were not seen in these rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for tebufenozide at 0.018 milligrams/kilogram/day (mg/kg/day). This RfD is based on the no observable adverse effect level (NOAEL) of 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at the lowest observable adverse effect level (LOAEL) of 8.7 mg/kg/day. An uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variability) was applied to the NOAEL of 1.8 mg/kg/day to calculate the RfD of 0.018 mg/kg/day. EPA has determined that the 10X factor to account for enhanced susceptibility of infants and children (as required by FQPA) can be removed. This determination is based on the results of reproductive and developmental toxicity studies. No evidence of additional sensitivity to young rats or rabbits was observed following pre- or postnatal exposure to tebufenozide.

4. *Carcinogenicity.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of tebufenozide on apples and walnuts. Additionally, time-limited tolerances associated with emergency exemptions have been established for cotton, leafy vegetables, pears, pecans, peppers, sugar beet, sugarcane, turnip tops, milk, and livestock commodities of cattle, goats, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebufenozide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose or one day exposure. Therefore, no toxicological endpoint was identified for acute toxicity and no acute dietary risk assessment is needed.

ii. *Chronic exposure and risk.* The Agency conducted a chronic dietary exposure analysis and risk assessment. The chronic analysis for tebufenozide used a RfD of 0.018 mg/kg/day. The analysis evaluated individual food consumption as reported by respondents in the USDA 1989-92 Continuing Surveys of Food Intake by Individuals and accumulates exposure to the chemical for each commodity. Tolerance level residues and some percent crop treated (PCT) assumptions were made for the proposed commodities to estimate the Anticipated Residue Concentration (ARC) for the general population and subgroups of interest. Since the FQPA safety factor has been removed for all population subgroups, the percent RfD that would exceed the Agency level of concern would be 100%. The existing tebufenozide tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in an ARC that is equivalent to percentages of the RfD below 100% for all subgroups [i.e., U.S. population, 12% and non-nursing infants (<1 year old), the most highly exposed subgroup, 25%].

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for tebufenozide. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration

estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENECC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in groundwater. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to tebufenozide they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on residential non-food sites.

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

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a

common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* No toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 12% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure, non-nursing infants (<1 year old) (discussed below) will utilize 25% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, after calculating DWLOCs and comparing them to conservative model estimates of concentrations of tebufenozide for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Tebufenozide is not currently registered for use on residential non-food sites. Therefore no short- and intermediate-term aggregate risk assessments are needed.

4. *Aggregate cancer risk for U.S. population.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

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

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

1. *Safety factor for infants and children — i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies.* In prenatal developmental toxicity studies in rats and rabbits, there was no evidence of maternal or developmental toxicity; the maternal and developmental NOAELs were 1,000 mg/kg/day (highest dose tested).

iii. *Reproductive toxicity study.* In 2-generation reproduction studies in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals

iv. *Conclusion.* There is a complete toxicity database for tebufenozide and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to tebufenozide. Based on this, EPA

concludes that reliable data support the use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* No toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 25% of the RfD for infants and 19% of the RfD for children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, after calculating DWLOCs, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Tebufenozide is not currently registered for use on residential non-food sites. Therefore no short- and intermediate-term aggregate risk assessments are needed.

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

IV. Other Considerations

A. Metabolism In Plants and Animals

Residue of concern in plants is adequately understood and is tebufenozide per se. Residues of concern in animals are not adequately understood. Studies to address residues of concern for animals are currently under Agency review. For the purpose of these section 18 actions only, the Agency has assumed the residue of concern is tebufenozide per se.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5229.

C. Magnitude of Residues

Residues of tebufenozide per se are not expected to exceed 0.01 ppm on

eggs; grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mbyop at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mbyop 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25 ppm as a result of these section 18 uses.

D. International Residue Limits

There are currently no Canadian, or Mexican listings for tebufenozide residues. Codex maximum residue levels (MRLs) have been set for tebufenozide at 0.1 ppm for rice (husked), 0.05 ppm for walnuts, and 1 ppm for pome fruits.

E. Rotational Crop Restrictions

Rotational Crop data are currently under review by the Agency. Crops which the label allows to be treated directly can be planted at any time. Based on preliminary data, a 30-day plantback interval is adequate for root, tuber, bulb, leafy, brassica, fruiting, and cucurbit vegetables. All other crops cannot be planted within 12 months of the last tebufenozide application.

V. Conclusion

Therefore, tolerances are established for residues of tebufenozide in or on eggs at 0.01 ppm; grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mbyop at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mbyop 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25 at ppm.

VI. Objections and Hearing Requests

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

appropriate adjustments to reflect the new law.

Any person may, by February 16, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Request for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300766] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

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

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the

requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

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

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

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 9, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. In § 180.482, add the following commodities to the table in paragraph (b) to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Eggs	0.01	12/31/00
Grass, forage	5	12/31/00
Grass, hay	18	12/31/00
Hogs, fat	0.1	12/31/00
Hogs, kidney	0.02	12/31/00
Hogs, liver	1	12/31/00
Hogs, meat	0.02	12/31/00
Hogs, mbyp	0.1	12/31/00
Peanuts	0.05	12/31/00
Peanut, hay	5	12/31/00
Peanut, meal	0.15	12/31/00
Peanut, oil	0.15	12/31/00
Poultry, fat	0.1	12/31/00
Poultry, meat	0.01	12/31/00
Poultry, mbyp	0.05	12/31/00
Rice, bran	0.8	12/31/00
Rice, grain	0.1	12/31/00
Rice, hulls	0.5	12/31/00
Rice, straw	6	12/31/00
Sweet potatoes ...	0.25	12/31/00

* * * * *

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7704]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists

those communities eligible for the sale of flood insurance.

Regulatory Classification

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

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
South Dakota: Butte County, unincorporated areas	430236	November 24, 1998	December 20, 1977
Tennessee: Lewis County, unincorporated areas	470103	November 25, 1998	February 9, 1979.
New Eligibles—Regular Program			
Montana: Darby, town of Ravalli County	300062	November 2, 1998	September 7, 1998.
Massachusetts: Brimfield, town of, Hampden County	250135	November 9, 1998	August 2, 1982.
North Carolina: ¹ Northwest, city of, Brunswick County	370513	November 12, 1998	May 15, 1995.
Washington: ² Kenmore, city of, King County	530336	November 13, 1998	March 30, 1998.
Regular Program Conversions			
Region I			
Connecticut:			
Plymouth, town of, Litchfield County.	090138	November 6, 1998.	November 6, 1998.
Windham, town of, Windham County.	090119	.....do	Do.
Region IV			
North Carolina: Carteret County, unincorporated areas	370043	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Region V			
Minnesota: East Grand Forks, city of, Polk County	275236	.....do	Do.
Region I			
Maine: Sidney, town of, Kennebec County.	230247	November 20, 1998. Suspension Withdrawn.	November 20, 1998
Vienna, town of, Kennebec County	230249	.....do	Do.
Massachusetts: Sudbury, town of, Middlesex County	250217	.....do	Do.
Region III			
West Virginia: Berkeley County, unincorporated areas	540282	.....do	Do.
Region IV			
North Carolina: Grifton, town of, Lenoir and Pitt Counties	370192	.....do	Do.
Raleigh, city of, Wake County	370243	.....do	Do.
Region VI			
Arkansas: West Memphis, city of, Crittenden County	050055	.....do	Do.
Texas: Gonzales County, unincorporated areas	480253	.....do	Do.
Guadalupe County, unincorporated areas	480266	.....do	Do.
Victoria County, unincorporated areas	480637	.....do	Do.
Region VII			
Iowa: Carlisle, city of, Warren County	190274	.....do	Do.
Indianola, city of, Warren County	190275	.....do	Do.
Norwalk, city of, Warren County	190631	.....do	Do.
Warren County, unincorporated areas	190912	.....do	Do.
Region IX			
California: Firebaugh, city of, Fresno and Madera Counties	060046	.....do	Do.
Fresno County, unincorporated areas	065029	.....do	Do.
Madera County, unincorporated areas	060170	.....do	Do.
Winters, city of, Yolo County	060425	.....do	Do.
Nevada: Lyon County, unincorporated areas	320029	.....do	Do.

¹ The City of Northwest has adopted the Brunswick County (CID #370295) Flood Insurance Rate Map dated May 15, 1995.

² The City of Kenmore has adopted the King County (CID #530071) Flood Insurance Rate Map dated March 30, 1998.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA—Non Special Flood Hazard Area.

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

Issued: December 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98-33581 Filed 12-17-98; 8:45 am]

BILLING CODE 6718-05-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 64

[Docket No. FEMA-7703]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule

because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However,

some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and

unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of

section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains. Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Maine: Portland, city of, Cumberland County	230051	June 11, 1975, Emerg.; July 17, 1986, Reg.; Dec. 8, 1998, Susp.	Dec. 8, 1998	Dec. 8, 1998
Region II				
New Jersey:				
Allendale, borough of, Bergen County ..	340019	June 2, 1972, Emerg.; July 2, 1979, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Fair Lawn, borough of, Bergen County	340033	April 4, 1974, Emerg.; July 2, 1981, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Glen Rock, borough of, Bergen County	340038	Feb. 12, 1975, Emerg.; July 2, 1981, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Ho-Ho-Kus, borough of, Bergen County	340044	Jan. 14, 1972, Emerg.; June 1, 1977, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Mahwah, township of, Bergen County ...	340049	Oct. 13, 1972, Emerg.; Nov. 3, 1982, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Midland Park, borough of, Bergen County.	340051	May 26, 1972, Emerg.; Sept. 30, 1977, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Montvale, borough of, Bergen County ...	340052	May 2, 1975, Emerg.; June 15, 1981, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Park Ridge, borough of, Bergen County	340063	Feb. 19, 1975, Emerg.; May 5, 1981, Reg.; Dec. 8, 1998, Susp..	.....do	Do

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Ramsey, borough of, Bergen County	340064	Jan. 21, 1974, Emerg.; Sept. 2, 1981, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Ridgewood, village of, Bergen County ..	340067	Nov. 12, 1971, Emerg.; Dec. 15, 1983, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Saddle River, borough of, Bergen County.	340073	March 10, 1972, Emerg.; May 16, 1977, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Upper Saddle River, borough of, Bergen County.	340077	April 12, 1974, Emerg.; Sept. 15, 1977, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Waldwick, borough of, Bergen County ..	340078	March 31, 1972, Emerg.; March 1, 1979, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Woodcliff Lake, borough of, Bergen County.	340082	July 15, 1975, Emerg.; Sept. 2, 1981, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Wyckoff, township of, Bergen County ...	340084	Dec. 17, 1971, Emerg.; Aug. 1, 1977, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Region V				
Ohio: Tipp City, city of, Miami County	390401	Sept. 9, 1974, Emerg.; July 18, 1985, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Region VI				
Louisiana:				
Natchez, village of, Natchitoches Parish	220370	Sept. 29, 1975, Emerg.; Sept. 18, 1987, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Natchitoches Parish, unincorporated areas.	220129	May 10, 1973, Emerg.; Sept. 18, 1987, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Richland Parish, unincorporated areas	220154	May 14, 1973, Emerg.; Aug. 1, 1987, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Texas:				
Bastrop County, unincorporated areas ..	481193	Sept. 12, 1978, Emerg.; Aug. 19, 1991, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Luling, city of, Caldwell County	480096	May 5, 1975, Emerg.; Jan. 16, 1979, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Martindale, town of, Caldwell County	481587	Nov. 16, 1983, Emerg.; March 15, 1982, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Region IX				
California:				
Menlo Park, city of, San Mateo County	060321	April 2, 1975, Emerg.; Feb. 4, 1981, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Palo Alto, city of, Santa Clara County ...	060348	Aug. 20, 1971, Emerg.; Feb. 15, 1980, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Region X				
Washington: Mason County, unincorporated areas.	530115	Aug. 18, 1975, Emerg.; May 24, 1991, Reg.; Dec. 8, 1998, Susp..	.....do	Do
Region II				
New Jersey: Highlands, borough of, Monmouth County.	345297	Dec. 11, 1970, Sept. 3, 1971, Reg.; Emerg.; Dec. 22, 1998, Reg..	Dec. 22, 1998 ...	Dec. 22, 1998
Region III				
Pennsylvania: Reynoldsville, borough of, Jefferson County.	420513	Feb. 22, 1974, Emerg.; April 17, 1978, Reg.; Dec. 22, 1998, Susp..	.....do	Do
Region IX				
Arizona: Quartzsite, town of, La Paz County	040134	June 21, 1983, Emerg.; Sept. 19, 1984, Reg.; Dec. 22, 1998, Susp..	.....do	Do
California:				
Morgan Hill, city of, Santa Clara County	060346	June 30, 1975, Emerg.; June 18, 1980, Reg.; Dec. 22, 1998, Susp..	.....do	Do
Region X				
Oregon:				
Burns, city of, Harney County	410084	April 7, 1975, Emerg.; Aug. 15, 1984, Reg.; Dec. 22, 1998, Susp..	.....do	Do
Harney County, unincorporated areas ...	410083	Jan. 15, 1975, Emerg.; April 17, 1984, Reg.; Dec. 22, 1998, Susp..	.....do	Do

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension.

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

Issued: December 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98-33580 Filed 12-17-98; 8:45 am]

BILLING CODE 6718-05-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket Nos. 98-43, 94-149; FCC 98-281]

1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order, the Commission adopts an electronic filing mandate for 15 Mass Media Bureau broadcast application and reporting forms, including sales forms and applications for new commercial stations and modifications to licensed facilities, after a phase in period. In conjunction with electronic filing, the Commission revises the requirements for extending the construction periods of broadcast stations, for selling unbuilt construction permits and for submitting ownership reports for commercial and noncommercial stations. The Commission also modifies the reporting requirements on the Annual Ownership Report form to include a section on the race and gender of individuals with attributable interests in broadcast licensees. Finally, the Commission institutes a formal program of both pre- and post-application grant random audits. The Commission is implementing the changes to eliminate rules and revise procedures that consume significant staff resources, create excessive filing burdens, and/or do not sufficiently advance key regulatory objectives. The intended effect of the changes is to reduce filing burdens and increase the efficiency of application processing while preserving the public's ability to fully participate in Commission broadcast licensing processes.

This Report and Order contains modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13, and has been submitted to the Office of Management and Budget ("OMB") for

review under section 3507(d) of the PRA.

EFFECTIVE DATES: February 16, 1999. 47 CFR 73.3615(a) will become effective 120 days after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lisa Scanlan, Audio Services Division, Mass Media Bureau, (202) 418-2720; Jerianne Timmerman, Video Services Division, Mass Media Bureau, (202) 418-1600. For additional information concerning the information collections contained in this Report and Order, contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Dockets 98-43 and 94-149, adopted October 22, 1998, and released November 25, 1998. The complete text of this Report and Order is available for inspection and copying during regular business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800 (phone), (202) 857-3805 (facsimile), 1231 20th Street, NW, Washington, DC 20036.

SYNOPSIS OF REPORT AND ORDER:

I. Introduction

1. With this Report and Order, we make fundamental changes in our broadcast application and licensing procedures. In the Notice of Proposed Rulemaking initiating this proceeding, 63 FR 19226 (April 17, 1998), we proposed numerous modifications to those procedures that we believe would serve the public interest by reducing applicant and licensee burdens, increasing the efficiency of application processing, and preserving the public's ability to participate fully in our broadcast licensing processes. After careful consideration of the proposals in the NPRM and the comments received, we now adopt these various measures. Specifically, we adopt an electronic filing mandate for key Mass Media Bureau broadcast application and reporting forms after a phase in period. We also revise our requirements for extending the construction periods of broadcast stations; for selling unbuilt station construction permits; and for submitting ownership reports for commercial and noncommercial educational stations. Additionally, we modify the Annual Ownership Report to require the provision of information on the racial and gender identity of broadcast licensees. To preserve the integrity of our streamlined application processes, we are implementing a two-pronged formal program of audits.

II. Discussion

A. Electronic Filing of Applications

Mandatory Electronic Filing

2. The Mass Media Bureau is currently developing electronic versions of various broadcast applications and reporting forms as part of a wide-ranging effort to computerize and streamline the Mass Media Bureau's processes in order to expedite service to the public. Electronic versions of the following 15 forms are being developed: FCC Forms 301, 302-AM, 302-FM, 302-TV, 302-DTV, 314, 315, 316, 340, 345, 346, 347, 349, 350, and 5072. FCC Form 398, the Children's Television Programming Report, is already available in electronic format. We believe phasing in mandatory electronic filing will provide a period for broadcast licensees, permittees and applicants, including small market broadcasters, to become familiar with, and accustomed to using, the Internet generally and our electronic system specifically to submit their applications. Although we feel that a phase in period should be sufficient for broadcast licensees, permittees and applicants to become accustomed to utilizing our electronic application system, we nonetheless note that an applicant can request a waiver of our mandatory electronic filing requirements, even after the close of the phase in period.

3. With regard to the length of time of the phase in period, we have determined that electronic filing will become mandatory, on a form-by-form basis, six months after each Mass Media Bureau form becomes available for filing electronically. We expect the 15 Mass Media Bureau forms specified above to become available for filing electronically no earlier than March of 1999. Thus, electronic filing of these key broadcast application forms will not become mandatory before the fall of 1999. With regard to the FCC Form 398 (Children's Television Programming Report) specifically, which has been available for submission electronically since the spring of 1997, we will require licensees to file it electronically as of January 10, 1999.

Operation and Security of Electronic System

4. We anticipate that applicants will file their Mass Media Bureau applications electronically via the Commission's site on the World Wide Web. Applicants will not be able to file applications on diskette because the submission of diskettes is not compatible with our Web-based system (HTML), would increase the risk of

virus importation into the Commission's system, and would unduly increase the burdens on the Commission's resources. The Commission's Web-based system will not be hardware or software product or manufacturer specific; all commonly available computer hardware and software will be compatible with the Commission's electronic system.

5. The electronic system will provide immediate notification to applicants that their electronically filed applications have been received. The system will afford applicants the ability to submit amendments, make corrections to electronically filed applications and submit narrative, explanatory exhibits. We note that Mass Media Bureau forms and applications filed electronically pursuant to this Report and Order must be received by the electronic filing system before midnight on the filing date. We believe it unnecessary and burdensome to require applicants to also submit paper copies of electronically filed applications during the phase in period.

6. For any broadcast application for which a fee is required, the electronic system will inform the applicant that a fee is required and an FCC Form 159 (Remittance Advice) must be filed. Fee payments will continue to be made to the Commission's lock-box bank—Mellon Bank in Pittsburgh, Pennsylvania. Applications will be accepted after we have received confirmation electronically from Mellon Bank that the applicant has made the appropriate payment.

7. Security for the Mass Media Bureau's electronic system will be consistent with all other Commission electronic filing systems. Applications will be filed electronically utilizing passwords chosen by the applicants and unique account numbers that are internally generated by the system and assigned to applicants. Applicants and licensees will be obligated to provide TINs so as to fulfill the Commission's obligations under the Debt Collection Improvement Act (DCIA), Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996). Due to security concerns, however, passwords and unique account numbers, rather than TINs, will be used for the filing of applications.

8. The general public will be able to view electronically filed applications through the Commission's site on the World Wide Web. Public access to all electronic submissions will be "read only." We anticipate that electronic access to broadcast applications will enhance the public's ability to view

applications and participate in the Commission's processes.

B. Streamlining Application Processing

Use of Certifications, Instructions and Worksheets

9. In order to obtain the full benefits of electronic filing, we have recast key Mass Media Bureau forms into "yes" or "no" certification formats, supplemented with detailed worksheets and instructions. The revised forms will facilitate application processing, result in more accurate databases and easier public access to information, thus benefiting broadcasters, the public and the Commission. The revised forms will also substantially reduce the amount of information applicants must submit, restricting the use of exhibits to waiver requests or to circumstances where additional information is necessary to support application elements potentially inconsistent with precedent, processing standards, Commission rules and policies, and the Act. Additionally, we will include an "explanation" checkbox beside the "yes" or "no" checkboxes on certain questions on the application form. To facilitate a smooth transition, we will selectively introduce paper versions of the new forms before the development of our electronic filing system is complete. Public notices will detail transition information concerning the use of these revised paper forms.

10. Application worksheets are available to applicants as instruments to provide guidance in completing certification questions. We will not require that applicants retain worksheets at the Commission and/or in their public files. We believe it would be contrary to our goals of easing regulatory burdens and increasing application processing efficiencies to, in essence, treat the worksheets as part of the application and subject them to review by the Commission and the public in all circumstances. In this regard, however, we note that it may be advantageous for licensees to retain the worksheets, as well as other data or documentation used to support certifications, for use in response to Commission audits and inquiries.

Assignment and Transfer Applications: Forms 314 and 315 To fully realize the processing efficiencies obtainable through electronic filing, we determined that significant changes in our sales applications forms (Forms 314 and 315) and license assignment and transfer rules are warranted.

a. Rule Revision: Payment Restrictions on the Sale of Unbuilt Stations

11. We affirm the holding in *Bill Welch*, 3 FCC Rcd 6502 (1988), that

there is no *per se* statutory proscription against the for-profit sales of unbuilt stations. Moreover, we no longer believe that retention of the rule is necessary to maintain the integrity of our licensing processes. Thus, we will, both for outstanding commercial station construction permits and commercial station construction permits that will be issued pursuant to the auction process, eliminate the no profit rule restricting payment upon assignment or transfer of an unbuilt station to reimbursement of a seller's expenses. We also will eliminate the no profit limitation for noncommercial educational station construction permits granted prior to the release of this Report and Order, as well as for those granted subsequent to the release of this Report and Order as "singletons." However, except for those granted as "singletons," we defer deciding on whether we should permit subsequently issued noncommercial educational station construction permits to be sold for a profit.

12. For commercial stations, use of competitive bidding procedures to resolve mutual exclusivity among commercial broadcast applicants will soon replace both the traditional comparative hearing process for full-service radio and television stations and the system of random selection formerly employed to award certain low power television and television translator licenses. Our concern with spectrum speculation in an auction environment, where there are strict bidding and payment requirements and where the winning bidder has paid fair market value for an authorization, is minimal. We also believe that the competitive bidding process itself, where the permittee may be required to make a substantial front end payment, provides a strong impetus for timely station construction. Even in cases where a commercial permit is not issued pursuant to an auction, *e.g.*, because only one application was filed for a frequency and therefore the application was granted as a "singleton," we believe it is appropriate to eliminate reimbursement restrictions. Even assuming that "singleton" commercial station permittees do not have the same impetus to build quickly in order to recoup auction expenditures, we believe that the automatic cancellation and forfeiture provisions adopted in this Report and Order will provide sufficient incentives to construct authorized facilities promptly.

13. Regarding outstanding commercial and noncommercial construction permits issued prior to the release of this Report and Order, we will also eliminate reimbursement restrictions.

Most current permittees filed construction permit applications under rules that prohibited the sale of a permit at a profit. Thus again, our concern that the construction permit was issued merely as the result of a speculative filing is minimal. Furthermore, some commercial station construction permits were recently issued pursuant to settlement agreements facilitated by section 309(i) of the Communications Act, which, *inter alia*, required the Commission to waive the no profit rule with regard to settlements among certain applicants entered into by February 1, 1998. In principle, these authorizations were acquired at fair market value and we see no justification for imposing price restrictions on their sale now. We note, however, that the Commission's current settlement rules will continue to apply to pending mutually exclusive commercial and noncommercial applications, *i.e.*, any pending applicants who did not take advantage of the Commission's prior windows for settling for more than out-of-pocket expenses and who wish to settle now are, absent a waiver of the provisions of 47 CFR 73.3525, restricted to out-of-pocket expenditures.

14. Under current processing rules, we continue to accept applications for FM facilities on the reserved band and to grant permits in circumstances where no mutually exclusive application is timely filed or where a global settlement agreement among all mutually exclusive applicants is approved. With regard to noncommercial station permits granted as "singletons" on or after the release of this Report and Order, we will eliminate the no-profit rule. However, in instances where there are mutually exclusive noncommercial applications filed on or after the release of this Report and Order and a permit is subsequently issued as the result of a settlement, we believe a more cautious approach is required. We recognize that a proceeding is pending to develop a selection process for mutually exclusive noncommercial educational station applicants. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking*, FCC 98-269 (released October 21, 1998). Until the issues in that proceeding are resolved, we will not be in a position to determine whether adopting procedures that would permit settlements among those applicants and subsequent for-profit sales could frustrate the goals of that proceeding.

15. Finally, we address the issue of the for profit sale of permits by permittees who received bidding credits as designated entities in the auction

context. Generally, we will follow the provisions of Part 1 of the auction rules and apply transfer limitations to the extent they are applied in other auctionable services. Thus, where bidding credits are used in a broadcast auction, for a five year period, the Commission will require a designated entity seeking approval of a transfer or an assignment to a non-designated entity, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, to reimburse the government for the amount of the bidding credit, plus interest, before transfer of the license will be permitted.

b. Requirement to Submit Contracts with Assignment and Transfer Applications

16. Applicants will assess their sales and organizational documents against the series of standards set forth in the expanded instructions to Forms 314 and 315 and will be required to certify that a transaction conforms fully to the instruction standards, the Commission's rules and policies, and the Act, or to disclose those specific aspects of the transaction for which waivers are sought and/or where compliance with the Act, and our rules and policies is uncertain. We emphasize, however, that if an application raises concerns on its face, or presents particularly significant public interest issues, or where an objection is filed, relevant provisions of the sales agreements will be reviewed by the staff on a case-by-case basis. In addition, we will rely on a two-pronged random audit program to enhance the reliability of applicants' certifications. To further reduce filing burdens on licensees, we will also adopt the proposal to eliminate, as duplicative, the § 73.3613(b) requirement that sales agreements and contracts be filed with the Commission within thirty days of execution, where the reporting entity has already filed the sales contract with the assignment or transfer application.

17. Applicants must continue to submit copies of sales agreements so that we can continue our practice of maintaining copies of unredacted sales agreements and contracts in the public reference room. Similarly, if the parties have an oral agreement, a written description of its material terms must be submitted with the application. We will continue to require that contracts submitted for retention in the public reference room disclose sales price. Since contracts and agreements are "material pertaining to" the sales application, they must also, pursuant to the public file rule, be retained in the station's public file until final action has

been taken on the application. If we determine that the documents have not been submitted for use in the public reference room, we will neither accept for filing, nor process the application for assignment or transfer. Similarly, we will suspend application processing if it comes to our attention that the documents have not been placed in the station's public file.

18. Prior to the implementation of electronic filing procedures, we will initially require applicants to file a single paper copy of the sales agreement with the assignment or transfer application, and eliminate duplicate copies which are submitted as part of the current triplicate paper filing procedures. The processing staff will immediately forward this copy of the contract to the public reference room. Upon the implementation of electronic filing procedures for sales applications, the public will have access to electronic copies of sales agreements transmitted with the application and made available in the public reference room. The staff will review the electronic copy of the sales agreement for the proposed transaction only where application responses, exhibits, waiver requests and/or objections raise relevant issues.

c. Requirement to Submit Contour Overlap Maps

19. We modify the sales application processing scheme as it relates to the radio contour overlap map. In lieu of Commission staff reviewing these maps in every instance to ensure that the application complies with our multiple ownership rules, applicants themselves will assess and certify compliance. We have developed instructions and worksheets that will help applicants understand all relevant rules and concepts. With conscientious use of these tools, applicants can accurately determine whether or not they should certify compliance with our current rules. As with the sales contracts, we emphasize that if an application raises concerns on its face, or presents significant public interest issues, or where an objection is filed, the contour overlap maps will be reviewed by the staff on a case by case basis.

20. We will retain our practice of maintaining copies of contour overlap maps in the Commission's public reference room. We will require applicants to file a single copy of the contour overlap map (or submit an electronic version) with the application for assignment or transfer. The processing staff will not review the map unless application responses, exhibits, or waiver requests raise multiple ownership issues, but the public will be able to access the map and bring any

concerns or objections to the attention of the Commission staff.

21. Since the radio contour overlap map constitutes "material related to" the application, it must, pursuant to the public file rule, also be maintained in the public inspection file along with the application for assignment or transfer for review by the general public until final action has been taken. As with sales contracts, we will refrain from processing any application when contour maps are not submitted with the application, or when we become aware that they have not been retained in the local public file according to the provisions of the local public file rule.

3. *New Commercial Station and Facility Change Applications: Form 301 a. Rule Revisions*

22. We modify 47 CFR 73.316 to shift the filing requirements regarding certain directional antenna information to the license application stage of the FM authorization process. Elimination of the requirement under 47 CFR 73.316(c) to file directional antenna information with the construction permit application would provide applicants maximum flexibility in choosing an antenna manufacturer when constructing a facility. Should the absence of definitive information concerning a specific directional antenna preclude grant of a construction permit application, the Commission can request the appropriate antenna information prior to grant. We also modify 47 CFR 73.1675(a) to eliminate the map requirement for auxiliary facilities for the FM and TV services and 47 CFR 73.1030(a) by eliminating the application disclosure requirement regarding the date of radio astronomy and research installation notification. These revisions will reduce filing burdens without endangering the technical integrity of the broadcast services. The staff will continue to afford the radio astronomy installations a 20 day comment period regarding applicable proposals. Furthermore, the staff will verify compliance with 47 CFR 73.1675(a) using technical data submitted in FCC Form 301.

b. *Form Revisions*

23. We will revise FCC Form 301 to decrease the number of required technical exhibits and significantly reduce applicant filing burdens. Exhibits will be required only in connection with the most critical technical and public safety matters, such as FM spacing, contour protection, and radio frequency electromagnetic exposure guidelines. We will employ a "Tech Box" to incorporate all critical technical data required for engineering review. In the event of any

discrepancies between data in the "Tech Box" and data submitted elsewhere in the application, the data in the "Tech Box" will be used. We are confident that our revised form and the few associated exhibits yield core technical data. As with other forms, we will also provide a detailed set of instructions to ensure that applicants can correctly determine compliance with Commission rules and policies and will employ our audit program to ensure that questions have been answered accurately.

24. Specifically, we have reorganized the AM section of Form 301 to provide individual "Tech Boxes" for Daytime, Nighttime and critical hours operations. We have also eliminated references to blanketing interference and cross-modulation from the FM technical portion of the form because these rules are only applicable once a station is operating and are therefore not practically considered at the construction permit application stage.

25. We will no longer require the submission of tower sketches to inform the Commission of co-located antennas. The information provided in the "Tech Box," concerning the proposed facility, in conjunction with information from the Commission's engineering database regarding co-located and nearby existing broadcast facilities, are sufficient to enable the staff to make accurate determinations about compliance with radiofrequency electromagnetic exposure guidelines and to determine if a proposed antenna may disrupt other nearby facilities.

26. Except for AM station applicants, the Commission will no longer require the filing of site maps with FCC Form 301. Technology such as Global Positioning Satellite receivers is now readily available and allows applicants to accurately determine coordinates without the use of site maps. However, site maps for AM stations retain their importance, because AM facilities, with their longer wavelengths, are much more susceptible to undesirable effects from nearby structures, such as buildings, antenna towers and water towers. Therefore, we will retain the requirement for AM applicants to submit transmitter site maps to evaluate the proposed site with respect to the surrounding electromagnetic environment. Finally, various cosmetic changes, corrections for typographical errors, and form congruence suggestions have been incorporated into the new Form 301.

C. *Enforcement*

27. A strong enforcement program, including random audits, is necessary to insure the integrity of the application

process under our new streamlined procedures. Petitions to deny and informal objections will remain as adjuncts to audits. We believe that these complementary factors, along with a formal audit program, will deter abuse of the application process.

28. Specifically, we will adopt a formal program of random audits, which will subject selected broadcast applications to heightened scrutiny prior to grant and will additionally subject selected applications to audit after grant. The pre-grant audit program will be applicable to commercial and noncommercial radio and television station applications that will be selected randomly by computer. Over the course of a year, the computer will randomly select up to a total of approximately five percent of all applications filed in the radio and television services. The applicants who filed these applications will then be notified of their selection for an audit, and will be directed by letter to provide certain additional documentation and information for our review. This documentation should be readily available to the selected applicants, and, if promptly furnished to the Commission, the processing of the applications subject to audit should not be unduly impeded. We expect that any pre-grant review will be conducted during the 30-day period for the filing of petitions to deny against the applications. Although we will choose applications for audit on a random basis, if an application raises concerns on its face or presents particularly significant public interest concerns, we may decide to conduct an audit even if the application did not fall into the group chosen by random selection. As to the concern that, under the proposed audit system, innocent, careless mistakes will be elevated to serious offenses, we note that the staff will continue its current practice of considering all the circumstances surrounding the submission of inaccurate or incomplete information in determining the need for and the severity of a sanction. We anticipate that clear guidance provided in the instructions, worksheets and forms will result in fewer mistakes.

29. After receiving the requested information from an audited applicant, we will examine the documentation and analyze it for consistency with the certifications and representations in the streamlined application and for compliance with all Commission rules and policies. Applicants may be required to provide further information to explain any discrepancies between the application filed and the supporting documentation submitted, and will be

given an opportunity to respond to all Commission questions and concerns. In pre-grant audit cases where we find that an applicant has made inaccurate certifications, the Commission may dismiss the application and require the resubmission of a corrected application, may also impose a forfeiture, or may defer action for further investigation and possible designation for hearing.

30. We will also randomly subject up to five percent of all applications to more extensive post-grant audits. Post-grant audits may include comparison of the application being audited with all relevant Commission files and databases as well as other available sources of pertinent information. Upon analysis of the above-described information, the staff may issue a letter of inquiry requiring submission of all the application's supporting and background documentation not found in its independent search. The staff will also allow the applicants an opportunity to explain any apparent discrepancies. Upon receipt and analysis of all relevant information, the staff will prepare either a close-out letter, instructions to correct any violations, if appropriate, admonition, forfeiture, hearing designation order, or an order to show cause why an order of revocation should not be issued. We retain the discretion to reexamine this audit program after it has been in operation for a reasonable period of time and to make any changes that are needed to address problems or to enhance the program's effectiveness.

D. Modifying Construction Permit Extension Procedures

31. We conclude that a three-year construction period would provide all permittees an adequate and realistic time to construct and amend 47 CFR 73.3598 to provide each permittee with a total of three unencumbered years during which it may construct its broadcast facility. Under these new procedures, the Commission will toll the construction period only when construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review. An act of God is defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes), will be narrowly construed, and include only those periods where the permittee demonstrates that construction progress was impossible, notwithstanding its diligent efforts. Covered administrative and judicial review falls into two categories. The first consists of petitions for reconsideration and applications for review within the Commission of the grant of a construction permit or a permit extension, and any appeal of any

Commission action thereon. The second category consists of any cause of action pending before any court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any environmental requirement. Thus, a permit would not qualify for tolling on the basis of the pendency of a zoning application before a local zoning board. In light of these new procedures, we eliminate the current practice of providing additional time for construction after a permit has been modified or assigned.

32. The lengthened three year construction period will also apply to modifications of licensed facilities. Likewise, the grounds for tolling a construction period will apply to modifications of licensed facilities. The lengthened three-year construction period will apply to NTSC permittees to construct either analog or digital new station facilities. This Report and Order does not impact DTV build-out requirements, the deadline for which remains 2006.

33. In lieu of FCC Form 307, the current form by which a permittee may apply for an extension, we adopt a notification procedure under which a permittee must inform the Commission of the circumstances that it believes should toll its construction period. A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of the act of God that has blocked construction, or the initiation of a relevant administrative or judicial review. The construction period will be tolled for the length of time that a diligent permittee will need to recover from the effects of the event. A permittee must also notify the Commission promptly when the relevant administrative or judicial review is resolved. A permittee that needs more than six months to resume construction after a natural disaster must submit additional supporting information at six-month intervals explaining construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments. The burden is upon the permittee to show that any further tolling of the construction period is warranted. Notification must be in the form of a letter submitted in triplicate to the Secretary. The letter notification must also be placed by the permittee in the local public file of the station(s) concerned.

34. Construction permits granted pursuant to these rules are subject to automatic forfeiture, without further Commission action, upon expiration of an unencumbered three-year

construction period. Additionally, we eliminate that part of 47 CFR 73.3535(a) that requires that "[b]efore such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated." We also eliminate the requirement that permittees who modify unbuilt stations certify that construction will commence immediately upon grant. See 47 CFR 73.3535(b). The analogous certification requirement for assignees and transferees will likewise be eliminated. No additional time will be granted when the permittee has had, in all, at least three unencumbered years to construct.

E. Modification of Pro Forma Assignments and Transfers

35. In the Notice of Proposed Rulemaking, we raised a question and invited comment as to whether 47 U.S.C. 310(d) would afford the Commission the flexibility to give a blanket consent to certain pro forma broadcast station assignments and transfers of control. We have determined that it would not be prudent to make such a fundamental change in our interpretation of 47 U.S.C. 310(d) without Congressional guidance. Therefore, we decline at this time to adopt the notification process suggested in the Notice.

F. Streamlined Ownership Reporting Requirements

36. We modify our existing ownership reporting rules to require commercial and noncommercial broadcast licensees to file Ownership Reports (FCC Form 323 or 323-E) when they file their stations' license renewal applications and every two years thereafter. For commercial licensees, we will delay the effective date of this rule modification until our new Ownership Report, which will include questions concerning minority and female ownership is available. Thus, commercial licensees should continue to file FCC Form 323 according to their current schedule until they have filed the revised form one time. Thereafter, they may file under the relaxed requirements. We also formalize the Commission's current practice of requesting an Ownership Report within 30 days of consummation of an approved assignment or transfer by amending 47 CFR 73.3615 to specifically require that commercial and noncommercial licensees and permittees file Ownership Reports within 30 days of consummating authorized assignments or transfers of licenses. We also eliminate the Commission's existing supplemental

reporting requirement, under which a noncommercial educational licensee or permittee must file an Ownership Report within 30 days after any change in previously reported information.

G. Information on Minority and Female Ownership

37. To develop more precise information on minority and female ownership of mass media facilities, we amend FCC Form 323 to include a section on the race and gender of individuals with attributable interests in broadcast licensees. Our revised Annual Ownership Report form will provide annual information on the state and progress of minority and female ownership and enable both Congress and the Commission to assess the need for, and success of, programs to foster opportunities for minorities and females to own broadcast facilities. In this regard, our information collection is consistent with our mandate under 47 U.S.C. 309(j) and 47 U.S.C. 257. Pursuant to 47 CFR 73.3615(a), sole proprietorships and partnerships composed solely of natural persons are exempt from the filing requirement. However, we encourage these licensees to file information voluntarily regarding gender and racial identity, so that we may more accurately measure minority and female broadcast ownership. The modified reporting requirement will only apply to the FCC Form 323, Annual Ownership Report, required of commercial broadcasters. We will consider at a later date whether to apply the requirement to the FCC Form 323-E required of noncommercial stations. The groups on which we will seek information are those to which our minority and female ownership policies have historically applied. In addition to females, these classifications are Black, Hispanic, Native American, Alaska Native, Asian, and Pacific Islander. Thus, we will amend Section 73.3615 of the Commission's Rules to require the provision of information on the gender and racial identity of all parties with attributable interests in commercial broadcast licensees.

III. Administrative Matters

38. The complete text of this Report and Order, including any statements, is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center (Room 239), 1919 M Street NW, Washington DC, and it may be purchased from the Commission's copy contractor, International Transcription Service Inc., 1231 20th Street NW, Washington, DC 20036, (202) 857-3800.

39. Paperwork Reduction Act of 1995 Analysis. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. The new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

Final Regulatory Flexibility Analysis (FRFA)

40. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking for each of the dockets in this proceeding, MM Docket Nos. 98-43 and 94-149. The Commission sought written public comments on the proposals set forth in each Notice, including comment on each IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996).

Need For and Objectives of Action

41. Specifically, this Report and Order: (1) Streamlines broadcast application procedures, (2) speeds introduction of new and expanded services to the public, (3) reduces administrative burden on regulatees, (4) increases public access to information about the Bureau's actions and processing activities, and (5) maximizes efficiency in the use of Commission resources. The Report and Order maintains the technical integrity of broadcast services while fostering the Commission's goals of competition and diversity, continuing enforcement of the Commission's core rules and policies, and permitting members of the public a continued opportunity to monitor station performance. This action is taken in conjunction with the Commission's 1998 biennial regulatory review. Although Congress did not mandate this area of review, the Commission nonetheless undertook it to assure that its rules and processes are no more regulatory than necessary to achieve Commission goals.

42. Further, the Order revises our Ownership Report form, FCC Form 323,

to include a section requiring each owner to identify the race or ethnicity and the gender of each person holding an attributable ownership interest in its broadcast facility. Doing so will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities and to chart the success of any measures that we may eventually adopt in this proceeding in promoting ownership by minorities and women. Information about the status of minority and female broadcast ownership will also help us to fulfill our responsibilities under section 257 of the Telecommunications Act of 1996 to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services. 47 U.S.C. 257. In implementing Section 257, the Commission is mandated to "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity."

Significant Issues Raised by Public Comments in Response to the IRFAs

43. No comments were received specifically in response to the IRFA in MM Docket No. 98-43. However, some comments in that proceeding did address certain small business issues. Primarily, commenters were concerned that not all small businesses are currently connected to the Internet and therefore would be unable to immediately participate in the electronic filing initiative adopted herein without additional expense. Commenters were also concerned that eliminating the requirement that permittees file sales contracts will hurt small business because lending institutions will be unable to access necessary sales price information. One commenter, Cumulus Media, commented that streamlining the application process will inevitably decrease the cost of doing business for small broadcasters and that broadcasters could then shift their resources into benefits for the public, such as more local programming and sponsorship of community events.

44. Four commenters endorsed our proposed amendment to FCC Form 323, which would require a broadcaster to provide information regarding the race or ethnicity and the gender of any individual with an attributable ownership interest in its broadcast facility. All four commenters stated that the collection of such information is essential in order to monitor the

effectiveness of minority and female ownership programs. One commenter points out that race and gender-based remedies must be narrowly tailored and terminate once fair representation has been achieved and, therefore, the collection of such data is necessary to these ends. The commenter asserts that the collection of statistical information on the race and gender of station employees to monitor equal employment opportunity compliance has been useful and the burden of its collection minimal. While another commenter urges that the revised form include a designation of the gender and race of the owner of the station, the first commenter suggests that we add questions concerning whether women or members of racial or ethnic minority groups hold ownership interests in the station and, if so, the percentage interest held by each group, the minority total, the female total, whether either total constitutes a controlling interest, whether women or minorities otherwise exercise control, and whether any minority ownership policies or devices were used by the current owners in acquiring the station.

45. Another issue raised by commenters concerning amendment of FCC Form 323 concerns how the Commission should define relevant groups. One commenter, Press Broadcasting Company, Inc., argues that the Commission has not clearly defined "minorities" beyond "Black, Hispanic, Native American, Alaska Native, Asian and Pacific Islander," and that the Commission's definition of minorities is arbitrary and inconsistent with its definition in other proceedings.

Description and Estimate of the Number of Small Entities to which Rules will Apply

46. Under the RFA, small entities include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the

activities of the agency and publishes such definition(s) in the **Federal Register.**" We received no comment in response to either IRFA on how to define radio and television broadcast "small businesses." Therefore, we will continue to utilize SBA's definitions for the purpose of this FRFA.

47. The rules and policies adopted in the Report and Order will apply to all broadcast licensees. The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. For 1992, the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. There were approximately 1,583 operating television broadcasting stations in the nation as of September 30, 1998, of which approximately 1,219 are considered small businesses.

48. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial religious, educational, and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. As of September 30, 1998, Commission records indicate that 12,373 radio stations were operating, of which 11,878 were considered small businesses.

49. Thus, the measures adopted here will affect the approximately 1,583 television stations, approximately 1,219 of which are considered small businesses. Additionally, the measures adopted here will also affect the 12,373 radio stations, approximately 11,878 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license

may be affected by the rules and procedures adopted in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

50. The measures adopted in the Report and Order will reduce the reporting required of prospective and current applicants, permittees and licensees. All measures aim to reduce the overall administrative burden upon both the public and the Commission. For example, we have adopted a phase-in period for mandatory electronic filing. We note that such a phase-in procedure has been used elsewhere to benefit small businesses. For example, the Securities and Exchange Commission incorporated its mandatory filing rules in stages. While most companies were phased into the electronic filing system in 1993, small businesses were not completely phased in until May 1996. We believe that electronic filing will, among other things, speed the processing of applications, save Commission resources, and make filing easier for regulatees by informing them of certain errors in their applications before they are actually sent.

51. The full benefits of electronic filing and processing would not be realized simply by converting the current version of each form into an electronic format. Accordingly, we have deleted or narrowed overly burdensome questions and will now rely more extensively on applicant certifications. These changes will both reduce applicant filing burdens and streamline our processing of sales, new station, and facility modification applications. The Report and Order revises Commission requirements for extending the construction periods of broadcast stations; for selling unbuilt construction permits; and for submitting ownership reports for commercial and noncommercial stations. To preserve the integrity of our streamlined application process, the Report and Order implements a formal program of both pre- and post-application grant random audits.

52. In addition, many broadcast licensees will need to file modified FCC Form 323, and include information on the race or ethnicity and gender of individuals with attributable interests in the broadcast license. However, not all broadcast licensees are required to file ownership forms. Specifically, pursuant to 47 CFR 73.3615(a), sole proprietorships and partnerships

composed solely of natural persons are exempt from the filing requirement. We encourage those licensees to file information voluntarily regarding gender and racial identity, so that we may more accurately measure minority and female broadcast ownership. In addition, our modified reporting requirement will apply only to commercial broadcast stations. The reporting requirements of noncommercial broadcasters as set forth in 47 CFR 73.3615(d) will remain unchanged.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

53. This Order sets forth the Commission's new streamlined rules and procedures. The streamlined rules and procedures are intended to reduce applicant and licensee burdens, realize fully the benefits of the Mass Media Bureau's electronic filing initiative, and preserve the public's ability to participate fully in the Commission's broadcast licensing processes. These streamlined rules and procedures are designed to reduce filing burdens and increase the efficiency of application processing. All significant alternatives presented in the comments were considered, and some were adopted herein, including the addition of an explanation checkbox and the provision of accompanying narrative exhibits to the certification forms, under specific circumstances, in order to reduce the number of application amendments and thereby further preserve staff resources while reducing the paperwork burden on applicants.

54. As noted in the Report and Order, the development of electronic filing procedures will also greatly increase efficiencies to applicants, while increasing the speed of the licensing process. We expect that these changes will benefit all, including small entities. Electronic filing should be easier for applicants than the current system because the electronic filing system will prompt the applicant for the necessary information and will provide interactive error messages if information is not filed correctly. The electronic filing system will allow the applicant to correct its applications prior to submitting it. This system will allow all interested parties, including small entities, easy access to pleadings that are filed in connection with applications and licenses.

55. We do not believe that the modified race and gender reporting requirement will impose an undue economic burden on licensees because they will not be required to obtain information from anyone whose interests are not already reportable. We

have attempted to keep burdens on broadcast television and radio stations to a minimum by grafting this information collection onto an existing collection requirement rather than imposing an entirely new requirement. Additionally, the information being requested is simply the race and gender of persons with an attributable interest in the broadcast license. The Commission rejected requests made by some commenters for the collection of additional information. The significant alternatives the Commission considered were: (1) To collect more information than the race and gender of those with attributable interests (e.g., whether any minority ownership policies or devices were used by the current owners in acquiring the station); or (2) collect no information on the race and gender of persons with attributable interests. The first alternative could significantly increase the information-gathering and reporting burden on licensees with little benefit, while the information we require can be submitted by interested parties during the course of this proceeding. The second alternative, to collect no race or gender information, would force the Commission to make important policy decisions without relevant and important information.

Report to Congress

56. The Commission will send a copy of the *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities* Report and 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's Office of Public Affairs, Reference Operations Division, will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

57. Authority for issuance of the Report and Order is contained in Sections 4, 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 301, 303, 307, 308 and 309. Sections 1.4, 73.316, 73.1030, 73.1675, 73.3500, 73.3526, 73.3534, 73.3535, 73.3597, 73.3598, 73.3599, 73.3613 and 73.3615 of the Commission's Rules, are amended.

58. The rule amendments will become effective 60 days after their publication in the **Federal Register**, and the information collection contained in these rules, with the exception of 47 CFR 73.3526(e)(11)(iii) and 73.3615(a), will become effective 60 days after publication in the **Federal Register**,

following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. The Commission will publish a notices setting the effective date of 47 CFR 73.3526(e)(11)(iii) and 73.3615(a) upon OMB's approval of these sections.

59. It is further ordered that the proceeding in MM Docket No. 98-43 is terminated.

List of Subjects in 47 CFR parts 1 and 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission

Shirley S. Suggs

Chief, Publications Branch

Rule Changes

Parts 1 and 73 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

2. Section 1.4 is amended by adding a sentence to paragraph (f) to read as follows:

§ 1.4 Computation of time.

* * * * *

(f) * * * Mass Media Bureau applications and reports filed electronically pursuant to § 73.3500 of this Chapter must be received by the electronic filing system before midnight on the filing date.

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 301, 303, 307, 308 and 309.

4. Section 73.316 is amended by revising paragraph (c) to read as follows:

§ 73.316 FM Antenna systems

* * * * *

(c) *Applications for directional antennas.* (1) Applications for construction permit proposing the use of directional antenna systems must include a tabulation of the composite antenna pattern for the proposed directional antenna. A value of 1.0 must be used to correspond to the direction of maximum radiation. The pattern must be tabulated such that 0° corresponds to the direction of maximum radiation or alternatively, in

the case of an asymmetrical antenna pattern, the pattern must be tabulated such that 0° corresponds to the actual azimuth with respect to true North. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas. Applications must include valuations tabulated at intervals of not greater than ten (10) degrees. In addition, tabulated values of all maximas and minimas, with their corresponding azimuths, must be submitted.

(2) Applications for license upon completion of antenna construction must include the following:

(i) A complete description of the antenna system, including the manufacturer and model number of the directional antenna. It is not sufficient to label the antenna with only a generic term such as "dipole." In the case of individually designed antennas with no model number, or in the case of a composite antenna composed of two or more individual antennas, the antenna must be described as a "custom" or "composite" antenna, as appropriate. A full description of the design of the antenna must also be submitted.

(ii) A plot of the composite pattern of the directional antenna. A value of 1.0 must be used to correspond to the direction of maximum radiation. The plot of the pattern must be oriented such that 0° corresponds to the direction of maximum radiation or alternatively, in the case of an asymmetrical antenna pattern, the plot must be oriented such that 0° corresponds to the actual azimuth with respect to true North. The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10-nth. Values of field strength less than 10% of the maximum field strength plotted on that pattern must be shown on an enlarged scale. In the case of a composite antenna composed of two or more individual antennas, the composite antenna pattern should be provided, and not the pattern for each of the individual antennas.

(iii) A tabulation of the measured relative field pattern required in paragraph (c)(1) of this section. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10 degrees. Sufficient vertical patterns to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. Complete information and patterns must be

provided for angles of -10 deg. from the horizontal plane and sufficient additional information must be included on that portion of the pattern lying between +10 deg. and the zenith and -10 deg. and the nadir, to conclusively demonstrate the absence of undesirable lobes in these areas. The vertical plane pattern must be plotted on rectangular coordinate paper with reference to the horizontal plane. In the case of a composite antenna composed of two or more individual antennas, the composite antenna pattern should be used, and not the pattern for each of the individual antennas.

(iv) A statement that the antenna is mounted on the top of an antenna tower recommended by the antenna manufacturer, or is side-mounted on a particular type of antenna tower in accordance with specific instructions provided by the antenna manufacturer.

(v) A statement that the directional antenna is not mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-sectional area of the tower in the horizontal plane.

(vi) A statement that no other antenna of any type is mounted on the same tower level as a directional antenna, and that no antenna of any type is mounted within any horizontal or vertical distance specified by the antenna manufacturer as being necessary for proper directional operation.

(vii) A statement from an engineer listing such individual engineer's qualifications and certifying that the antenna has been installed pursuant to the manufacturer's instructions.

(viii) A statement from a licensed surveyor that the installed antenna is properly oriented.

(ix)(A) For a station authorized pursuant to § 73.215 or Sec. § 73.509, a showing that the root mean square (RMS) of the measured composite antenna pattern (encompassing both the horizontally and vertically polarized radiation components (in relative field)) is at least 85 percent of the RMS of the authorized composite directional antenna pattern (in relative field). The RMS value, for a composite antenna pattern specified in relative field values, may be determined from the following formula:

RMS=the square root of:

$$[(\text{relative field value } 1)^2 + (\text{relative field value } 2)^2 + \dots + (\text{last relative field value})^2]$$

total number of relative field values

(B) where the relative field values are taken from at least 36 evenly spaced radials for the entire 360 degrees of azimuth. The application for license

must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to § 73.215 on Channels 221 through 300, as required by § 73.315(a), while noncommercial educational stations operating on Channels 201 through 220 must show that the 60 dBu contour covers at least a portion of the community of license.

* * * * *

5. Section 73.1030 is amended by revising paragraph (a) as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(a)(1) *Radio astronomy and radio research installations.* In order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, a licensee proposing to operate a short-term broadcast auxiliary station pursuant to Section 74.24, and any applicant for authority to construct a new broadcast station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39° 15' N on the north, 78° 30' W on the east, 37° 30' N on the south, and 80° 30' W on the west, shall notify the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944. Telephone: (304) 456-2011. The notification shall be in writing and set forth the particulars of the proposed station, including the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission and power. The notification shall be made prior to, or simultaneously with, the filing of the application with the Commission. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself, or on behalf of the Naval Radio Research Observatory, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

(2) Any applicant for a new permanent base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization to change the frequency,

power, antenna height, directivity, or location of a station on these islands shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants shall consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD-83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, and effective radiated power.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. The Commission shall determine whether an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference.

* * * * *

6. Section 73.1675 is amended by revising paragraph (a) as follows:

§ 73.1675 Auxiliary antennas.

(a)(i) An auxiliary antenna is one that is permanently installed and available for use when the main antenna is out of service for repairs or replacement. An auxiliary antenna may be located at the same transmitter site as the station's main antenna or at a separate site. The service contour of the auxiliary antenna may not extend beyond the following corresponding contour for the main facility:

(i) AM stations: The 0.5 mV/m field strength contours.

(ii) FM stations: The 1.0 mV/m field strength contours.

(iii) TV stations: The Grade B coverage contours.

(a)(2) An application for an auxiliary antenna for an AM station filed pursuant to paragraphs (b) or (c) of this section must contain a map showing the

0.5 mV/m field strength contours of both the main and auxiliary facilities.

* * * * *

7. Section 73.3500 is amended by adding an (a) paragraph designation to the introductory text and adding paragraph (b) to read as follows:

§ 73.3500 Application and report forms.

(a) Following are the FCC broadcast application and report forms, listed by number.

* * * * *

(b) Following are the FCC broadcast application and report forms, listed by number, that must be filed electronically in accordance with the filing instructions set forth in the application and report form.

(1) Form 398, in electronic form as of January 10, 1999.

8. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e)(11)(iii) *Children's Television Programming Reports.* For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, *i.e.* four quarterly reports filed jointly each year, in electronic form as of January 10, 1999. These Reports shall be filed with the

Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

* * * * *

9. Section 73.3534 is revised to read as follows:

§ 73.3534 Period of construction for Instructional TV Fixed station construction permit and requests for extension thereof.

(a) Each original construction permit for the construction of a new Instructional TV Fixed station, or to make changes in such existing stations, shall specify a period of 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) Requests for extension of time within which to construct an Instructional TV Fixed station shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such request for extension are known to the applicant in time to permit such filing. In other cases, a request will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date.

(c) Requests for extension of time to construct Instructional TV Fixed stations will be granted upon a specific and detailed narrative showing that the failure to complete construction was due to causes not under the control of the permittee, or upon a specific and detailed showing of other sufficient justification for an extension.

(d) If a request for extension of time within which to construct an Instructional TV Fixed station is approved, such an extension will be limited to a period of no more than 6 months.

(e) A construction permit for an Instructional TV Fixed station shall be declared forfeited if the station is not ready for operation within the time specified therein or within such further time as the FCC may have allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.

§ 73.3535 [Removed]

10. Section 73.3535 is removed.

11. Section 73.3597 is amended by adding paragraph (c)(1)(iii) as follows:

§ 73.3597 Procedures on transfer and assignment applications.

* * * * *

(c) (1) * * *

(i) * * *

(ii) * * *

(iii) The provisions of paragraphs (c) and (d) of this section apply only to mutually exclusive noncommercial educational applications filed on or after the release of the Report and Order in MM Docket 98-43, where the construction permit is issued pursuant to settlement agreement.

* * * * *

12. Section 73.3598 is revised to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or broadcast auxiliary station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

(i) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes) or

(ii) the grant of the permit is the subject of administrative or judicial review (i.e., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation. All notifications must be filed in triplicate with the Secretary and must be placed in the station's local public file.

(d) A permittee must notify the Commission promptly when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God will automatically cease six months from the date of the notification described in paragraph (c) of this section, unless the permittee submits additional notifications at six month intervals detailing how the act of God continues to cause delays in

construction, any construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments.

(e) Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.

§ 73.3599 [Removed]

13. Section 73.3599 is removed:

14. Section 73.3613 is amended by adding paragraph (b)(7) as follows:

§ 73.3613 Filing of contracts.

* * * * *

(b) * * *

(7) Agreements providing for the assignment of a license or permit or agreements for the transfer of stock filed in accordance with FCC application Forms 314, 315, 316 need not be resubmitted pursuant to the terms of this rule provision.

15. Section 73.3615 is amended by revising paragraphs (a) and (a)(1); the first sentence of paragraph (a)(2); paragraph (a) (3) (i) (A); paragraph (c); paragraph (d) introductory text and paragraphs (e) and (f) as follows:

§ 73.3615 Ownership Reports.

(a) With the exception of sole proprietorships and partnerships composed entirely of natural persons, each licensee of a commercial AM, FM, or TV broadcast station shall file an Ownership Report on FCC Form 323 when filing the station's license renewal application and every two years thereafter on the anniversary of the date that its renewal application is required to be filed. Licensees owning multiple stations with different anniversary dates need file only one Report every two years on the anniversary of their choice, provided that their Reports are not more than two years apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

(1) In the case of an individual, the name, race or ethnicity, and gender of such individual;

(2) In the case of a partnership, the name, race or ethnicity, and gender of each partner and the interest of each partner. * * *

(a) * * *

(3) * * *

(i) * * *

(A) The name, residence, citizenship, race or ethnicity, gender, and stockholding of every officer, director, trustee, executor, administrator, receiver and member of an association, and any stockholder which holds stock accounting for 5 percent or more of the votes of the corporation, except that an investment company, insurance company, or bank trust department need be reported only if it holds stock amounting to 10 percent or more of the votes, provided that the licensee certifies that such entity has made no attempt to influence, directly or indirectly, the management or operation of the licensee, and that there is no representation on the licensee's board or among its officers by any person professionally or otherwise associated with the entity.

* * * * *

(c) Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior FCC consent must be received under § 73.3540. A transfer of control takes place when an individual or group in privity, gains or loses affirmative or negative (50%) control. See instructions on FCC Form 323 (Ownership Report). Each permittee or licensee of a commercial AM, FM or TV Broadcast station shall file an Ownership Report on FCC Form 323 within 30 days of consummating authorized assignments or transfers of permits and licenses. The Ownership Report of the permittee or licensee shall give the information required by the applicable portions of paragraph (a) of this section.

(d) Each licensee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E when filing the station's license renewal application and every two years thereafter on the anniversary of the date that its renewal application is required to be filed. Licensees owning more than one noncommercial educational AM, FM or TV broadcast station with different anniversary dates need file only one Report every two years on the anniversary of their choice, provided that their Reports are not more than two years apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership reports shall give the following information as of a date not

more than 60 days prior to the filing of the Ownership Report:

* * * * *

(e) Each permittee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E:

(1) Within 30 days of the date of grant by the FCC of an application for original construction permit and;

(2) On the date that it applies for a station license. The Ownership Report of the permittee shall give the information required by the applicable form. A permittee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and it is accurate, in lieu of filing a new Report.

(f) Each permittee or licensee of a noncommercial educational AM, FM or TV Broadcast station shall file an Ownership Report on FCC Form 323-E within 30 days of consummating authorized assignments or transfers of permits and licenses. The Ownership Report of the noncommercial educational permittee or licensee shall give the information required by the applicable form.

* * * * *

[FR Doc. 98-33486 Filed 12-17-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: 98-001; Notice 02]

RIN 2127-AH05

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates the list in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. 33112. Under 49 CFR Part 544, each insurer listed would be required to file a report for the 1995 calendar year not later than October 25, 1998. In this final rule, the agency extends the time for filing to a date not later than 30 days from the publication of this notice in the **Federal Register**. Further, as long as it remains listed, each company must submit reports by each subsequent October 25.

DATES: The final rule on this subject is effective December 18, 1998.

Reporting Date: Insurers listed in this final rule must submit their CY 1995 reports not later than 30 days from the publication of this notice in the **Federal Register**. Previously listed insurers whose names are removed by this notice need not submit reports for CY 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-0846. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The agency may not, however, exempt an insurer under this section if it is considered an insurer only because of Section 33112(b)(1); that is, if it is a self-insurer. The term *small*

insurer is defined in Section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a *small insurer*, but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As provided in 49 CFR Part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular States because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In establishing Part 544 (52 FR 59, January 2, 1987), the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, defined in 49 U.S.C. 33112(b)(1) as any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded those reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C, which consists of an annually updated list of the self-insurers that are subject to Part 544.

Following the same approach as in the case of Appendix A, NHTSA has included, in Appendix C, each of the relatively few self-insurers that are subject to reporting instead of the relatively numerous self-insurers that are exempted. NHTSA updated Appendix C based primarily on information from the publications *Automotive Fleet Magazine* and *Business Travel News*.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On May 4, 1998, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (63 FR 24519). Based on the 1995 calendar year A.M. Best data for market shares, NHTSA proposed to amend the list in Appendix A of insurers which must report because each had at least 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on June 23, 1997 (See 62 FR 33754). One company, Metropolitan Group, included in the June 1997 listing, was proposed to be removed from Appendix A. Three companies, American Financial Group, Erie Insurance Company, and Zurich Insurance Group-U.S., were proposed to be added.

Under Part 544, each of the 20 insurers listed in Appendix A of the NPRM would have been required to file a report not later than October 25, 1998, setting forth the information required by Part 544 for each State in which it did business in the 1995 calendar year. As long as those 20 insurers remain listed, they would be required to submit

reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B of the NPRM listed those insurers that would be required to report for particular States for calendar year 1995, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1995 calendar year A.M. Best data for market shares, it was proposed that Integon Corporate Group, reporting on its activities in the State of North Carolina be removed from Appendix B. Two companies, Allmerica P & C Companies (Michigan) and Island Insurance (Hawaii), that were not listed in Appendix B, were proposed to be added.

Under Part 544, each of the 12 insurers listed in Appendix B of the NPRM would have been required to report no later than October 25, 1998, on their calendar year 1995 activities in every State in which they had a 10 percent or a greater market share, and set forth the information required by Part 544. As long as those 12 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine* and *Business Travel News* for 1995, the most recent year for which data are available, NHTSA proposed several changes in Appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it proposed that five rental and leasing companies, Associates Leasing Inc., Enterprise-Rent-A-Car, GE Capital Fleet Services, PHH Vehicle Management Services, and Wheels, Inc., be added to Appendix C.

Under Part 544, each of the 20 companies (including franchisees and licensees) listed in Appendix C in the NPRM would have been required to file reports for calendar year 1995 no later than October 25, 1998, and set forth the information required by Part 544. As long as those 20 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Public Comments on Final Determination

In response to the NPRM, the agency received no comments. Accordingly, this final rule adopts the proposed changes to Appendices A, B, and C.

Because this final rule listing the insurance companies that must file reports is being published too late to allow the companies to file their reports by October 25, 1998, the agency has decided to extend the filing deadline on a one-time basis. Accordingly, the companies listed in those appendices are required to file the reports required by 49 U.S.C. 33112 and 49 CFR Part 544 no later than thirty days from the date this notice is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this final rule and has determined the action not to be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about \$50,000 for any insurer that is added to Appendix A, about \$20,000 for any insurer added to Appendix B, and about \$5,770 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency would add three insurers and remove one insurer; for Appendix B, the agency would remove one insurer and add two insurers; and for appendix C, the agency would add five additional companies. The agency therefore estimates that the net effect of this final rule will be a cost increase to insurers, as a group, of approximately \$148,850.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in NHTSA Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590, or by calling (202) 366-4949.

2. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements") and was approved for use through July 31, 2000.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on Appendices A, B, or C would be construed to be a small entity within the definition of the RFA. "Small insurer" is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for all forms of motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

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

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed.

3. Appendix A to Part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American Financial Group¹
American International Group
California State Auto Association
CNA Insurance Group
Erie Insurance Group¹
Farmers Insurance Group
GEICO Corporation Group
ITT Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeco Insurance Companies
State Farm Group
Travelers Insurance Group
USAA Group
Zurich Insurance Group-U.S.¹

4. Appendix B to Part 544 is revised to read as follows:

¹ Indicates a newly listed company which must file a report no later than 30 days from the publication of this notice in the **Federal Register**.

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Allmerica P & C Companies (Michigan)¹
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Island Insurance Group (Hawaii)¹
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.¹
A T & T Automotive Services, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation
Citicorp Bankers Leasing Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car¹
GE Capital Fleet Services¹
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Vehicle Management Services¹
Ryder System, Inc. (Both rental and leasing operations)
U-Haul International, Inc. (Subsidiary of AMERCO)
USL Capital Fleet Services
Wheels Inc.¹

Issued on: December 7, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-33545 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE41

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the St. Andrew Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies is restricted to coastal sand dunes and had a historic distribution that included the northeast Florida panhandle from Gulf County into portions of Bay County. Its current range is limited to a portion of the St. Joseph Peninsula in Gulf County. Habitat impacts causing loss of mice and the species' capability to recover from such impacts within local populations are primarily responsible for the range curtailment. Threats to beach mouse habitat include severe storms, coastal land development and its associated activities, and non-storm related, natural shoreline erosion. Additional threats include predation by free-ranging domestic cats and displacement by house mice. This action implements the protection of the Act for this species.

DATES: This rule is effective January 19, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, at the above address (telephone 904/232-2580, ext. 106; facsimile 904/232-2404).

SUPPLEMENTARY INFORMATION:

Background

The oldfield mouse (*Peromyscus polionotus*) occurs in northeastern Mississippi, Alabama, Georgia, South Carolina, and Florida. Beach mice are coastal subspecies of the oldfield mouse restricted to beach and sand dune habitat. Hall (1981) recognized eight coastal subspecies whose common distinguishing characteristics include white feet, large ears, and large black eyes. Their fur is variously patterned in shades of white, yellow, brown, and grey. The head, back, and rump are darkly patterned, though to a lighter and less extensive degree than inland oldfield mice. The all-white underparts extend higher up to the sides than on the inland subspecies (Sumner 1926, Bowen 1968). Howell (1939) described the type (original) specimen of the St. Andrew beach mouse as having a very pale, buff-colored head and back with extensive white coloration underneath and along the sides. Bowen (1968) noted

two distinct rump color pigmentations, one a tapered and the other a squared pattern, which extended to the thighs. Head and body lengths average 75 millimeters (mm) (2.95 inches (in)), tail mean length 52 mm (2.05 in), and hind foot mean length 18.5 mm (0.73 in) (James 1992).

Beach mice subspecies historically occurred on both the Atlantic Coast of Florida from St. Johns through Broward counties and the eastern Gulf of Mexico coast from Gulf County, Florida, to Baldwin County, Alabama (Ivey 1949, Bowen 1968, James 1992, Stout 1992, Gore and Schaefer 1993). The St. Andrew beach mouse is the easternmost of the five Gulf Coast subspecies. Howell (1939) collected the type specimen at St. Andrew Point on Crooked Island, Tyndall Air Force Base, Bay County, Florida (type locality). Other historic collection records for the subspecies include nine additional specimens from the type locality, seven mice from St. Joseph Point and four mice from Cape San Blas on the St. Joseph Peninsula in Gulf County, 48 individuals at or near the town of Port St. Joe located on the central Gulf County coastal mainland, and four specimens near Money Bayou in eastern Gulf County (Bowen 1968). Based on these records, Bowen (1968) and James (1992) described the former range of the St. Andrew beach mouse as likely extending from the St. Joseph Spit (Peninsula) northwest along the coastal mainland adjacent to St. Joseph Bay, to Crooked Island at the East Pass of St. Andrews Bay. This range also included about 0.6 kilometer (km) (1 mile (mi)) of mainland sand dune habitat east of the landward end of the St. Joseph Peninsula to Money Bayou on the Gulf of Mexico. The absence of past collection records and lack of beach mouse sign and trapping success in the area east of Money Bayou to the southeastern corner of Gulf County (James 1987; J. Gore, Florida Game and Fresh Water Fish Commission, in litt. 1994) suggest that this area may not be part of the subspecies' historic range.

Coastal tidal marsh and upland habitat between the mainland city of Port St. Joe and the St. Joseph Peninsula naturally divided the former range of the St. Andrew beach mouse into two segments. Preliminary genetic analysis of St. Andrew beach mice from the Port St. Joe area, the St. Joseph Peninsula, and Crooked Island indicated that these samples shared a similarity for at least one gene locus (site), and that this locus differed distinctly in a sample of the Choctawhatchee beach mouse (Moyers 1997).

Typical beach mouse habitat generally consists of several rows of sand dunes paralleling the shoreline. Prevailing wind, beach sand, and vegetation combine to form and shape coastal dunes. A common complex of animal species, vegetation, and habitat types characterize the coastal sand dune ecosystem. The types and amount of animals, vegetation, and habitat may differ, however, among specific sites. The common types of sand dune habitat include frontal dunes, primary dunes, secondary dunes, inter and intradunal swales, and scrub dunes. Frontal dunes and primary dunes are those closest to the shoreline, most recently formed, and highly dynamic. The foreslope of primary dunes grades into the developing frontal dunes on the open beach. Frontal dunes on the Gulf Coast are sparsely vegetated, usually by sea oats (*Uniola paniculata*), bluestem (*Schizachyrium maritimum*), beach grass (*Panicum amarum*), and sea rocket (*Cakile constricta*). Primary dunes also support stands of these species and include other broad-leaved plants such as seaside pennywort (*Hydrocotyle bonariensis*), seashore elder (*Iva imbricata*), and beach morning glory (*Ipomea stolonifera*) (Clewell 1985). Secondary dunes consist of one or more dune lines landward of the primary dune with a similar, though denser, vegetative cover. Interdunal swales are wet or dry depressions between primary and secondary dunes, while intradunal swales occur within primary dunes as a result of wave action, storm surges, and wind erosion. Wet swales are those whose water table is at or near the surface. Swale vegetation includes plants found on primary and secondary dunes as well as salt meadow cordgrass (*Spartina patens*), rushes (*Juncus sp.*), sedges (*Cyperus sp.*), and saltgrass (*Distichlis spicata*). Scrub dunes are the oldest of the dune habitat types and are dominated by woody plants including saw palmetto (*Serenoa repens*), myrtle oak (*Quercus myrtifolia*), sand live oak (*Q. geminata*), sand pine (*Pinus clausa*), slash pine (*P. elliotii*), seaside rosemary (*Ceratiola ericoides*), greenbrier (*Smilax sp.*), and bush goldenrod (*Chrysoma pauciflosculosa*). Reindeer moss (*Cladonia leporina*) often covers otherwise bare dune surfaces. Some primary and secondary dune vegetation is also present but at reduced densities (Blair 1951, Gibson and Looney 1992). Size and density of understory and overstory vegetation may vary.

Trap surveys at Crooked Island and on the St. Joseph Peninsula documented the presence of St. Andrew beach mouse on frontal dunes, as well as on primary

and secondary dunes (James 1987; Gore in litt. 1990, 1994; Bates 1992, Moyers *et al.* 1996, Mitchell *et al.* 1997). These results support other surveys which found that the greatest concentration of most other beach mice subspecies occurred in these habitat types (Blair 1951, Hill 1989, Frank and Humphrey 1992, Holler 1992). This concentration is due in part to a predominance of plants whose seeds and fruits are important seasonal constituents of beach mouse diets (Moyers 1996).

Although beach mice occur on interdunal and intradunal swales, studies of other beach mouse subspecies indicate that, in general, they use this habitat type less frequently when compared to frontal, primary, and secondary dunes (Blair 1951, Hill 1989, Gore and Schaefer 1993, Novak 1997). James (1987) only rarely observed St. Andrew beach mouse tracks in the interdunal areas within St. Joseph Peninsula State Park (T.H. Stone Memorial State Park), located within the northern 15 km (9 mi) of the peninsula.

Various researchers have also documented the occurrence of other beach mouse subspecies within scrub dunes (Extine and Stout 1987, Hill 1989, Rave and Holler 1992, Gore and Schaefer 1993, Swilling *et al.* 1996, Moyers *et al.* 1996, Novak 1997). Blair (1951) believed that the scrub dunes on Santa Rosa Island offered abundant food and cover for the Santa Rosa beach mouse (*Peromyscus polionotus leucocephalus*). Scrub dunes may also function as refugia during and after storms and as a source for recolonization of storm-damaged dunes (Moyers *et al.* 1996, Swilling *et al.* 1996). Their use by the St. Andrew beach mouse is not well documented. James (1987) noted the absence of tracks in scrub dunes within St. Joseph Peninsula State Park (SJPSP), although she did collect mice in 1986 from well-vegetated back dunes on Crooked Island (James 1992). Moyers *et al.* (1996) captured beach mice within SJPSP in secondary dunes immediately adjacent to scrub dunes.

Based on a study of other Gulf coast subspecies that included habitat conditions following Hurricane Frederick, Meyers (1983) reported that the minimum post-storm area needed to allow beach mice to persist was 50 hectares (ha) (124 acres (ac)). He also determined that a habitat size from 100 to 200 ha (247 to 494 ac) supporting a population of 127 mice was optimal for that population to recover from habitat impacts produced by a storm of comparable intensity. Meyer's figures should be used with caution, however, since he did not know pre-storm habitat

conditions or population numbers within the study area.

Beach mouse populations can at times undergo great seasonal variations in numbers (Bowen 1968, Extine and Stout 1987). Prior to human disturbance, hurricanes and tropical storms likely were the dominant factors producing rapid and possible widespread impacts on beach mice and their habitat. Because the St. Andrew beach mouse evolved under adverse weather conditions, the subspecies developed the capability to survive and recover from these periodic severe impacts to its numbers and habitat. During this century, however, more rapid land development, dune encroachment by pedestrians and vehicles, and military activities began to contribute to these impacts (James 1992). Bowen (1968) was unable to collect beach mice from one or more historic sites during a 1961 field trip. Hurricane Eloise split Crooked Island into east and west segments in 1975, and multiple attempts to collect beach mice from the western segment during the early and mid-1980's were unsuccessful (Gore in litt. 1987). During this same period, trap surveys collected small numbers of beach mice on the eastern segment. Limited trap and track surveys during the late 1980's found no evidence of beach mice within undeveloped coastal mainland habitat between Crooked Island and Money Bayou, as well as on the St. Joseph Peninsula from near the southern border of SJPSP through Cape San Blas to the northeastern end of the peninsula (Gore in litt. 1990, James 1987). Both surveys revealed that mice still existed on Crooked Island East and also occurred within SJPSP. Gore collected 3.6 mice per 100 trap nights during his 1989 survey within the park. Based on her survey results, James (1992) estimated the Crooked Island East population at 150 mice and the population within SJPSP at 500 mice. Gore speculated that the range-wide population at its lowest contained several hundred mice.

Extensive surveying of primary, secondary, and scrub dune habitat on Crooked Island East during the 1990's revealed that the beach mouse population there no longer existed (Gore in litt. 1994, Holler in litt. 1994). Similar efforts at Cape San Blas on Eglin Air Force Base and U.S. Coast Guard properties yielded no mice (Gore in litt. 1994). Bates (1992) did capture 338 separate individuals within SJPSP at a rate of 26.64 mice per 100 trap nights. In 1993 and 1994, Gore (in litt. 1994) again sampled habitat between SJPSP and Cape San Blas and trapped 9 beach mice for a capture rate of 7.56 mice per 100 trap nights. Based on the survey

findings to date, Gore (in litt. 1994, 1995) assumed that the St. Andrew beach mouse was then restricted to the northern 20 to 25 km (12.5 to 15.5 mi) of the St. Joseph Peninsula.

In October 1995, Hurricane Opal caused extensive coastal damage to the Florida panhandle. Habitat impacts within the St. Joseph Peninsula appeared more extensive outside SJPSP boundaries (Gore in litt. 1995). Using an average density estimate of 2.5 mice per hectare, Gore (in litt. 1995) calculated that the total population of St. Andrew beach mice remaining after the storm was around 190 individuals. Moyers *et al.* (1996) trapped a total of about 5.25 km (3 mi) of habitat throughout SJPSP in December 1995 and captured 62 individuals for a rate of 3.44 mice per 100 trap nights. They estimated the population size within the sampled area at 127, a figure which compared favorably to Gore's post-hurricane estimate. Moyers (1996a) later collected an additional 11 mice on William J. Rish State Park and on some private parcels within the St. Joseph Peninsula immediately south of SJPSP. The most recent trap survey within SJPSP (February 1997) collected 117 mice for a capture rate of 9.00 mice per 100 trap nights (Mitchell *et al.* 1997). They estimated that SJPSP currently may support between 300 and 500 mice. The estimate represents a significant increase over the 1995 post-Hurricane Opal survey and is comparable to the last pre-Hurricane Opal survey within the park (Bates 1992).

In November 1997 and January 1998, a total of 38 St. Andrew beach mice, including mated pairs and pregnant females, were translocated from SJPSP to East Crooked Island, Tyndall Air Force Base. Post-release trapping and radio telemetry surveys revealed successful dispersal and reproduction by these introduced beach mice. Track observations indicated movement up to 2.5 km (1.6 mi) from one of the release sites. Offspring of these founders colonized habitat outside the reintroduction area (Moyers *et al. in litt.* 1998).

Definitive estimates of minimum viable population size for beach mice are not yet available. Several recent estimates for small mammals based on mass/population density relationships indicate that continued survival of a self-sustaining population would require several thousand individuals (Belovsky 1987, Silva and Downing 1994). These estimates still may be low for beach mice since they reflect small rodent populations in more stable environments. As mentioned previously, the estimates of the

remaining numbers of St. Andrew beach mice do not approach these figures.

Previous Federal Action

The Service included the St. Andrew beach mouse as a category 2 candidate species in its September 18, 1985, notice of review of vertebrate wildlife (50 FR 37958). At that time, category 2 species were defined as those for which information in possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) were not currently available to support a proposed rule. The Service published an updated, combined animal notice of review (ANOR) on January 6, 1989, which retained the species' category 2 classification (54 FR 554). In the November 21, 1991, ANOR update, the St. Andrew beach mouse was designated a category 1 candidate for listing (56 FR 58804). A category 1 candidate was one for which the Service had on file sufficient information to support issuance of a proposed rule. The Service retained this classification in the November 15, 1994, ANOR (59 FR 58982). Upon publication of the February 18, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the St. Andrew beach mouse as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. Candidate status for this animal was continued in the September 19, 1997, NOR (62 FR 49398). The proposed rule to list the St. Andrew beach mouse was published on October 17, 1997 (62 FR 54028).

The processing of this final rule conforms to the Service's final listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings. The highest priority is given to handling emergency situations (Tier 1), second highest priority (Tier 2) to processing final decisions on proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and delisting or reclassifying actions, and lowest priority (tier 3) to actions involving critical habitat determinations. The processing of this final rule falls under tier 2. At this time, the Southeast Region has no pending tier 1 actions.

Summary of Comments and Recommendations

In the October 17, 1997, proposed rule (62 FR 54028) and through associated notifications, the Service requested all interested parties to submit factual reports or information that might contribute to the development of a final rule for the St. Andrew beach mouse. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter or facsimile and requested to provide comment. A summary of the proposed regulation and other information was published in the *Panama City Herald* on October 21, 1997, *Port St. Joe Star* on October 23, 1997, and *Florida Journal* edition of the *Wall Street Journal* on November 26, 1997. At the request of the Gulf County Board of Commissioners, the Service presented information and answered questions on the proposed listing at the Board's monthly public meeting held on November 25, 1997, in Port St. Joe, Florida. Pertinent comments from meeting attendees following conclusion of the meeting are included in the administrative record for the final rule and addressed in this section.

In compliance with the Service's July 1, 1994, policy on information standards under the Act (59 FR 34270), the Service solicited the expert opinions of four appropriate and independent specialists regarding the proposal's supportive scientific and commercial data, and additional information and issues related to the range and distribution, ecology, populations, threats to the continued existence of the St. Andrew beach mouse, and the appropriateness of critical habitat designation. All four solicited experts supported the proposed listing action and generally found the accompanying data accurate and objective. Additional information and suggested changes provided by the reviewers were considered in developing this final rule, and incorporated where applicable. Two of the reviewers provided comments on critical habitat. Both of these reviewers agreed with the Service that designation of critical habitat would not provide additional conservation benefit to the St. Andrew beach mouse on Federal lands beyond that afforded by the Act's Section 7(a)(2) jeopardy standard or existing habitat conservation measures implemented by the Federal landowners. However, they also believed some designation of critical habitat on non-Federal lands might benefit the species. The Service has addressed their comments in Issue 1 and in the "Critical Habitat" section.

During the 60-day comment period, the Service received a total of eight written and oral responses. All pertinent comments contained have been considered and incorporated, as appropriate, in the formulation of this final rule. The listing was supported by the Florida Game and Fresh Water Fish Commission and the Apalachee Regional Planning Council. The Washington Legal Foundation, Pacific Legal Foundation, and one private citizen opposed the listing. Responses from the Florida Department of Transportation and a private citizen were non-committal.

Comments, concerns, and questions of similar content have been grouped together and referred to as "Issues" for the purposes of this summary. The following is a summary of the issues and the Service's response to each.

Issue 1: Critical habitat designation might benefit the species by improving the uniformity and relevance of the Service's biological opinions, providing better justification for requiring beach mouse surveys on non-federally involved private lands, and identifying habitat outside Federal lands for future beach mouse translocations (taking mice out of the wild from one location and moving them to different location).

Response: The Service believes that uniform and effective biological opinions can be prepared for this species without critical habitat designation (see "Critical Habitat" section). The designation of critical habitat does not affect private landowners unless Federal permitting or financing is involved with their property. In addition, critical habitat designation does not enable the Service or other parties to require landowner surveys for listed species. The Service can identify potential translocation sites by habitat features without a regulatory designation. For example, as part of recovery efforts for various listed species, such as the black-footed ferret, Hawaiian crow, and American burying beetle, the Service has conducted translocations and reintroductions without designating critical habitat.

Issue 2: Potential interbreeding of the St. Andrew beach mouse with other subspecies of oldfield mice will make it impossible to know what species is being protected.

Response: The species' historic range is separated by approximately 5 km (3.1 mi.) at the point closest to habitat occupied by another subspecies, the federally endangered Choctawhatchee beach mouse. This geographic separation prevents intercrosses (interbreeding) between these subspecies.

Inland oldfield mice typically occur in young grassland habitats with dry, sandy to loamy soils, fallow fields, and similar locations associated with sandhill and inland scrub habitats (Bowen 1968, King 1968, Hall 1981). With the exception of some scrub, these habitats currently are not associated with the coastal strand, the physiographic area that includes beach mouse habitat. The absence of most coastal strand habitat and inland oldfield mice in beach mouse surveys suggest that intercrosses between the St. Andrew beach mouse and inland subspecies is unlikely.

Issue 3: The Service lacks the authority to regulate the St. Andrew beach mouse under the Endangered Species Act, pursuant to the Commerce Clause of Article I, Section 8 of the United States Constitution. The Service failed to show in the proposed rule that regulation of this species addresses activities that bear a substantial relation to, or substantially affect interstate commerce.

Response: On June 22, 1998, the Supreme Court, without comment, rejected the argument that using the Act to protect species that live only in one State goes beyond Congress' authority to regulate interstate commerce. This decision upholds a decision made by the United States Court of Appeals for the District of Columbia Circuit (National Association of Homebuilders vs. Babbitt, 97-1451) that regulation under the Act is within Congress' Commerce Clause power and that loss of animal diversity has a substantial effect on interstate commerce. Thus, although the St. Andrew beach mouse is found only within the State of Florida, the Service's application of the Act to list this species is constitutional.

Issue 4: The Service should not list the St. Andrew beach mouse because the proposed rule did not present clear scientific evidence that the subspecies is a distinct taxon, or that there are current threats to the continued existence of the subspecies.

Response: While few studies have addressed the relationship between genetics and the taxonomy of beach mice and other oldfield mice, the best available genetic information on the St. Andrew beach mouse does not refute Howell's (1939) original classification of the subspecies based on morphology, pelage (fur) color pattern, and distribution.

The best available information also indicates that loss and modification of habitat was, and continues to be, the major factor threatening the continued existence of the St. Andrew beach mouse throughout its entire range.

Severe storms and natural shoreline erosion impact mainly frontal and primary dunes, while coastal development and related activities mostly affect secondary and scrub dunes. Information documenting the historic loss of St. Andrew beach mouse from Crooked Island suggests that multiple habitat threats over a relatively large area resulted in the extirpation of this local population. Such multiple impacts currently exist or threaten approximately two-thirds of the St. Joseph Peninsula and all mainland areas within the species' historic range.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Using historic topographic maps and their habitat references, the Service calculated that 66 km (41 mi) of the estimated 86 km (53.5 mi) of linear area within the historic range of the St. Andrew beach mouse contained sand dune habitat. From field surveys, Gore (in litt. 1994, 1995) estimated the amount of recently occupied habitat to be between 20 and 23 km (14.3 to 12.5 mi), all within the northern two-thirds of the St. Joseph Peninsula. This represents up to a 68 percent curtailment of historic sand dune habitat within the subspecies' former range. The 1997-1998 translocation of mice to Crooked Island East is not included in this assessment because the full extent of habitat occupied, and stability and survivability of this population cannot be reliably determined for a number of years.

Natural events and manmade activities that have impacted the St. Andrew beach mouse and its habitat include severe storms, land development, military exercises on Crooked Island, dune encroachment by vehicles and pedestrians, and non-storm related shoreline erosion. Between 1871 and 1995, nearly 50 hurricanes or tropical storms occurred within 90 mi of St. Joe Bay, which is about midway within the historic range of the species. In this century, storm strength,

proximity to the historic range, and degree of habitat impact have been especially intense during the last 30 years (Doehring *et al.* 1994). In 1975, Hurricane Eloise breached Crooked Island, dividing it into two segments and severely eroding and fragmenting dunes, particularly within the newly-formed western segment (R. Bates, pers. comm. 1995). In 1985, Hurricane Kate scoured dunes within the entire range of the St. Andrew beach mouse. These storms caused extensive blowouts in the high dunes throughout the St. Joseph Peninsula (James 1992). In 1995, Hurricane Opal, which made landfall 85 mi west of St. Joe Bay, severely damaged and fragmented frontal and primary sand dunes within the historic range of the beach mouse. The most seriously impacted areas were the unoccupied habitat from Crooked Island to Mexico Beach. Gore (in litt. 1995) estimated an average loss of 52 percent of occupied area within the St. Joseph Peninsula, with the greatest impacts occurring south of SJPSP. Although the population within the SJPSP has since recovered, the Service believes that, coupled with additional land development, consecutive years of severe weather or a single season of intense storms over, or in close proximity to, currently occupied habitat may result in extinction of the subspecies.

Land development has been primarily responsible for the permanent loss of St. Andrew beach mouse habitat. Historic maps suggest that earlier construction of State Road 98 and incorporated development from the vicinity of Port St. Joe to Mexico Beach occurred within one or more types of coastal sand dune habitat. Little or no suitable habitat currently occurs at the seaward side of some of these incorporated areas (J. Danforth, Gulf County Division of Solid Waste, pers. comm. 1997). This density of development also tends to fragment remaining undeveloped habitat. Meyers (1983) believed that intense development could act as a barrier to migration, isolating mice within these habitat segments and making them more vulnerable to local extinction from one or more threats. Neither Gore (in litt. 1990) nor James (1987) found evidence of beach mice within these fragmented parcels located along the coast between Port St. Joe and Mexico Beach. The current status of beach mice within these parcels is unknown.

Gore (in litt. 1994) ranked continued habitat loss on the St. Joseph Peninsula as one of the most serious long-term threats to the St. Andrew beach mouse outside of the State parks. He attributed beach mouse presence in the area

between SJSP and Cape San Blas in 1994 to the relatively low density of housing compared to mainland areas, and the apparent low threat from free-ranging domestic cats, which he believed was related to the primary use of the residences as vacation homes. In addition, most structures are set back from the frontal and primary dune lines. Since 1994, additional construction has occurred in this area, as well as within unoccupied habitat on the remainder of the peninsula (J. Danforth, pers. comm. 1997). The construction has proceeded despite the unavailability of federally financed loans or flood insurance (see Factor D.). The Service believes that continued construction may result in intense development of secondary and scrub dunes, resulting in the severe fragmentation or loss of these habitat types. These areas are known to be important to other beach mice subspecies (see "Background" section). Intense impacts to these habitat types, coupled with severe storms affecting frontal and primary dunes, may contribute to the extinction of the St. Andrew beach mouse. Gulf County has constructed snow fencing and planted dune vegetation to restore frontal and primary dunes on the St. Joseph Peninsula and elsewhere that were damaged as a result of Hurricane Opal (J. Danforth, pers. comm. 1997).

Other human activities impact beach mouse habitat. Gore (in litt. 1994) described the sand dunes east of Cape San Blas as having little vegetation and generally being of poor quality. He attributed this situation to a combination of storm damage exacerbated by vehicular traffic on the beach. Although Gulf County has updated its beach driving ordinance in an attempt to eliminate dune impacts on the St. Joseph Peninsula (Gulf County Commission 1997), some areas continue to have problems with dune encroachment by all-terrain vehicles (D. Wibberg, Office of the Gulf County Board of Commissioners, pers. comm. 1997). Prior to 1985, trial exercises with military hovercraft contributed to habitat degradation on Crooked Island (James 1992). The Department of Defense has since discontinued this practice (R. Bates, Tyndall Air Force Base, pers. comm. 1995) and is restoring dune habitat and has funded translocation of beach mice onto Crooked Island.

Severe natural erosion within a section of beach north of Cape San Blas, primarily within U.S. Coast Guard property on the St. Joseph Peninsula, has resulted in the loss of frontal, primary, and secondary dunes (Gore in litt. 1994). Sporadic natural shoreline

erosion of frontal and primary dunes is also occurring north of this area to SJSP, as well as between Cape San Blas and Money Bayou. The principal effect in the area of severe erosion has been to isolate occupied habitat on the northern peninsula from unoccupied habitat between Cape San Blas and Money Bayou. The additional natural erosion has resulted in some habitat fragmentation.

B. Overutilization for commercial, recreational, scientific, or educational purposes. This factor is not now known to be applicable.

C. Disease or predation. The impact of parasites and pathogens on beach mice populations and their potential contribution to the decline of the St. Andrew beach mouse are unknown. Significant adverse impacts from these factors might occur when combined with, or as a function of, other threats. Studies and observations by various researchers strongly suggest that predation, especially by free-ranging domestic cats, is an important factor contributing to the loss of mice from local habitat within or adjacent to developed areas (Blair 1951, Humphrey and Barbour 1981, Holliman 1983, Humphrey *et al.* 1987). Bowen (1968) provided an anecdotal report on the complete absence of beach mouse sign on a 3.2 km (2 mi) stretch of beach having abundant cat tracks. Frank and Humphrey (1992) noted a reduction of cat sign on dunes and an increase in *Anastasia Island beach mouse* (*P. p. phasma*) numbers and mean survivorship following removal of 15 to 20 cats from the camping area at Anastasia State Recreation Area. Gore and Schaeffer (1993) found a significant inverse relationship between the ratio of Santa Rosa beach mice to cat tracks on sample transects within developed and undeveloped dune areas on Santa Rosa Island. Their median transects in the developed areas contained no mouse tracks and 13 cat tracks. Bates (1992) found that predators in SJSP did not appear to concentrate near dunes and the infrequent house cat tracks observed occurred mainly near structures. Although Bates failed to capture beach mice in dunes adjacent to the camping areas, Moyers *et al.* (1996) did capture mice and observe tracks in these areas. Gore (in litt. 1994) believed that the house cat population on private lands south of SJSP was less of a problem than other developed areas because the residences there served mainly as seasonal vacation homes. He nevertheless believed further cat introductions associated with additional land development could pose a serious threat to beach mouse populations.

Other mammalian predators occurring on sand dunes within SJSP include fox, bobcat, raccoon, and coyote (Bates 1992). Coyotes are relatively recent migrants to SJSP and Crooked Island, where they have become predators on sea turtle nests (S. Shea, Tyndall Air Force Base, pers. comm. 1994; J. Bente, Florida Department of Environmental Protection, pers. comm. 1995).

D. The inadequacy of existing regulatory mechanisms. The Federal Coastal Barrier Resources Act of 1982 and the Coastal Barrier Improvement Act of 1990 (CBRA) prohibit most new Federal expenditures and financial assistance within Coastal Barrier Resources System (CBRS) units. CBRA also prohibits the sale of new Federal flood insurance for new construction or substantial improvements within otherwise protected areas. There are two CBRS units and one otherwise protected area within the historic range of the St. Andrew beach mouse. The Cape San Blas Unit (P30) covers all of the St. Joseph Peninsula, while the otherwise protected area (P30P) corresponds with the boundaries of St. Joseph Peninsula State Park. Habitat west of the city of Mexico Beach, including Crooked Island East and West, are part of the St. Andrew Complex Unit (P31). CBRA does not prohibit use of non-Federal or private funds to finance or insure projects within CBRS units or otherwise protected areas. As a result, coastal construction may still proceed within all remaining undeveloped parcels within the subspecies' historic range.

Eglin Air Force Base currently allows beach driving through its Cape San Blas property and adjacent property it leases from and manages for the U.S. Coast Guard. However, the agreement with Gulf County prohibits vehicles and pedestrians from encroaching on or near sand dunes. Strict enforcement of this provision has been difficult due to the distance of Eglin's main base from the Cape San Blas unit and the lack of onsite enforcement personnel. The distance also hampers efforts at evaluating and taking action on potential problems associated with free-ranging domestic cats.

State laws protect sea oats, a critical component of the dune vegetative community, from being picked on public land but do not prohibit this activity on private land, nor their destruction during construction activities. State-regulated Coastal Construction Control Lines (CCCL) correspond to the limits of the coastal high hazard 100-year storm event impact area. Construction seaward of the CCCL requires permits whose stringent requirements generally result

in protection of beach, frontal dune, and primary dune habitats (G. Chelicki, Florida Department of Environmental Protection, pers. comm. 1997). The same protections are not afforded to secondary and scrub dune habitats occurring landward of the CCCL. The State has designated Crooked Island East and West as critical wildlife areas, which would protect plants and animals from take or disturbance by pedestrians, vehicles, and dogs, but this designation does not address habitat protection (S. Shea in litt. 1997).

The St. Andrew beach mouse is listed as a Florida State endangered species. Chapter 39-27.002 of the Florida Administrative Code prohibits the take, possession, or sale of endangered species except as authorized by specific permit for the purpose of enhancing the survival potential of the species. The law does not provide for the protection or conservation of a listed species' habitat.

Bay County, Florida, restricts beach driving to permitted vendors. State parks on the St. Joseph Peninsula do not generally permit beach driving within their boundaries, although beach driving occurs on Rish State Park because it is within the Aquatic Preserve driving management plan area. Gulf County regulates beach driving on the peninsula between Indian Pass and SJSPS by ordinance and permits. The ordinances restrict the number of vehicle access points and prohibits driving in, on, or over sand dunes or vegetated areas. They do not address pedestrian encroachment. The most recent revised ordinance creates a 7.6 meter (25 foot) dune buffer zone within a portion of the St. Joseph Peninsula, in which beach driving and parking are prohibited (Misty Nabers, Florida Department of Environmental Protection, pers. comm. 1997). This revision does not apply to the section of the peninsula between about 3.2 km (2 mi) northwest of Cape San Blas to Money Bayou (D. Wibberg, pers. comm. 1997).

Gulf County does not have any ordinances relating to the ownership, control, and handling of free-ranging domestic cats.

E. *Other natural or manmade factors affecting its continued existence.* In addition to severe storms, other widespread climatic conditions that can occur within the range of the St. Andrew beach mouse include periods of drought and freezing weather. The extent of any direct or indirect impacts of these factors on beach mouse survival, either alone or in combination with manmade threats, is not known.

Storms and residential and commercial development can fragment and isolate beach mouse habitat. This isolation precludes movement and gene flow among other habitat blocks. In smaller blocks, the lack of gene flow may result in a loss of genetic diversity, which can reduce the population's fitness. Increased predation pressure and competition for available food and cover may further weaken populations through direct mortality and reduced reproductive success. The combined threats may result in a severe decline leading to extinction of these isolated populations (Caughley and Gunn 1996).

The ecological similarity of house mice and oldfield mice (Gentry 1966, Briese and Smith 1973) suggests that competition and aggression may occur between these species. An inverse relationship appears to exist between the population densities of the house mouse and inland oldfield mice (Caldwell 1964, Caldwell and Gentry 1965, Gentry 1966). Humphrey and Barbour (1981) documented mutually exclusive distribution patterns of house mice and other Gulf coast beach mice, a pattern similar to that observed by Frank and Humphrey (1992) for the Anastasia Island beach mouse, and by Gore (in litt. 1987, 1990, 1994) and Holler (in litt. 1994) for the St. Andrew beach mouse. The significance of competition to the observed patterns is not clear. In general, the observations suggest that where conditions favor one of the two species, that species will predominate or exclude the other species. Briese and Smith (1973) noted that house mice primarily invade disturbed areas, such as when development occurs, and are able to establish themselves in these and adjacent habitats occupied by low densities of oldfield mice. They also noted that house mice seem to be less affected by predation from house cats than oldfield mice.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the St. Andrew beach mouse as endangered. The primary threats to the continued existence of the species are habitat impacts from periodic severe weather and land development, which result in direct loss of mice and the capability of remaining mice to recover from such impacts. Other potentially significant threats include predation by free-ranging domestic cats and possible competitive displacement by the house mouse. The Service considers the threat

of extinction to be high magnitude and imminent because of the more than two-thirds estimated range curtailment, the species' restriction to a single land unit, and the recent high frequency of severe storms occurring within or in close proximity to the species' historic range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be threatened or endangered. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for the St. Andrew beach mouse at this time.

Designated critical habitat is protected by the Act only under section 7(a)(2), which provides that activities that are federally funded, permitted, or carried out may not destroy or adversely modify critical habitat. However, this section, which also prohibits Federal activities likely to jeopardize listed species, provides substantial protection to the habitat of listed species, even if critical habitat is not designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. For most species, including the St. Andrew beach mouse, the protection afforded the species'

habitat through application of the no jeopardy standard is so strong, the Service believes there would be no direct net conservation benefit from designating critical habitat.

Regulations (50 CFR part 402.02) define "jeopardize the continued existence of" as meaning to engage in an action that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

"Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The St. Andrew beach mouse is restricted to coastal sand dunes that consist of several rows paralleling the shoreline. The common types of sand dune habitat include frontal dunes, primary dunes, secondary dunes, inter and intradunal swales, and scrub dunes. Beach mice occur mostly in frontal, primary, and secondary dunes due in part to the predominance of plants whose seeds and fruits are important seasonal constituents of beach mouse diets. Further, scrub dunes may function as refugia during and after storms and as a source for recolonization of storm-damaged dunes. Because of the highly precarious status of the St. Andrew beach mouse, destruction or adverse modification of any of these habitat features to the point of appreciably diminishing habitat value for recovery and survival would also jeopardize the species' continued existence by reducing its reproduction, numbers, or distribution.

For the St. Andrew beach mouse, therefore, the Service has determined that designation of critical habitat would not add any protection over that afforded by the jeopardy standard. Any appreciable diminishment of habitat sufficient to appreciably reduce the value of the habitat for survival and recovery would also appreciably reduce the likelihood of survival and recovery by reducing reproduction, numbers, or distribution. The Service has found this to be the case for several listed species, for which an appreciable reduction in habitat value would trigger the jeopardy standard, for example the Appalachian elktoe mussel, listed as endangered on November 23, 1994 (59 FR 60324), and three Texas aquatic invertebrates, listed as endangered on June 5, 1995 (60 FR 29537).

Within unoccupied lands under Federal management, both Eglin and Tyndall Air Force bases are actively

involved in conservation of sand dune habitat. Eglin Air Force Base does not allow dune encroachment by vehicles and pedestrians within its Cape San Blas unit boundaries and closely reviews mission-related activities for potential habitat impacts (R. McWhite, Eglin Air Force Base, pers. comm. 1997). Eglin recently completed an ecological survey of Cape San Blas that will assist them in deciding how best to manage the natural resources within the unit. On Crooked Island, Tyndall Air Force Base restricts beach access on both east and west segments to pedestrians and authorized vehicles, and also prohibits dune encroachment. Natural resource personnel review all requests for military operations to minimize or eliminate potential habitat disturbances. Because of these current conditions, the Service believes that a designation of Crooked Island or Cape San Blas as critical habitat is not prudent because it would not result in any additional benefit to the species.

Recovery of the St. Andrew beach mouse will require the establishment of stabilized beach mouse populations wherever suitable habitat exists within the historic range of the species. The section 7 consultation requirements do not apply to private lands unless there are actions that are authorized, funded, or carried out by the Federal government. Critical habitat designation on unoccupied private lands might provide minimal benefit to the St. Andrew beach mouse by alerting permitting agencies to potential sites for translocation. Based on the existing protections for sand dune habitat by Gulf and Bay counties and State-regulated Coastal Construction Control Lines (see Factor D.), the Service believes that most mouse habitat should remain relatively intact for translocation and recolonization of mice. Thus, any benefit that might be provided by designation of unoccupied habitat can be more effectively accomplished through the recovery process and coordination with the county governments. In addition, sand dune habitat can change rapidly during severe storms making potential translocation areas unsuitable for mice. Thus, the current recovery and coordination process is a preferable means for identifying potential areas for mice translocations.

Based on the above discussion, the Service has determined that the lack of additional conservation benefit from critical habitat designation for this species makes such designation not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibition against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions that are expected to require consultation include mission-related activities authorized or carried out by Tyndall Air Force Base on Crooked Island and by Eglin Air Force Base at the Cape San Blas unit, following any translocation of beach mice to these locations. The Service's experience with other beach mice indicates that, with planning, beach mouse conservation and military activities are compatible.

The Federal Emergency Management Agency (FEMA) provides flood insurance for completed structures through the National Flood Insurance Program. Section 7 of the Act normally would require FEMA to consider consultation with the Service where the agency provides flood insurance to private landowners with structures located in occupied habitat. In this case,

private property occupied by the beach mouse within the St. Joseph Peninsula is also located within a CBRS unit and subject to the CBRA prohibitions against the acquisition of new federally-funded coastal flood insurance for new construction or substantial improvements (see Factor D. under "Summary of Factors Affecting the Species"). The Service, therefore, believes the listing will have no additional impact on the application of FEMA's flood insurance program.

U.S. Army Corps of Engineers involvement in the section 7 consultation process may result from the issuance of permits for the filling of wet interdunal swales subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*). Consultation will be required should the Corps determine that such permit issuance may affect the St. Andrew beach mouse.

The Service may undertake internal consultations when carrying out recovery activities such as dune restoration and construction of pedestrian crossovers or when reviewing incidental take permit applications under section 10(a)(1)(B) of the Act.

Actions taken and in progress for the St. Andrew beach mouse include updated status surveys within a portion of the historic range; a population genetics analysis; population viability modeling; distribution of outdoor interpretive habitat signs; reconstruction of a dune boardwalk at SJPSP; sand dune restoration at Crooked Island, SJPSP, and other Gulf County areas; and translocation of beach mice from SJPSP to Crooked Island. The Service plans to continue pursuing conservation actions to reduce threats to the species' continued existence.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or any foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The prohibitions of section 9 will not apply to St. Andrew Beach mice which were held in captivity or a controlled

environment on the date of publication in the **Federal Register** of this final rulemaking, provided that such holding and any subsequent holding of such mice is not in the course of a commercial activity (purchase or sale).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Beneficial activities whose implementation does not result in take of beach mice. Such activities include, but are not limited to, boardwalk construction on or over dunes, use of snow fencing and planting of local, native dune vegetation to accelerate dune restoration, and dune reconstruction using beach quality sand.

(2) Normal residential activities on unoccupied habitat that would not result in take of beach mice, such as, landscape maintenance, private development and dune access by vehicles and pedestrians.

(3) Activities authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with any measures required under section 7 of the Act.

Potential activities involving the St. Andrew beach mouse that the Service believes will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Take of St. Andrew beach mouse without a permit.

(2) Possession, sale, delivery, carrying, transportation, or shipping of illegally taken St. Andrew beach mice.

(3) Destruction or alteration of occupied habitat such as unpermitted development or habitat modification that results in the death of or injury to the St. Andrew beach mouse through the significant impairment of essential behaviors including breeding, feeding, or sheltering.

For questions regarding whether specific activities will constitute a violation of section 9 or to obtain approved guidelines for actions within beach mouse habitat, contact the Field Supervisor of the Service's Panama City Field Office, 1612 June Avenue, Panama City, Florida 32405-3721 (telephone 850/769-0552). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permit Coordinator, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679-7110; facsimile 404/679-7081).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John F. Milio (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of

the Code of Federal Regulations, as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

MAMMALS, to the List of Endangered and Threatened Wildlife:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

2. Amend § 17.11(h) by adding the following, in alphabetical order under

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS	*	*	*	*	*		*
Mouse, St. Andrew beach.	<i>Peromyscus polionotus peninsularis.</i>	U.S.A. (FL)	Entire	E	655	NA	NA
*	*	*	*	*	*		*

Dated: December 7, 1998.
Jamie Rappaport Clark,
 Director, Fish and Wildlife Service.
 [FR Doc. 98-33552 Filed 12-17-98; 8:45 am]
 BILLING CODE 4310-55-P

Proposed Rules

Federal Register

Vol. 63, No. 243

Friday, December 18, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV99-993-1 PR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the current assessment rate from \$2.16 to \$3.28 per ton of salable dried prunes for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1998-99 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The increased assessment rate is needed because the assessable tonnage is expected to be 99,750 salable tons, or 38 percent less than the Committee's initial estimate for 1998-99. Increasing the assessment rate to \$3.28 per ton of salable dried prunes would allow the Committee to meet its 1998-99 expenses and to operate for the first three months of the 1999-2000 crop year before monies become available from that year's assessments. The higher assessment rate would apply for the entire 1998-99 crop year, which began August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by December 28, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington,

DC 20090-6456; Fax: (202) 205-6632; or E-mail: moabdocket_clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Diane Purvis, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487-5901; Fax (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632, or E-mail: Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as

issued herein will be applicable to all assessable dried prunes beginning on August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1998-99 and subsequent crop years from \$2.16 per ton to \$3.28 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998-99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by

the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 1, 1998, and unanimously recommended to reduce its 1998-99 budget from \$348,840 to \$327,180 and increase the current assessment rate from \$2.16 to \$3.28 per ton of salable dried prunes. The assessment rate of \$2.16 per ton was approved by the Department in a final rule published in the **Federal Register** on October 2, 1998 (63 FR 52959). The \$1.22 per ton increase in the assessment rate to \$3.28 per ton is needed to allow the Committee to meet its 1998-99 expenses and to operate for the first three months of the 1999-2000 crop year before monies become available from next year's assessments. The California Agricultural Statistical Service originally estimated a 170,000 ton crop (161,500 salable tons) for the 1998-99 crop year. Due to unusually cool and wet weather conditions caused by the El Nino this season, the 1998-99 crop harvest is about four weeks late, of poor quality, and approximately 50 percent less than normal size. The Committee now expects the salable prune tonnage to be 99,750 salable tons, or 38 percent less than the Committee's initial estimate for 1998-99.

The following table compares major budget expenditures recommended by the Committee on June 25, 1998, and major budget expenditures in the revised budget recommended on December 1, 1998.

Budget expense categories	(\$1,000)	
	6/25/98	12/1/98
Salaries, Wages & Benefits	191.5	189.7
Research & Development	30	0
Office Rent	23	23
Travel	21	18.5
Acreage Survey	21	0
Reserve (Contin-gencies)	9.14	50.93
Equipment Rental	9	9
Data Processing	8	3.85
Stationary & Print-ing	5.5	5
Office Supplies	5	5
Postage & Mes-senger	5	5

The assessment rate recommended by the Committee was derived by dividing the reduced expenses by its reduced estimate of salable California dried prunes. Production of dried prunes for the year is estimated at 99,750 salable tons which should provide \$327,180 in assessment income. Interest income also will be available to cover anticipated

expenses. The Committee is authorized to use excess assessment funds from the 1997-98 crop year (currently estimated at \$58,088) for up to five months beyond the end of the crop year to meet 1998-99 crop year expenses. At the end of the five months, the Committee refunds or credits excess funds to handlers (\$993.81(c)). Income derived from handler assessments, along with interest income, would be adequate to cover budgeted expenses.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1998-99 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts

less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

An updated prune industry profile shows that 8 of the 20 handlers (40 percent) shipped over \$5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60 percent) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 90 producers, or about 7 percent of the 1,250 total producers, would be considered large growers with annual income over \$500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule would increase the current assessment rate established for the Committee and collected from handlers for the 1998-99 and subsequent crop years from \$2.16 per ton to \$3.28 per ton of salable dried prunes. The Committee unanimously recommended 1998-99 expenditures of \$327,180 and an assessment rate of \$3.28 per ton of salable dried prunes. The proposed assessment rate of \$3.28 is \$1.22 higher than the current 1998-99 rate (63 FR 52959, October 2, 1998). The quantity of assessable dried prunes for the 1998-99 crop year is now estimated at 99,750 salable tons. Thus, the \$3.28 rate should provide \$327,180 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 1998-99 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 25, 1998, with major budget expenditures in the revised budget recommended on December 1, 1998.

Budget expense categories	(\$1,000)	
	6/25/98	12/1/98
Salaries, Wages & Benefits	191.5	189.7
Research & Development	30	0
Office Rent	23	23
Travel	21	18.5
Acreage Survey	21	0
Reserve (Contin-gencies)	9.14	50.93
Equipment Rental	9	9
Data Processing	8	3.85
Stationary & Print-ing	5.5	5
Office Supplies	5	5
Postage & Mes-senger	5	5

Due to unusually cool and wet weather conditions caused by the El Nino this season, the 1998-99 crop harvest is about four weeks late, of poor quality, and approximately 50 percent less than normal size. At its December 1, 1998, meeting, the Committee reduced the California Agricultural Statistical Service's dried prune crop estimate for 1998-99 from 170,000 tons (161,500 salable tons) to 103,000 tons (99,750 salable tons).

The Committee reviewed and unanimously recommended 1998-99 expenditures of \$327,180. The assessment rate of \$3.28 per ton of salable dried prunes was then determined by dividing the total recommended budget by the reduced estimate for salable dried prunes. The Committee is authorized to use excess assessment funds from the 1997-98 crop year (currently estimated at \$58,088) for up to five months beyond the end of the crop year to fund 1998-99 crop year expenses. At the end of the five months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 1998-99 would be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 1998-99 season should average about \$800 per salable ton of dried prunes. Based on estimated shipments of 99,750 salable tons, assessment revenue during the 1998-99 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 1, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As

with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 1998-99 crop year began on August 1, 1998, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) the Committee's excess funds are nearly exhausted and the assessment increase must be implemented promptly so the Committee can collect assessments based on the higher rate and meet its financial obligations.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 993.347 is proposed to be revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 1998, an assessment rate of \$3.28 per ton is established for California dried prunes.

Dated: December 14, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-33573 Filed 12-17-98; 8:45 am]

BILLING CODE 3410-02-P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1998-19]

Treatment of Limited Liability Companies Under the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is seeking comments on how to treat limited liability companies ("LLC") for purposes of the Federal Election Campaign Act ("FECA" or the "Act"). LLC's are non-corporate business entities, created under State law, that have characteristics of both partnerships and corporations. While the Commission is proposing that these entities be treated as partnerships for purposes of the Act, please note that no final decision has yet been reached on any of the issues discussed in this Notice.

DATES: Comments must be received on or before February 1, 1999. The Commission will hold a hearing on these proposed rules, if sufficient requests to testify are received. If a hearing is held, its date will be announced in the **Federal Register**. Persons wishing to testify at the hearing should so indicate in their comments.

ADDRESSES: All comments should be addressed to N. Bradley Litchfield, Associate General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up for clarity. Electronic mail comments should be sent to LLCnprm@fec.gov and should include the full name, electronic mail address and postal service address of the commenter. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-1300 or (800) 424-9530 (toll free).

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act, as amended, 2 U.S.C. 431 *et seq.*, contains various restrictions and prohibitions on the right of "persons" to contribute to Federal campaigns. The Act defines "person" to include an individual, partnership, committee, association, corporation, labor organization, or any

other organization or group of persons. 2 U.S.C. 431(11).

The Act prohibits corporations and labor organizations from making any contribution or expenditure in connection with a Federal election, 2 U.S.C. 441b(a), although these entities may establish separate segregated funds ("SSF") and solicit contributions from their restricted class to the SSF. 2 U.S.C. 441b(b)(2)(C). The Act also prohibits contributions by Federal contractors, 2 U.S.C. 441c, and foreign nationals, 2 U.S.C. 441e. Contributions by persons whose contributions are not prohibited by the Act are subject to the limits set out in 2 U.S.C. 441a(a), generally \$1,000 per candidate per election to Federal office; \$20,000 aggregate in any calendar year to national party committees; and \$5,000 aggregate in any calendar year to other political committees. 2 U.S.C. 441a(a)(1). Individual contributions may not aggregate more than \$25,000 in any calendar year. 2 U.S.C. 441a(a)(3).

Contributions by partnerships are permitted, subject to the 2 U.S.C. 441a(a) limits. In addition, partnership contributions are attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1(e).

In recent years the Commission has received several advisory opinion requests ("AOR") seeking guidance on the treatment of limited liability companies for purposes of the Act, and has issued advisory opinions ("AO") in response to these AOR's. See AO's 1998-15, 1998-11, 1997-17, 1997-4, 1996-13, and 1995-11. LLC's are noncorporate business entities, established under State law, in which all members have limited liability protection and which may be taxed as a partnership rather than a corporation for Federal income tax purposes. Callison and Sullivan, *Limited Liability Companies* section 1.1 (1994). They thus combine the tax advantages of partnerships with the liability protection provided to corporate members.

Wyoming enacted the first LLC statute in 1977, but the majority of these laws have been enacted since 1990. *Id.* section 1.5. Thus these entities did not exist when the FECA was originally adopted, and were in their infancy when the FECA was last amended in 1979.

In considering the pertinent AOR's, the Commission has determined that, since LLC's are neither partnerships nor corporations, they should be considered "any other organization or group of persons" and therefore be treated as "persons" under 2 U.S.C. 431(11). As persons, but not corporations, LLC's are

subject to the Act's contribution limits rather than its prohibitions. In addition, contributions from an LLC's general operating accounts or treasury are not attributed to any of its members.

However, the Commission's allowance of contributions by LLC's has also been premised on the assumption that none of the individual members of the LLC are entities prohibited by the Act from contributing, i.e., corporations, labor organizations, Federal contractors, or foreign nationals. If any member of the contributing LLC falls within a category prohibited by the Act from contributing, that contribution is impermissible. AO 1997-17; see also AO's 1997-4, 1996-13, and 1995-11.

In each of these AO's, the Commission reviewed the law of the State in which the LLC was established regarding classification of LLC's and their attributes, as compared with the similar attributes of both partnerships and corporations in that State. For example, the Commission has noted how the statutes classify the entities in definitional terms and selection of business name. It has also considered whether the statutes for LLC's and the rules of an entity itself broadly reflect characteristics that are different from those of a corporation in some instances, or a partnership in others. In one recent opinion, the Commission stated that, even if flexibility in a particular State's law on LLC's and other business forms might allow LLC's to have more common attributes with corporations or partnerships in that State, the LLC was still a separate type of business entity with its own comprehensive statutory framework. See AO 1997-4.

As the number of AOR's on this topic has increased, the Commission has decided that, rather than continuing to examine the various State statutes to determine treatment of LLC's on a state-by-state basis, it would be preferable to draft a generally-applicable rule for this purpose. This approach would provide all LLC's with guidance under the Act, without their having to request an advisory opinion construing the law of their particular State.

Moreover, while the Act's legislative history directs the Commission to look to State law to determine the status of corporations, see, e.g., H.R. Rept. 1438 (Conf.), 93d Cong., 2d Sess. 68-69 (1974), LLC's are by definition noncorporate entities. In *California Medical Association v. FEC* ("CMA"), 453 U.S. 182 (1981), the Supreme Court rejected an effort by a nonprofit unincorporated association to establish an SSF and otherwise be subject to the

requirements of section 441b, rather than 441a(a)'s contribution limits.

In considering these AOR's, the Commission learned that the Internal Revenue Service ("IRS") has scrutinized the characteristics of LLC's, to determine whether they should be taxed as corporations or as partnerships for Federal income tax purposes. In view of changes by the States allowing greater flexibility in their LLC statutes that, in effect, blurred or narrowed the traditional differences between corporations and partnerships, the IRS concluded in 1996 that it should adopt regulations reflecting those altered circumstances. "Simplification of Entity Classification Rules," 61 FR 66584, 66584-85 (Dec. 18, 1996). The IRS regulations abandoned the past State-by-State LLC approach in the interest of achieving greater simplification and conserving both IRS and taxpayer resources. Known as the "check-the-box" rules, they permit entities that are not corporations under State law, such as LLC's, to designate themselves on an IRS form as either corporations or partnerships for Federal tax purposes. 26 CFR 302.7701-3. An LLC with two or more members is automatically treated as a partnership for tax purposes and need not file the appropriate tax form, unless it wishes to "check-the-box" and elect to take corporate tax treatment. 26 CFR 302.7701-3(b).

The Commission considered adopting the IRS' approach as part of its discussion of AO's 1998-11 and 1998-15, but decided that any such action should be taken as part of a notice-and-comment rulemaking procedure rather than through the AO process. After reviewing these AO's and other relevant material, the Commission is seeking comment on two alternative approaches: (A) that all LLC's be treated in the same manner as partnerships are treated for purposes of the Act; and (B) that the Commission adopt the IRS's "check the box approach," that is, that LLC's be treated as either partnerships or corporations for FECA purposes based on their chosen treatment under the Internal Revenue Code. The question of whether a business entity qualified as an LLC would continue to be determined by the law of the State in which the business organization was established.

If Alternative A were adopted, contributions by an LLC would be attributed to the LLC and to each member of the LLC in direct proportion to his or her share of the LLC's profits, as reported to the recipient by the LLC, or by agreement of the members, as long as certain conditions were met. In addition, contributions by an LLC

would be subject to the contribution limitations set forth in 2 U.S.C. 441a, and no portion of any contribution could be made from the profits of a member prohibited from making contributions under 2 U.S.C. 441b, 441c, or 441e. However, unlike their current treatment, LLC's could still make contributions, even if some, but not all, of their members were prohibited from doing so.

The Commission is considering whether a uniform approach is appropriate despite the individual differences that might exist between different LLC's. In addition, this approach would probably result in the majority of LLC's being treated as partnerships for both Federal taxation and FECA purposes. As explained above, the default position under the IRS "check-the-box" approach is taxation as a partnership; that is, an LLC must specifically opt to be taxed as a corporation, or it will be treated as a partnership. The IRS has informed the Commission that, while the figures as to how many LLC's opt for corporate tax treatment are not readily available, the large majority of LLC's are most likely to prefer tax treatment as partnerships, rather than as corporations.

Treating all LLC's as partnerships would also address possible proliferation problems that could develop if the Commission continues the approach taken in past AO's, that is, treating LLC's as "persons" for purposes of the Act. Since the same persons may currently become members of an unlimited number of LLC's, if LLC contributions are not further attributed to individual members, a person might be able to circumvent the section 441a(a) contribution limits by channeling contributions through several LLC's to the same candidate or committee.

However, as noted above, the Commission also invites comment on Alternative B for the attribution of LLC contributions that would more rigorously follow the IRS approach.— Specifically, this approach would mean that an LLC, which opted for taxation as a corporation under the IRS "check-the-box" rules, would also be treated as a corporation under FECA. Thus, its contributions to influence Federal elections would be prohibited by 2 U.S.C. 441b, but it could establish a separate segregated fund under the same regulatory regime that generally applies to corporations and labor organizations. See 2 U.S.C. 441b(b)(2)(C) and 11 CFR 114.5. On the other hand, contributions of an LLC that did not select tax treatment as a corporation would be treated as though made by a partnership

pursuant to current Commission regulations at 11 CFR 110.1(e).

In addition, because there is some general similarity between the Federal income taxation of LLC's and Subchapter S corporations (26 U.S.C. 1361–1379), the Commission invites comments regarding a possible revision to its regulations that would allow a Subchapter S corporation to make otherwise lawful contributions in Federal elections. Under such a regulatory exception, these contributions would be attributed only to the individual stockholders of the corporation as their personal (noncorporate) contributions and would be subject to their limits under the Act. Comments are invited both as to the Commission's authority to promulgate such a rule and its merit as a Commission policy position. (Proposed regulatory language for this possible exception is not published at this time.)

The Commission welcomes comments on other approaches to deal with the above FECA policy issues, or on any other aspect of this rulemaking.

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

These proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that limited liability companies are already covered by the Act, and the proposed revisions would clarify the extent to which they could contribute to Federal campaigns. In some instances this amount would be greater than is presently the case, while in others it would be smaller. In neither case would the amount involved qualify as "significant" for purposes of the Regulatory Flexibility Act.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

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

PART 110—CONTRIBUTIONS AND EXPENDITURES LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.1 would be amended by adding new paragraph (g) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

Alternative A

(g) *Contributions by limited liability companies ("LLC").* (1) *Definition.* The question of whether a business entity qualifies as a limited liability company is determined by the law of the State in which the business organization is established.

(2) *Attribution of contributions.* A contribution by an LLC shall be attributed to the LLC and to each member—

(i) In direct proportion to his or her share of the LLC's profits, according to instructions which shall be provided by the LLC to the political committee or candidate; or

(ii) By agreement of the members, as long as—

(A) Only the profits of the members to whom the contribution is attributed are reduced (or losses increased), and

(B) These members' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.

(3) *Limitation on contributions.* A contribution by an LLC shall not exceed the limitations on contributions in 11 CFR 110.1(b), (c), and (d). No portion of such contribution may be made from the profits of a corporation that is a member, or from a member who is prohibited from contributing under 11 CFR 110.4 or 115.2.

Alternative B

(g) *Contributions by limited liability companies ("LLC").* (1) *Definition.* A limited liability company is determined by the law of the State in which the business entity is established.

(2) A contribution by a limited liability company which elects to be treated as a partnership by the Internal Revenue Service, pursuant to 26 CFR 301.7701–3, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).

(3) A limited liability company which elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701–3, shall be considered a corporation pursuant to 11 CFR 114.

(4) A contribution by a limited liability company that does not make an election pursuant to 26 CFR 301.7701–3 shall be treated as a contribution from a partnership pursuant to 11 CFR 110.1(e).

* * * * *

Dated: December 15, 1998.

Scott E. Thomas,

Acting Chairman, Federal Election Commission.

[FR Doc. 98-33548 Filed 12-17-98; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-301-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300-600 series airplanes. This proposal would require removal of the fuel level sensing amplifier (FLSA) of the trim tank system, modification of the polarization pin code in the electronics bay, and installation of a new, improved FLSA. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent continuous aft transfer of fuel due to the FLSA not supplying electrical power to the trim tank overflow sensor, which could result in potential loss of fuel during flight.

DATES: Comments must be received by January 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-301-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager,

International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-301-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-301-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300-600 series airplanes. The DGAC advises that, on airplanes equipped with a trim tank system and with a certain fuel level sensing amplifier (FLSA), electrical power is not being supplied to the trim tank overflow sensor during flight. This condition is caused by the existing design of the FLSA, and could result in fuel loss from the trim tank during flight. Such fuel

loss could occur if all of the following conditions are present:

- Failure of the high-level sensor or associated circuits of the trim tank while the trim tank is empty; and
- Balance of the airplane such that the center of gravity with no fuel on board is 24 percent mean aerodynamic chord of the wing or further forward of that location; and
- Fuel weight of the airplane before departure is greater than 20,000 kilograms (44,000 pounds), which is the minimum amount of fuel required to fill the trim tank.
- Lack of electrical power to the trim tank overflow sensor, if not corrected, could result in continuous aft transfer of fuel, and potential loss of fuel during flight.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A300-28-6055, Revision 01, dated July 24, 1998, which describes procedures for removal of the FLSA of the trim tank system, modification of the polarization pin code in the electronics bay, and installation of a new, improved FLSA. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98-249-252(B), dated July 1, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified

in the service bulletin described previously.

Cost Impact

The FAA estimates that 61 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the actions proposed by this AD on U.S. operators is estimated to be \$10,980, or \$180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98-NM-301-AD.

Applicability: Model A300-600 series airplanes on which Airbus Modification 4801 was accomplished during production and on which Airbus Modification 10778 (reference Airbus Service Bulletin A300-31-6051, dated June 28, 1996) has been accomplished; except those airplanes on which Airbus Modification 11683 (reference Airbus Service Bulletin A300-28-6055, dated January 28, 1997, and Revision 01, dated July 24, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent continuous aft transfer of fuel due to the fuel level sensing amplifier (FLSA) not supplying electrical power to the trim tank overflow sensor, which could result in potential loss of fuel during flight, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, within 2 months after the effective date of this AD, remove the FLSA of the trim tank system, modify the polarization pin code in the electronics bay, and install a new, improved FLSA, in accordance with Airbus Service Bulletin A300-28-6055, Revision 01, dated July 24, 1998.

Note 2: Accomplishment of the actions specified in paragraph (a) of this AD, prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300-28-6055 dated January 28, 1997, is considered acceptable for compliance with the applicable actions specified in this AD.

(b) For airplanes on which Airbus Service Bulletin A300-31-6051, dated June 28, 1996, is accomplished after the effective date of this AD: Concurrent with the accomplishment of Airbus Service Bulletin A300-31-6051, accomplish the actions required by paragraph (a) of this AD, in accordance with Airbus Service Bulletin A300-28-6055, Revision 01, dated July 24, 1998.

(c) As of the effective date of this AD, no person shall install a FLSA having part number 722-295-2, on any airplane.

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

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

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

Note 4: The subject of this AD is addressed in French airworthiness directive 98-249-252(B), dated July 1, 1998.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33539 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-244-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, and Model MD-88 and MD-90-30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes, and Model MD-88 and MD-90-30 airplanes, that would have required replacement of the lanyard assembly pins of the evacuation slides with solid stainless steel pins. That proposal was prompted by a report that, due to stress corrosion on the lanyard pins, the arms of the lanyard assembly of the evacuation slide were found to be frozen. This new action revises the proposed rule by expanding the applicability of the proposed rule to

include additional airplanes, and revising the type of replacement pins. The actions specified by this new proposed AD are intended to prevent the improper deployment of the evacuation slide due to such stress corrosion, which could delay or impede evacuation of passengers during an emergency.

DATES: Comments must be received by January 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-244-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627-5338; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-244-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-244-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes, and Model MD-88 and MD-90-30 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 2, 1998 (63 FR 16172). That NPRM would have required replacement of the lanyard assembly pins of the evacuation slides with solid stainless steel pins. That NPRM was prompted by a report that, due to stress corrosion on the lanyard pins, the arms of the lanyard assembly of the evacuation slide were found to be frozen. That condition, if not corrected, could result in the improper deployment of the evacuation slide, which could delay or impede evacuation of passengers during an emergency.

Comments Received to Previous Proposal

Due consideration has been given to the comments received in response to the NPRM.

Requests To Reference Latest Service Information

Several commenters request that the applicability and paragraph (a) of the proposed AD be revised to reference Revision 01 of McDonnell Douglas Alert Service Bulletin DC9-25A357. Two of these commenters state that the effectivity listing of this alert service bulletin has been revised to include additional airplanes.

The FAA concurs with the commenters' requests to reference Revision 01 of the alert service bulletin.

Since issuance of the NPRM, the FAA has reviewed and approved Revision 01 of McDonnell Douglas Alert Service Bulletin DC9-25A357, dated March 16, 1998. The replacement procedures described in this revised alert service bulletin are essentially identical to those described in the original version (which was referenced in the proposed AD as the appropriate source of service information for accomplishment of the replacement). However, the effectivity listing of the alert service bulletin, among other items (including affected spares), has been revised to include additional Model DC-9 series airplanes and MD-88 airplanes that are subject to the identified unsafe condition. Therefore, the FAA has revised the supplemental NPRM to reference Revision 01 of the alert service bulletin as the appropriate source of service information (for certain airplanes) for determining the applicability of the supplemental NPRM, and as an additional source of service information for accomplishing the required replacement. The FAA also has revised the cost impact information and paragraph (b) of the supplemental NPRM according to the revised information specified in Revision 01 of the alert service bulletin.

Request To Reference Correct Type of Pin

One commenter points out that the pin specified in the referenced alert service bulletin is not stainless steel, but rather a corrosion-resistant steel pin. The commenter states that a solid pin in lieu of the current roll pin would not be of any benefit in preventing corrosion since both the existing pin [part number (P/N) MS39086-140] and the proposed solid pin (P/N MS16555-628) are made of the same material (410 cress steel). The FAA acknowledges that the pin specified in the referenced alert service bulletin is not stainless steel. The FAA has consulted with Boeing and determined that the alert service bulletin incorrectly describes the subject pin as "solid stainless steel." Therefore, the FAA has revised paragraph (a) of the supplemental NPRM to read "solid corrosion-resistant pins" instead of "solid stainless steel pins."

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 2,167 McDonnell Douglas Model DC-9 series airplanes, and Model MD-88 and MD-90-30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$2 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$146,400, or \$122 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 97-NM-244-AD.

Applicability: Model DC-9 series airplanes and Model MD-88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9-25A357, Revision 01, dated March 16, 1998; and Model MD-90-30 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90-25A019, dated February 11, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the improper deployment of the evacuation slide, which could delay or impede evacuation of passengers during an emergency, accomplish the following:

(a) Within 180 days after the effective date of this AD, replace the lanyard assembly pins of the evacuation slides with solid corrosion-resistant pins, in accordance with McDonnell Douglas Alert Service Bulletin MD80-25A357, dated February 11, 1997, or McDonnell Douglas Alert Service Bulletin DC9-25A357, Revision 01, dated March 16, 1998 (for Model DC-9 series airplanes and Model MD-88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90-25A-019, dated February 11, 1997 (for Model MD-90-30 airplanes); as applicable.

(b) As of the effective date of this AD, no lanyard assembly, part number (P/N) 3961899-1 or P/N 3956939-501, shall be installed on any airplane unless that assembly has been modified in accordance with the requirements of paragraph (a) of this AD.

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

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33537 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 35**

[REG-118662-98]

RIN 1545-AW78

New Technologies in Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations governing certain notices and consent required in connection with distributions from retirement plans. Specifically, these proposed regulations set forth applicable standards for the transmission of those notices and consent through electronic media and modify the timing requirements for providing certain distribution-related notices. The proposed regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The proposed regulations affect retirement plan sponsors, administrators, and participants. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 18, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 15, 1999, at 10 a.m. must be received by March 25, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-118662-98), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC. 20044. Submissions

may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-118662-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Catherine Livingston Fernandez (202) 622-6030; concerning submissions of comments and the hearing, and/or to be placed on the building access list to attend the hearing Michael L. Slaughter (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by February 16, 1999. Comments are specifically requested concerning: Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in 26 CFR 1.402(f)-1, 1.411(a)-11, and 35.3405-1. This information is required for notices to recipients of distributions from retirement plans, individual retirement accounts, and annuities. This information will be used to help recipients make informed decisions regarding these distributions. The collections of information are mandatory. The likely respondents are individuals, business or other for-profit institutions, and nonprofit institutions.

Estimated total annual reporting and/or recordkeeping burden: 477,563 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 76 minutes.

Estimated number of respondents and/or recordkeepers: 375,000.

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

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

Section 411(a)(11) of the Internal Revenue Code generally provides that if the value of a participant's accrued benefit exceeds \$5,000, the benefit may not be immediately distributed without the participant's consent. Section 1.411(a)-11(c) of the Income Tax Regulations states that this requirement applies until the later of normal retirement age or age 62 and requires that the consent be in writing. Section 1.411(a)-11(c)(2) of the regulations provides that the participant's consent is not valid unless, prior to the distribution, the participant is given an explanation of the plan distribution options (e.g., lump sum, annual installments, annuity, etc.) and is advised of the right to defer the distribution in a manner that would satisfy the notice requirement of section 417(a)(3).

Section 402(f) requires that the plan administrator of a qualified retirement plan provide the recipient of an eligible rollover distribution with a written explanation of the direct rollover, mandatory 20-percent income tax withholding, and other relevant tax information. Section 1.402(f)-1 Q&A-2 requires that notices under section 402(f) be provided no less than 30 and

no more than 90 days before the date of a distribution, although a participant may waive the 30-day period.

Section 3405(e)(10)(B) of the Code requires the payor of any designated distribution (other than an eligible rollover distribution) to transmit to the payee a notice of the right not to have income tax withheld from the payment.

Section 1510 of the Taxpayer Relief Act of 1997 provides for the Secretary of the Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, time, and related recordkeeping requirements under the Code and the Employee Retirement Income Security Act of 1974 (ERISA) regarding the use of new technologies by sponsors and administrators of retirement plans and to clarify the extent to which writing requirements under the Code relating to retirement plans permit "paperless" transactions. Section 1510 provides that the guidance must protect participant and beneficiary rights. Any final regulations applicable to this guidance may not be effective until the first plan year beginning at least six months after issuance as final regulations.

The IRS and Treasury issued Announcement 98-62, 1998-29 I.R.B.13, to request comments from interested members of the public concerning the development of the guidance described in section 1510. Announcement 98-62 solicited information on the kinds of electronic or "paperless" technologies used by sponsors and administrators in plan administration, identified a number of specific legal and practical issues for comment, and requested that commentators identify the issues most in need of administrative guidance. Commentators generally encouraged the IRS and Treasury to issue guidance facilitating the use of new technologies in plan administration, particularly the use of electronic technologies for transmission of the notices and consent required for plan distributions. These proposed regulations respond to the comments by providing the guidance most frequently requested by commentators.

Additionally, in response to many of the comments submitted under Announcement 98-62, the IRS and Treasury are issuing a notice concerning the use of electronic media for general plan transactions. The notice confirms that the "paperless" administration of participant enrollments, contribution elections, investment elections, beneficiary designations (other than designations requiring spousal consent), direct rollover elections, and certain other transactions will not cause a

qualified plan to fail to satisfy the requirements of section 401(a) (or the requirements for a qualified cash or deferred arrangement under section 401(k)). The notice is intended to apply to a broad range of general plan transactions and electronic media, but it does not apply to transactions for which the Code, the regulations, or other guidance of general applicability prescribes requirements for the media through which such transactions may be conducted (for example, it does not apply to providing the section 402(f) notice). Additionally, the notice does not address the application of Title I of ERISA to the use of electronic media for any plan transactions.

Explanation of Provisions

General

These proposed regulations permit the use of electronic media for the transmission of certain notices and consent required for distributions from qualified plans. Using flexible standards—rather than detailed requirements—the proposed regulations:

- Permit electronic delivery of the notice of distribution options and the right to defer under section 411(a)(11), the rollover notice under section 402(f), and the voluntary tax withholding notice under section 3405(e)(10)(B);
- Permit participant consent to a distribution under section 411(a)(11) to be given electronically; and
- Permit a plan to provide the section 411(a)(11) and section 402(f) notices more than 90 days before a distribution, if the plan provides a summary of the notices within 90 days before the distribution.

Notices Under Sections 402(f), 411(a)(11), and 3405(e)(10)(B)

1. Use of Electronic Media for Delivery of Notices

The proposed regulations provide that, in general, a plan may provide a notice required under section 402(f), 411(a)(11), or 3405(e)(10)(B) either on a written paper document or through an electronic medium reasonably accessible to the participant to whom the notice is given. The proposed regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. Instead, the proposed regulations set forth generally applicable standards that are intended to parallel the key attributes of notices provided on written paper documents without imposing more stringent requirements on electronic notices. The

use of generally applicable standards rather than detailed rules is consistent with the comments received under Announcement 98-62.

Under the proposed regulations, an electronic notice must be provided under a system reasonably designed to give the notice in a manner no less understandable to the participant than a written paper document. The no-less-understandable requirement is to be applied taking into account the method of delivery and the format and content of the electronic notice; however, the standard is not intended to require that the electronic notice be identical in form or content to a corresponding notice provided on a written paper document (although an electronic notice must contain all the information that would be required if the notice were provided on a written paper document).

The IRS and Treasury would expect that provision of notices through e-mail or a plan web site would in most cases satisfy the no-less-understandable requirement under well designed systems. However, the IRS and Treasury expect that the amount and nature of the information that must be provided in the section 402(f) notice would preclude oral delivery of the full section 402(f) notice through a telephone system. By contrast, the amount and nature of the information required in the notice under section 3405(e)(10)(B) is such that the no-less-understandable standard may be met by a notice provided through a telephone system.¹ Whether a section 411(a)(11) notice may be provided through a telephone system will depend on the complexity of the plan distribution options. A plan with a few simple distribution options could provide, through a well designed telephone system, a section 411(a)(11) notice that is just as understandable as a notice provided on a written paper document; a plan with more numerous or more complex distribution options may not be able to satisfy the no-less-understandable standard in that manner.

The IRS and Treasury believe that participants should be able to receive a written paper notice from the plan on request and that the right to receive a written paper notice is an important safeguard for participants. Many of the comments submitted under Announcement 98-62 strongly supported this proposition. Certain participants may be unable to use

¹ The permissibility under the proposed regulations of providing the section 3405 notice through an electronic medium is not limited to qualified plans described in section 401(a); rather, it applies with respect to any payor under section 3405.

paperless technologies in an effective manner, particularly as these new technologies emerge and change rapidly. In such cases, the right to receive a notice on a written paper document may be necessary to ensure that the participant has an adequate opportunity to deliberate about his or her rights and options (and to seek advice from third parties, if desired). In accordance with these considerations, the proposed regulations provide that a participant who is given a legally required notice through an electronic medium be advised at the time the notice is given that he or she may request and receive the notice on a written paper document at no charge.

Because of its potential significance to individuals, this written paper notice must be a copy that participants can retain for their own records (thus, a posted copy is not adequate). Merely making paper notices available through the electronic medium used to deliver the notice or another electronic medium (for example, by including a "print" option on an e-mail system or a web site) is not adequate because of the uncertainty in determining whether a participant will in fact be able to generate the paper version of the notice. A written paper notice furnished on request need not contain precisely the same information or be presented in the same format as the notice delivered through an electronic medium. Rather, the written paper notice (like the electronic notice) need only satisfy the applicable legal requirements regarding that notice.

These generally applicable standards for electronic notices are illustrated by several examples. The examples illustrate whether certain uses of electronic technologies satisfy the proposed regulations, but they are not intended to constitute an exhaustive list of permissible uses, systems, or media. Other uses, systems, or media (whether extant, such as CD-ROM or touch-screen kiosk, or not yet developed) that satisfy the applicable standards would be permitted.

To conform the rules for providing the section 411(a)(11) notice to the standards described above, the proposed regulations remove from the existing regulations the requirement that the section 411(a)(11) notice be received "in a manner that would satisfy the notice requirements of section 417(a)(3)." Also, while they do not remove references in the existing regulations to the "written" section 402(f) notice (because the statutory provisions of section 402(f) specifically refer to a "written" notice), the proposed regulations provide for the electronic transmission of the section

402(f) notice and modify the timing requirement for providing that notice.

2. Flexibility for Timing Requirement in Providing Notices

The proposed regulations modify the timing requirement for providing the section 402(f) and section 411(a)(11) notices. Under existing regulations, those notices must be provided no less than 30 days and no more than 90 days before the date of a distribution, although a participant is permitted to waive the 30-day period.² As discussed above, the proposed regulations permit plans with comparatively few and simple distribution options to provide the section 411(a)(11) notice through a variety of electronic media, including (in many cases) automated telephone systems. This will make it easier for those plans to provide the notice within the 90/30-day period (for example, by providing the notice when a participant requests a distribution through the automated telephone system). Similarly, plans with more numerous or more complex distribution options that use an e-mail system or a web site may provide the notice when a participant requests a distribution through the e-mail system or the web site.

The proposed regulations also provide flexibility with respect to the 90-day period by providing an alternative timing rule under sections 402(f) and 411(a)(11). Under this alternative timing rule, a plan may give the full section 402(f) and section 411(a)(11) notices more than 90 days before the distribution and provide the participant a summary of the notice during the 90/30-day period. The full notice is not required to be provided on a regular periodic basis and could be provided in connection with other materials (for example, in the summary plan description or in a brochure describing plan distribution features), but it must be updated (and provided to the participant) as necessary to ensure accuracy as of the time the summary is provided.

The summary of the notice must set forth the material provisions of the notice, must refer the participant to the most recent occasion on which the full notice was provided (and, in the case of a notice provided in a document—such as the summary plan description—that contains other information, must identify that document and must indicate where the notice may be found

in that document), and must advise the participant of the right to request and receive a full notice without charge. The plan could make this full notice available through an electronic medium under a system that satisfies the standards discussed above if it also offers the participant the option to request the full notice on a written paper document. Whether written or electronic, the full notice, if requested, must be provided without charge no fewer than 30 days prior to the date of the distribution (although the participant may waive this 30-day period).

In the case of the section 411(a)(11) notice, the summary will consist of a statement that the participant has a right to defer receipt of the distribution (if applicable) and a summary of the plan distribution options. In the case of the section 402(f) notice, the summary must summarize the principal provisions of the section 402(f) notice. The use of electronic media to provide these summaries is subject to the same generally applicable standards that apply to the electronic transmission of the full section 411(a)(11) and section 402(f) notices, as described above. In contrast to the full section 402(f) notice, however, the IRS and Treasury believe that the summary of the section 402(f) notice can be provided orally through a well designed telephone system in a manner no less understandable than a written paper summary. The following summary, based on the summary set forth in Notice 92-48, 1992-2 C.B. 377, is an example of a section 402(f) summary that may be provided through an automated telephone system:

Summary of Notice Regarding Important Tax Information

The following is a brief explanation of an important decision you must make about any distribution you request from the Plan. Please listen to it carefully. You can find a more complete written explanation of these rules in the Summary Plan Description for the Plan, beginning on page x. You can obtain a free copy of the complete explanation from the Personnel Office, or you will have an opportunity at the end of this message to request to have a copy mailed to you.

A payment from the Plan may be eligible for "rollover" treatment. A payment that is eligible for "rollover" can be taken in two ways. You can have ALL OR ANY PORTION of your payment either (1) PAID IN A "DIRECT ROLLOVER" or (2) PAID TO YOU.

A rollover is a payment of your Plan benefits to your individual retirement arrangement (IRA) or to another employer plan. This choice will affect the tax you owe. If you choose a DIRECT ROLLOVER

1. Your payment will not be taxed in the current year and no income tax will be withheld.

2. Your payment will be made directly to your IRA or, if you choose, to another employer plan that accepts your rollover.

3. Your payment will be taxed later when you take it out of the IRA or the employer plan.

If you choose to have your Plan benefits PAID TO YOU

1. You will receive only 80% of the payment, because the plan administrator is required to withhold 20% of the payment and send it to the IRS as income tax withholding to be credited against your taxes.

2. Your payment will be taxed in the current year unless you roll it over. You may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59½, you also may have to pay an additional 10% tax.

3. You can roll over the payment by paying it to your IRA or to another employer plan that accepts your rollover within 60 days of receiving the payment. The amount rolled over will not be taxed until you take it out of the IRA or employer plan.

4. If you choose to have your Plan benefits paid to you and you want to roll over 100% of the payment to an IRA or an employer plan, YOU MUST FIND OTHER MONEY TO REPLACE THE 20% THAT WAS WITHHELD. If you roll over only the 80% that you received, you will be taxed on the 20% that was withheld and that is not rolled over.

You can find a complete explanation of these rules, as well as additional rules that may apply in special circumstances, beginning on page x of your Summary Plan Description. You can also obtain a free copy of the complete explanation from the Personnel Office.

If you wish to have a free copy of the complete explanation mailed to you, press 1.

If you wish to hear this explanation again, press 2.

If you wish to end this transaction now, without requesting any distribution, press 3.

If you wish to continue with this transaction, press 4.

Consent Under Section 411(a)(11)

The proposed regulations provide that, in general, a plan may receive a participant's consent either on a written paper document or through an electronic medium reasonably accessible to the participant. As in the case of participant notices, the proposed regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. Instead, the proposed regulations set forth generally applicable standards for transmitting consent through electronic media. The standards are intended to parallel the key attributes of participant consent provided on written paper documents without imposing more stringent requirements on electronic consents. To conform the existing regulations to this change, the proposed regulations

²The timing requirements and waiver provisions for purposes of the section 411(a)(11) notice are provided in Treasury Regulations §§ 1.411(a)-11(c)(2)(ii) and (iii), which are part of final regulations published elsewhere in this issue of the **Federal Register**.

remove the requirement that a participant's consent be "written."

The proposed regulations provide that participant consent transmitted through an electronic medium must be given under a system that is reasonably designed to preclude an individual other than the participant from giving the consent and that provides the participant a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective. The proposed regulations do not set out specific rules regarding adequate identification or authentication of participants; the IRS and Treasury note, however, that many comments submitted under Announcement 98-62 confirmed that "paperless" systems ordinarily use passwords and personal identification numbers to ensure participant identity in plan transactions.

The requirement that a participant be given a reasonable opportunity to review and to confirm, modify, or rescind the terms of a distribution before his or her consent becomes effective is not intended to require a mandatory rescission period after a transaction has been completed; it is sufficient for the plan to provide this opportunity immediately before the participant completes the session in which the consent is given (for example, before exiting the plan web site or at the end of an automated telephone transaction). The opportunity to review and to confirm, modify, or rescind the terms of the distribution may be compared to a participant's opportunity to review the terms of a distribution on a written paper distribution election form prior to submitting that written paper form to the plan.

Many comments submitted under Announcement 98-62 indicated that it is a very common practice in electronic plan administration to provide participants with confirmations (usually written confirmations) of plan transactions. The receipt of a confirmation is, for the participant, analogous to the opportunity to retain a photocopy of a written paper distribution election form. Consistent with these comments, the proposed regulations provide for the plan to give the participant a confirmation of the terms of the distribution within a reasonable time after the participant has given consent through an electronic medium. However, the confirmation of the participant's consent to the distribution generally need not be given through a written paper document; it may be given through any electronic medium that would satisfy the

provisions of the proposed regulations for delivery of the section 411(a)(11) notice. (Thus, if the confirmation is given through an electronic medium, the participant must be given the right to request and to receive the confirmation on a written paper document.) Additionally, the confirmation need not be given as a separate transaction. For example, the confirmation could be given immediately before completion of a session conducted on a plan web site. Alternatively, a plan could provide the confirmation by reflecting the transaction in a participant's periodic account statement (provided that the confirmation is given within a reasonable time after the consent).³

As with notices, the general standards for the section 411(a)(11) consent are illustrated by several examples intended to describe in broad terms certain uses of electronic technologies that would satisfy the proposed regulations. The examples illustrate consent given through e-mail, web sites (Internet or intranet), and automated telephone systems and clarify that a participant may consent to a distribution orally through an automated telephone system. The examples are not intended to constitute an exhaustive list of permissible uses, systems, or electronic media or to imply that other uses, systems, or electronic media (whether extant or not yet developed) would fail to satisfy the proposed regulations.

Other Transactions and Recordkeeping

A few comments submitted under Announcement 98-62 requested guidance on the use of electronic media for waivers of the qualified joint and survivor annuity and the qualified preretirement survivor annuity, spousal consent, and related explanations under section 417. Guidance on those issues has not been issued at this time because any use of electronic media for those purposes—as well as for the notice requirements of sections 401(k)(12) and 401(m)(11) (pertaining to the safe harbor methods of satisfying the nondiscrimination requirements of sections 401(k) and (m)) and the notice requirements of section 204(h) of ERISA—would raise substantial issues

³ Several commentators requested that guidance on electronic plan administration clarify that participants need not receive written paper confirmation of every plan transaction conducted through an electronic medium (such as an inquiry regarding a participant's account value). The IRS and Treasury note that (apart from the provision of the proposed regulations described above) neither the Code or the regulations impose a requirement to provide confirmation (written or otherwise) of plan transactions conducted through an electronic medium.

distinct from those raised by the use of electronic media for the notice and consent requirements of sections 402(f), 411(a)(11), and 3405(e)(10)(B). The IRS and Treasury will be reviewing those issues and will consider whether guidance should be issued in the future.

Several comments also requested guidance regarding the use of electronic media for withholding elections under section 3405. The IRS and Treasury are issuing guidance permitting payors to establish systems to receive Form W-4P (Withholding Certificate for Pension or Annuity Payments) electronically. Interested parties are invited to submit comments concerning what, if any, additional guidance is needed concerning the use of electronic media for withholding elections under section 3405.

Several comments submitted under Announcement 98-62 addressed recordkeeping under section 6001 for electronic plan administration. Revenue Procedure 98-25, 1998-11 I.R.B. 7, specifies the basic requirements that the IRS considers to be essential in cases where a taxpayer's records are maintained within an Automatic Data Processing system. Under section 3.01 of Revenue Procedure 98-25, these requirements apply to employee plans. Additionally, Revenue Procedure 97-22, 1997-1 C.B. 652, provides guidance to taxpayers maintaining books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage medium, such as an optical disk. Under section 3.02 of Revenue Procedure 97-22, the requirements of that revenue procedure apply employee plans. The IRS and Treasury invite interested parties to submit comments on what specific guidance is needed concerning recordkeeping requirements for electronic plan administration in addition to that provided in Revenue Procedures 98-25 and 97-22.

Reliance

Plan sponsors and administrators may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Proposed Effective Date

These regulations are proposed to be effective the first day of the first plan year beginning on or after the date that is six months after they are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide paperless alternatives to notices that otherwise must be sent as written paper documents. It is anticipated that most small businesses affected by these regulations will be sponsors of retirement plans. Since these notices are provided only upon distributions and since, in the case of a small plan, there will be relatively few distributions per year, small plans that implement a paperless system for delivering these notices will likely contract for them as part of a paperless system for distributions offered by outside vendors. The paperless delivery of the notices will only add a minor increment to the cost of these paperless distribution systems or the plan sponsor will continue to use a paper-based system. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 15, 1999, at 10 a.m. in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present a photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name

placed on the building access list, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 25, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Catherine Livingston Fernandez, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of 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 35

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 35 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.402(f)-1 is amended by:

1. Revising Q&A-2.
2. Adding Q&A-5 and Q&A-6.

The revision and additions read as follows:

§ 1.402(f)-1 Required explanation of eligible rollover distributions; questions and answers.

* * * * *

Q-2: When must the plan administrator provide the section 402(f) notice to a distributee?

A-2: The plan administrator must provide the section 402(f) notice to a distributee at a time that satisfies either paragraph (a) or (b) of this Q&A-2.

(a) Paragraph (a) of this Q&A-2 is satisfied if the plan administrator provides a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of a distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided the plan administrator clearly indicates to the distributee that the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to attract the attention of the distributee. For example, this information could be either provided in the section 402(f) notice or stated in a separate document (e.g., attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of paragraph (a) of this Q&A-2, the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)-20, Q&A-10, for the date of the distribution.

(b) This paragraph (b) is satisfied if the plan administrator—

(1) Provides a distributee with the section 402(f) notice;

(2) Provides the distributee with a summary of the section 402(f) notice within the time period described in paragraph (a) of this Q&A-2; and

(3) If the distributee so requests after receiving the summary described in paragraph (b)(2) of this Q&A-2, provides the section 402(f) notice to the distributee without charge and within the period specified in paragraph (a) of this Q&A-2 (disregarding the 90-day period described in paragraph (a) of this Q&A-2). The summary described in paragraph (b)(2) of this Q&A-2 must set forth a summary of the principal provisions of the section 402(f) notice, must refer the distributee to the most recent occasion on which the section 402(f) notice was provided (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must indicate where the notice may be found in that document), and must advise the distributee that, upon request, a copy of the section 402(f) notice will be provided without charge.

* * * * *

Q-5: Will the requirements of section 402(f) be satisfied if a plan administrator provides a distributee with the section 402(f) notice or the summary of the notice described in paragraph (b)(2) of Q&A-2 of this section other than through a written paper document?

A-5: A plan administrator may provide a distributee with the section 402(f) notice or the summary of that notice described in paragraph (b)(2) of Q&A-2 of this section either on a written paper document or through an electronic medium reasonably accessible to the distributee. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the distributee than a written paper document.

(b) At the time the notice or summary is provided, the distributee must be advised that the distributee may request and receive the notice on a written paper document, and, upon request, that document must be provided to the distributee at no charge.

Q-6: Are there examples that illustrate the provisions of Q&A-2 and Q&A-5 of this section?

A-6: The following examples illustrate the provisions of Q&A-2 and Q&A-5 of this section:

Example 1. A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. If a participant requests a distribution from Plan A by e-mail and the distribution is an eligible rollover distribution, the plan administrator provides the participant with a section 402(f) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice. Plan A does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 2. A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal

identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution that is an eligible rollover distribution, the participant is automatically shown a page on the web site containing a section 402(f) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the section 402(f) notice. Plan B does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 3. A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. Plan C provides the section 402(f) notice in the summary plan description, the most recent version of which was distributed to participants in 1997. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. In 1999, a participant, using Plan C's automated telephone system, requests a distribution that is an eligible rollover distribution. The automated telephone system refers the participant to the most recent occasion on which the section 402(f) notice was provided in the summary plan description, informs the participant where the section 402(f) notice may be located in the summary plan description, and provides an oral summary of the material provisions of the section 402(f) notice. The system also advises the participant that the participant may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution, the participant must acknowledge comprehension of the summary. Under Plan C's system for processing such transactions, the participant's distribution will be made no more than 90 days and no fewer than 30 days after the participant requests the distribution and receives the summary of the section 402(f) notice (unless the participant waives the 30-day period). Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or

merely because the summary is provided to the participant other than through a written paper document.

Example 4. The facts are the same as in *Example 3*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the summary of the section 402(f) notice by reading from a prepared text. Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary of the section 402(f) notice is provided to the participant other than through a written paper document.

Example 5. The facts are the same as in *Example 3*, except that Plan C does not provide the section 402(f) notice in the summary plan description. Instead, the automated telephone system reads the section 402(f) notice to the participant. Plan C does not satisfy the notice requirement of section 402(f) by oral delivery of the section 402(f) notice through the automated telephone system.

Par. 3. Section 1.411(a)-11 is amended by:

1. Revising paragraphs (c)(2)(i) and (iii).
2. Adding paragraphs (f) and (g).
3. Removing the language "Written consent" in paragraph (c)(2)(ii) and (c)(3) and adding the language "Consent" in its place.

The revisions and additions read as follows:

§ 1.411(a)-11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) *Consent.* (i) No consent is valid unless the participant has received a general description of the material features of the optional forms of benefit available under the plan. In addition, so long as a benefit is immediately distributable, a participant must be informed of the right, if any, to defer receipt of the distribution. Furthermore, consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a distribution. Whether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances.

* * * * *

(iii) A plan must provide a participant with notice of the rights specified in this paragraph (c)(2) at a time that satisfies either paragraph (c)(2)(iii)(A) or (B) of this section:

(A) This paragraph (c)(2)(iii)(A) is satisfied if the plan provides a participant with notice of the rights

specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided the plan administrator clearly indicates to the participant that the participant has a right to at least 30 days to consider whether to consent to the distribution.

(B) This paragraph (c)(2)(iii)(B) is satisfied if the plan—

(1) Provides the participant with notice of the rights specified in this paragraph (c)(2);

(2) Provides the participant with a summary of the notice within the time period described in paragraph (c)(2)(iii)(A) of this section; and

(3) If the participant so requests after receiving the summary described in paragraph (c)(2)(iii)(B)(2) of this section, provides the notice to the participant without charge and within the period specified in paragraph (c)(2)(iii)(A) of this section (disregarding the 90-day period described in paragraph (c)(2)(iii)(A) of this section). The summary described in paragraph (c)(2)(iii)(B)(2) of this section must advise the participant of the right, if any, to defer receipt of the distribution, must set forth a summary of the distribution options under the plan, must refer the participant to the most recent occasion on which the notice was provided (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must indicate where the notice may be found in that document), and must advise the participant that, upon request, a copy of the notice will be provided without charge.

* * * * *

(f) *Medium for notice and consent*—

(1) *Notice.* The notice of a participant's rights described in paragraph (c)(2) of this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(2) of this section may be provided either on a written paper document or through an electronic medium reasonably accessible to the participant. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(i) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the participant than a written paper document.

(ii) At the time the notice or summary is provided, the participant must be advised that he or she may request and receive the notice on a written paper document, and, upon request, that document must be provided to the participant at no charge.

(2) *Consent.* The consent described in paragraphs (c)(2) and (3) of this section may be given either on a written paper document or through an electronic medium reasonably accessible to the participant. A consent given through an electronic medium must be given under a system that satisfies the following requirements:

(i) The system must be reasonably designed to preclude any individual other than the participant from giving the consent.

(ii) The system must provide the participant with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective.

(iii) The system must provide the participant, within a reasonable time after the consent is given, a confirmation of the terms (including the form) of the distribution either on a written paper document or through an electronic medium under a system that satisfies the requirements of paragraph (f)(1) of this section.

(g) *Examples.* The provisions of paragraph (f) of this section are illustrated by the following examples:

Example 1. A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). Within a reasonable time after the participant's consent, the plan administrator, by e-mail, sends confirmation of the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Plan A does not fail to satisfy the notice or consent

requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 2. The facts are the same as in *Example 1*, except that, instead of sending a confirmation of the distribution by e-mail, the plan administrator, within a reasonable time after the participant's consent, sends the participant an account statement for the period that includes information reflecting the terms of the distribution. Plan A does not fail to satisfy the consent requirement of section 411(a)(11) merely because the consent is provided other than through a written paper document.

Example 3. A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing a section 411(a)(11) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The web site requires the participant to review and confirm the terms of the distribution before the transaction is completed. After the participant has given consent, the Plan B web site confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Plan B does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 4. A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. Plan C provides only the following distribution options: a lump sum and annual installments over 5, 10, or 20 years. A participant may request a distribution from Plan C by following the applicable instructions on the automated

telephone system. After the participant has requested a distribution, the automated telephone system reads the section 411(a)(11) notice to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The automated telephone system requires the participant to review and confirm the terms of the distribution before the transaction is completed. After the participant has given consent, the automated telephone system confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Because Plan C has relatively few and simple distribution options, the provision of the section 411(a)(11) notice over the automated telephone system is no less understandable to the participant than a written paper notice. Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 5. The facts are the same as in *Example 4*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the section 411(a)(11) notice from a prepared text and processes the participant's distribution in accordance with predetermined instructions of the plan administrator. Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

PART 35—TEMPORARY EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 4. The authority citation for part 35 is revised to read as follows:

Authority: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Pub. L. 97-248 (96 Stat. 623).

Section 35.3405-1 also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Par. 5. Section 35.3405-1 is amended by adding d-35 and d-36 to read as follows:

§ 35.3405-1. Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

* * * * *

d-35. Q. Through what medium may a payor provide the notice required under section 3405 to a payee?

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d-27) to a payee either on a written paper document or through an electronic medium reasonably accessible to the payee. A notice provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice in a manner no less understandable to the payee than a written paper document.

(b) At the time the notice is provided, the payee must be advised that the payee may request and receive the notice on a written paper document, and, upon request, that document must be provided to the payee at no charge.

d-36. Q. Are there examples that illustrate the provisions of d-35 of this section?

A. The provisions of d-35 of this section are illustrated by the following examples:

Example 1. An employer deferred compensation plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. The plan administrator is the payor. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with the notice required under section 3405 by e-mail. The plan administrator also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 2. An employer deferred compensation plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. The plan administrator is the payor. A

participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing the notice required by section 3405. Although this page of the web site may be printed, the page also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 3. An employer deferred compensation plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. The plan administrator is the payor. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the notice required by section 3405 to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 4. The facts are the same as in *Example 3*, except that, pursuant to the system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the notice required by section 3405 by reading from a prepared text. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

* * * * *

John M. Dalrymple,
Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 98-32939 Filed 12-17-98; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 950**

[WY-028-FOR]

Wyoming Regulatory Program

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

ACTION: Proposed rule; correction.

SUMMARY: This document contains corrections to the proposed Federal rule published on July 29, 1998 (63 FR 40384; administrative record No. WY-33-8), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice is intended to correct two typographical errors and inserts two items omitted in the list of intended modifications to the Wyoming rules and regulations.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, 307-261-6550; Internet, GPadgett@SMRE.Gov.

Correction of Publication

In the proposed rule FR Doc. 98-20262, on page 63 FR 40385 in the **Federal Register** issue of July 29, 1998, make the following corrections:

1. In the center column, (12) should read, "Chapter 8, Section 3-4, revises the rules on special alternative standards for existing as well as new special bituminous coal mines;"

2. In the center column, (13) should read, "Chapter 12, Section 1(a)(iv)(B),;"

3. In the third column, add in numerical order, "(22) Chapter 1, Section 2(v), revising the definition of critical habitat;" and "(23) Chapter 8, Section 5, General Performance Standards."

Dated: December 9, 1998.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98-33621 Filed 12-17-98; 8:45 am]

BILLING CODE 4310-05-M

LIBRARY OF CONGRESS**Copyright Office****37 CFR Part 251**

[Docket No. 98-3 CARP]

Copyright Arbitration Royalty Panels; Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing amendments to the regulations governing the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993. These changes are designed to fill gaps in the rules that have been the subject of inquiries and to promote the efficient resolution of issues and claims.

DATES: Written comments are due January 19, 1999. Reply comments are due February 16, 1999.

ADDRESSES: If sent BY MAIL, an original and 10 copies of written comments should be addressed to Office of the General Counsel, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. If DELIVERED BY HAND, an original and 10 copies should be brought to: Office of the General Counsel, Copyright Office, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Attorney-Advisor. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal Reform Act of 1993, Pub. L. 103-198, 17 Stat. 2304, eliminated the Copyright Royalty Tribunal (CRT) and replaced it with a system of *ad hoc* Copyright Arbitration Royalty Panels (CARPs) administered by the Librarian of Congress (Librarian) and the Copyright Office (Office). The CARPs adjust royalty rates and distribute royalties collected under the various compulsory licenses and statutory obligations of the Copyright Act. In 1994, the Office published final regulations for CARP proceedings. 59 FR 63025 (December 7, 1994). Eighteen months later, the Copyright Office issued a notice making non-substantive, technical changes to the rules. 61 FR 63715 (December 2, 1996). Based on the Office's experience with the rules since they were first enacted, the Office is now proposing substantive changes to these regulations. These changes are designed to fill gaps in the rules that have been the source of inquiry or contention, to promote the early and efficient resolution of issues and claims, and to resolve ambiguities that have fostered misunderstandings. Many of the changes are codifications of rulings the Office has made by order in response to discovery motions. Now the substance of these orders will become

part of the rules so that the Office's policies are known in advance, and the motions upon which they were based become unnecessary.

The Office has also received two petitions requesting additional changes to the CARP regulations¹ from parties who have participated in previous CARP proceedings. On July 29, 1998, Program Suppliers² filed a request for rulemaking to amend § 251.5 (Program Suppliers' Request). The purpose of the requested rulemaking is "to eliminate the requirement that copyright arbitration royalty panels ("CARPs") consist entirely of lawyers prior to assigning a CARP for the satellite carrier royalty distribution hearing." Program Suppliers' Request at 1. In addition, Mr. James Cannings³ has a petition for a rulemaking pending before the Office. He seeks an amendment to § 251.44(f) (Cannings' Petition) which would require parties who join together and submit a single direct case to designate a lead counsel for purposes of future service.

The Copyright Office has incorporated the concerns of these petitioners into this proposed rulemaking proceeding. Specifics on these proposals are discussed herein. However, the Office is denying Program Suppliers' request that the Office not select a panel for the scheduled 1992-1995 satellite distribution proceeding before it completes consideration of the Program Suppliers' proposed amendment. The Office has already compiled and published the list of arbitrators for 1998 and 1999 pursuant to § 251.3, and it has scheduled the satellite distribution proceeding to begin on January 8, 1999. Under the current time constraints, it would be impossible to consider the proposed changes, finalize the amendments, and generate a new list, assuming that the Office agreed to adopt Program Suppliers' suggestion for amending § 251.5. Furthermore, the Office is considering numerous changes to its regulations and has decided to conduct a single rulemaking proceeding to consider all substantive changes to

¹ Copies of these documents are on file in the Copyright General Counsel's Office, Room LM-403, James Madison Building, Washington, DC.

² Program Suppliers are a group of producers and distributors of syndicated programming. Historically, they participate in CARP proceedings that set rates for the cable and satellite compulsory licenses and in those proceedings that determine the distribution of cable and satellite royalties among the copyright owners who file an annual claim.

³ Mr. Cannings is a songwriter and publisher who participates in CARP proceedings which determine the distribution of cable royalties and in those proceedings to determine the distribution of the royalties collected annually pursuant to chapter 10 of the Copyright Act, 17 United States Code.

the regulations governing the CARPs. For these reasons, the Office denies Program Suppliers' request to conclude its consideration of the proposed amendment before selecting the satellite distribution arbitration panel.

Interested parties may file comments on the issues outlined below, the proposed changes raised in both proposals, and on any other areas of concern.

I. Qualifications of the Arbitrators

Section 251.5 requires that each person serving on a CARP be an attorney with at least 10 or more years of legal practice. Program Suppliers assert that the recent decision by the District of Columbia Circuit upholding the Librarian's final determination as to the distribution of the 1990-1992 cable royalties compels a reevaluation of the all-attorney requirement. See *National Ass'n of Broadcasters v. Librarian of Congress*, 146 F.3d 907 (D.C. Cir. 1998). In that decision, the Court noted that the CARP system "replace[d] the Tribunal's quasi-adjudication with an arbitration undertaken by an ad hoc panel whose proposed settlement is then reviewed by final decisionmakers * * *." Id. at 920 (citing H.R. Rep. No. 103-286, at 11 (1993)). Program Suppliers argue that because the CARP system seems to move away from the classic adjudicatory model, "individuals from disciplines other than law should be permitted to serve as arbitrators, [thereby bringing] to the process a perspective and expertise that the all-attorney requirement excludes." Program Suppliers' Request at 4. In essence, Program Suppliers believe that the all-attorney panel's lack of any experience with the technical, economic, and industry concepts central to these proceedings have impeded the process, or at the very least, "did nothing to enhance the efficiency or the quality of the hearing or decisionmaking processes." Id. at 5.

The current provision was considered when the Copyright Office promulgated the CARP regulations now in effect. At that time, the Office determined that arbitrators should be attorneys because of the judicial nature of the proceedings. See Notice of Proposed Rulemaking, 59 FR 2550 (January 18, 1994); Interim Regulations, 59 FR 23964 (May 9, 1994); Final Rules, 59 FR 63025 (December 7, 1994). Nevertheless, the Office invites comments on these provisions once again, in light of the recent decision from the District of Columbia Circuit and the parties' experience with the all-attorney panels in the five concluded proceedings.

II. Public Records

Unlike the recommendation of the Register of Copyrights and the final order of the Librarian of Congress, which are published in the **Federal Register** in accordance with 17 U.S.C. 802(f), the official report of the CARP is not. The Office has chosen instead to make it available to the public for inspection and copying through the Office of the Copyright General Counsel. The Office decided against publication of the panel's report in the **Federal Register** for two reasons: (1) It is fully discussed in the Register's published recommendation, and (2) it is not a final determination. The Office has also begun to post the CARPs' reports on its website. See <http://www.loc.gov/copyright/carp>.

III. Formal Hearings

Section 251.41(b) permits a CARP to decide a controversy or rate adjustment on the basis of written pleadings, without an oral hearing, in certain circumstances. A petition to dispense with formal hearings may be granted by the Librarian during the 45-day precontroversy period if (1) there is no genuine issue of material fact to be decided or (2) all parties agree to the petition. The Office is considering whether to expand this provision to add other circumstances upon which the Librarian may grant a petition to dispense with formal hearings.

As § 251.41(b) currently is written, the provision for a CARP determination based on a written record is consistent with copyright law and the Administrative Procedure Act (APA). The Copyright Act states that a CARP "shall act on the basis of a fully documented written record" and any copyright owner or other person participating in arbitration proceedings "may submit relevant information and proposals" to the arbitration panels. 17 U.S.C. 802(c). CARP proceedings are also subject to the requirements of the Administrative Procedure Act, subchapter II of chapter 5 of title V of the United States Code. 17 U.S.C. 802(c). The APA states that an agency may "adopt procedures for the submission of all or part of the evidence in written form" so long as "a party will not be prejudiced thereby." 5 U.S.C. 556(d). Principles of due process provide guidance as to what would prejudice a party.

In *Gray Panthers v. Schweiker*, 652 F.2d 146, 164 (D.C. Cir. 1980), the U.S. Court of Appeals for the District of Columbia Circuit discussed four factors to be weighed in determining the "dictates of due process" in any

assessment of whether procedural requirements afford the parties adequate protection. The factors include: the private interest affected, the risk of an erroneous deprivation of such interest, the probable value of additional or substitute procedural safeguards, and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

There are a number of factors that weigh in favor of expanding § 251.41(b). The nature of CARP proceedings and the type of issues involved heavily depend on documentary evidence. Consequently, there is often no need for the fact finder to observe the demeanor of witnesses to weigh the value of their testimony. All parties have full access to the written record that is the basis for the decision. Discovery procedures offer any party the opportunity to test the other parties' factual assertions by requiring the production of underlying facts, and therefore diminish the need for cross-examination. On the other hand, one argument in support of oral hearings is that certain parties are less sophisticated or less capable of representing themselves and an oral hearing can overcome these problems.

The Office believes, however, that most of the factors established in *Gray Panthers* favor expanding the circumstances in which a CARP may base its determination on a written record without conducting oral hearings in order to promote the public interest by reducing costs and promoting administrative efficiencies. The Office would like to receive comments from interested parties about whether there are additional circumstances upon which the Librarian could base his determination to allow the CARP to proceed solely on the basis of the written pleadings, without violating due process requirements.

In addition, the Office also welcomes comments on the procedures for waiving oral hearings. For example, should the Librarian continue to rule on petitions to waive oral hearings or should the CARP make such determinations?

IV. Written Cases

A. Incorporation of Past Testimony

Section 251.43(c) states:

Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

There seems to be some misunderstanding regarding this provision, since objections were filed

when opposing parties incorporated prior testimony into their written direct case by reprinting it. The term "designate," however, is not limited to identifying where the documents may be found. It is also permissible for a party to include the entire text of prior testimony in the direct case. Therefore, the Office proposes to amend § 251.43(c) to clarify this interpretation.

The amended regulation also removes any use of the more general term "record," in favor of the more specific term, "testimony," to avoid any confusion about the nature of the past records that a party may include in his or her direct case.

The Office invites comments on whether and why it should be permissible to designate past "records" and why records other than past testimony should be included in a party's direct case. In addition, the Office is proposing a conforming amendment to § 251.43(e).

B. Declaration of Stated Claims or Requested Rates and Terms

The Office proposes amending § 251.43(d) in two respects. First, the Office proposes requiring the addition of proposed terms to the direct case. With the passage of the Digital Performance Right in Sound Recordings Act, there are now a number of proceedings where the CARP is supposed to determine the terms, as well as the rates. Therefore, when a party files a written direct case in a rate setting proceeding, the Office proposes to add a requirement that the party must state its requested terms, if that is an issue in the proceeding, as well as its requested rate.

Second, the Office proposes clarifying the point at which settlement is reached. The Office has a strong policy in favor of private settlements, which it wishes to encourage at every step of the process. Therefore, the Office invites comment on two alternative proposals for reaching settlement during the final phase of the process prior to the empaneling of a CARP.

Under the first proposal (which is the approach adopted in these proposed amendments), a party states in its written direct case a percentage or dollar claim, or proposes a rate, which may be accepted by all the other parties to the proceeding within seven days of filing the direct case. If the other parties accept the stated claim or rate, they can so notify the Librarian. Such an acceptance may then become the basis upon which the Librarian may make the official distribution or rate adjustment without it being necessary to send the case to the CARP. This official

distribution or rate adjustment can be made with or without precedential effect, according to the wishes of the parties. See proposed § 251.43(d). Once the Librarian is so notified, the party whose requested claim or rate has been accepted by all other parties will not be able to revise its claim or rate, and thus thwart a resolution of the dispute. However, until and unless the other parties accept the requested claim or rate during the specified ten day period, no party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of facts and conclusions of law. The Office proposes to retain the parties' option to revise their claims or rates, in the absence of the other parties' agreement, to encourage realistic assessment of their cases in light of evidence that is developed during the proceeding.

Another approach to settlement after the filing of the written direct case would be to allow the Librarian to adopt a proposed claim or rate in those instances where no party files an objection to another party's proffered claim or rate. As in the preceding proposal, the party making the percentage or dollar claim, or proposed rate, would be unable to adjust the proffered claim or rate during the specified ten day period. Of course, it may occur in a particular proceeding that the sum of the parties' claims to royalties would exceed 100% of the royalty pool, in which case the Librarian would be unable to adopt any parties' proposed percentage or dollar claim to the fund in those instances where no objections were filed. Similarly, the Librarian would be unable to choose among several proposed rates offered for a similar purpose in any proceeding where more than one of the rates remained unchallenged.

In spite of these potential problems, the Office considers it worthwhile to explore these options to settlement. Therefore, the Office seeks comment from all interested parties on the two proposals for late stage settlement; or alternatively, parties may offer their own proposals for further consideration. The object of any proposal, however, is to encourage fair and equitable settlements among the parties while increasing the efficiencies of the administrative process.

V. Filing and Service of Written Cases and Pleadings

A. Subscription and Verification

The Office proposes an amendment to § 251.44(e)(2), which deals with *pro se* parties, to conform it to § 251.44(e)(1),

which contains parallel requirements for parties represented by attorneys. At the end of § 251.44(e)(2), the proposed amendment adds the requirement that the signature of a *pro se* party on a document filed in a case "constitutes certification that to the best of his or her knowledge and belief there is good ground to support the document, and that it has not been interposed for purposes of delay." This is a standard requirement for signatures on legal documents and should apply with equal force to all participants in a proceeding.

B. Service

Section 251.44(f) requires a party to serve a copy of all filings "upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself." Mr. Cannings proposes that in those cases where parties join together and file a single direct case, service should be made to a single lead counsel to be designated by the parties to the joint case, who in turn, would be responsible for distributing the pleadings further. In support of his request for the amendment, Mr. Cannings argues that the current requirement places an undue burden on an individual party, creating an inequitable and unfair financial hardship on an individual participant. The Office seeks comment on the Cannings proposal.

VI. Discovery and Prehearing Motions

Section 251.45 is an important provision of the CARP rules. The section sets the requirements for eligibility to participate in a CARP proceeding, establishes the terms of both precontroversy discovery and discovery during a proceeding, and delineates certain pleading requirements. Section 251.45 is the mainstay for procedural and evidentiary rulings that the Librarian has made in accordance with his authority under 17 U.S.C. 801(c). As such, the section has become the subject of much interpretation by the Librarian, and certain precedents have developed during the course of its application. The Office believes that these precedents need to be reflected in the rules, in addition to the other practice points raised for consideration, in order to maximize the effectiveness of the section.

A. Notices of Intent To Participate

Paragraph (a) of § 251.45 provides that parties wishing to participate in royalty distribution and rate adjustment proceedings must file a notice of intent to participate, as directed by the

Librarian. In cable and satellite royalty distribution proceedings, there are two phases to the distribution. The first phase involves dividing the collected royalties among the various claimant categories involved in the proceeding (music, sports, etc.). The second phase resolves disputes concerning the further distribution of royalties within a category that arise between individual claimants. The Office is proposing to amend paragraph (a) to require that parties filing a notice of intent to participate in royalty distributions identify in a single notice each phase of the proceeding in which they intend to participate. Specific inclusion of this provision in the regulation will ensure efficient administration of the process and give all parties a full, fair opportunity to participate.

B. Service of Pleadings During Precontroversy Discovery

Section 251.45 (b)(1)(i) and (b)(2)(i) provide that all motions, petitions, objections, oppositions, and replies filed during the precontroversy discovery period must be served by means no slower than overnight express mail. The Office seeks comment as to whether the requirement that pleadings be served by overnight express mail is unduly costly and, if so, given the limited precontroversy discovery period, how might service be otherwise permitted.

C. Discovery Practice by the CARP

Under current practice, the Librarian of Congress oversees discovery on the written direct cases, and the CARP oversees discovery on the rebuttal cases, although the Librarian has the discretion to designate discovery matters to the CARP for its resolution. Section 251.45(c)(1) of the rules, however, currently states that the CARP shall designate a period of discovery on both the written direct cases and the rebuttal cases, which suggests that there are two rounds of discovery on the written cases: one conducted by the Librarian and the other by the CARP. Therefore, the Office is deleting the reference to the written direct cases to make clear that the CARP oversees only discovery on the rebuttal cases and not on the written direct cases, unless otherwise directed by the Librarian.

D. Objections to Written Direct Cases

Currently, § 251.45(c)(2) provides that “[a]fter the filing of the written cases with a CARP, any party may file with a CARP objections to any portion of another party’s written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying

documents.” The Office is proposing to clarify this sentence so that parties make evidentiary objections to the CARP during the course of the proceeding and not to the Librarian during the precontroversy discovery period.

E. Precontroversy Discovery

Section 251.45(b) and (c) currently govern the establishment of a precontroversy discovery period, motions practice, and the limitations on discovery. The Librarian has extensively applied these provisions in each of the CARP proceedings he has conducted, and certain shortcomings of these rules have been identified. The greatest difficulties have surrounded the rather terse description in paragraph (c) of what types and categories of documents are subject to discovery in CARP proceedings. The Librarian has been called upon to resolve numerous discovery disputes and has fashioned certain principles to better articulate the boundaries of discovery. The Office believes that these principles should be included in the rules.

Consequently, the Office is recommending creation of a new paragraph (d), entitled “Limitations on discovery,” and redesignation of the current paragraph (d) as paragraph (f). The provisions of this new paragraph are intended to apply to both precontroversy discovery and any discovery that is directed by the CARPs.

1. Underlying Documents

Proposed § 251.45(d)(1) provides that parties “may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.” This is the current standard for discovery enunciated in current paragraph (c), and remains the standard governing discovery under the proposed changes. New paragraphs (1), (2), and (3) expand on the basic standard. Paragraph (1) provides that underlying documents include only those documents that underlie a witness’ factual assertions and do not include documents which are intended to augment the record with what the witness might have said or put forward, or explore the boundaries of what the witness said. They are also not documents which underlie a witness’ opinion testimony, since that testimony is not, by definition, a factual assertion.

Documents that underlie a witness’ factual assertions are those documents that the witness relied upon in making his or her assertion. Documents “relied upon” by a witness is a somewhat elusive concept, because these are not necessarily just the documents that a witness looked at and considered in

making his or her factual assertion. For example, a witness may make a statement based upon a summary fact sheet of a statistical survey. The facts asserted by the witness actually come from the statistical survey, even though the witness never actually examined, or perhaps even had access to the survey. In circumstances where the asserted facts are the essential part of the witness’ testimony, or are the crux of a claimant’s case, production of the statistical survey is appropriate. At the same time, however, the Library must balance the costs associated with production of the survey against the evidentiary benefits derived from the production. The Librarian must make these determinations on a case by case basis, and it would be inappropriate, if not impossible, to attempt to resolve these cases by codified rules. The Office, therefore, believes that a requirement for production of documents relied upon by a witness in making his or her factual assertions is a sufficient principle to announce in the rules, with specific applications of the principle left to the determination of the Librarian or the CARP as the circumstances warrant.

Paragraph (1) also provides that a party seeking discovery must identify, in its discovery requests, the specific factual assertion of a witness for which documents are sought. This includes identifying the witness by name, the page number on which the assertions appear, and the assertions themselves.

2. Supporting Documents for Bottom-Line Figures

Proposed § 251.45(d)(2) involves the principle of verification of bottom-line numbers. Both royalty distribution and rate adjustment proceedings are number-intensive, and many witnesses testify as to what, for example, a royalty rate should be, or why the royalty rate submitted by another party is the incorrect amount. Witnesses submitting this type of testimony must be prepared to exchange the documents that assisted them in offering their figures. Like underlying facts described in paragraph (1), however, a balance must be struck between the quality of the testimony produced by obtaining the supporting documents and the cost of producing the documents. It is not the goal of the CARP discovery process always to trace a bottom-line figure to its origins, for such a practice will often drive the cost of discovery well beyond the benefits of obtaining the documentation. The Librarian must balance the relevance of the testimony with the cost of obtaining supporting documentation and make individual determinations. The purpose

of paragraph (2) is, therefore, to state the principle rather than its application to particular circumstances.

Another sometimes elusive matter is what constitutes a "bottom-line figure." Many numbers may be offered as means of arriving at a specific distribution percentage or royalty rate, some of which can be considered bottom-line figures and others which are explanatory or elucidative. Again, the rule states the principle, not the application.

3. Confidential Material

Proposed § 251.45(d)(3) provides that where discovery may result in production of confidential materials, the parties may negotiate in good faith the terms of a protective order, subject to the approval of the Librarian. The parties are free and encouraged to negotiate a protective order on their own for submission to and approval by the Librarian.

4. Penalty for Lack of Responsive Discovery

To facilitate the precontroversy discovery schedule, proposed § 251.45(d)(4) states that all parties must be prepared to cooperate in the exchange of discovery material. A party may not withhold identified documents which it has said that it will produce simply because it is displeased with the response to its discovery requests by other parties. Document production is to take place on time, as directed in the discovery schedule. A party aggrieved by another's response or failure to respond to its discovery request currently has only the remedy of submitting a motion to compel production with the Librarian. Under the proposed rule, failure to comply with the production dates without a showing of good cause would result in the striking of the testimony which the documents underlie upon the motion of another party.

5. Organized Discovery Response

All parties must furnish the opposing sides with the underlying documents in as organized and usable a form as possible, whether in hard copy or digital format. Therefore, § 251.45(d)(5) requires the party producing documents to label each document corresponding to the request for which it is responsive. Production of undifferentiated documents, or the practice of "dumping" documents, is not acceptable.

F. Precedential Rulings

Section 802(c) of the Copyright Act, 17 U.S.C., states that "[t]he arbitration

panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration royalty panel determinations, and rulings by the Librarian of Congress under section 801(c)." The procedural rules of part 251 of 37 CFR are rules of general applicability to CARP proceedings, and interpretations of those rules made in the context of such proceedings apply with equal force to all subsequent CARP proceedings. This means that the Librarian's precontroversy discovery rulings serve as precedents for subsequent CARP proceedings as well. To make this clear, the Office proposes to add a new paragraph (e), entitled "Precedential rulings."

VII. Written Orders

The Copyright Office proposes amending § 251.50 to require that a CARP's substantive rulings be issued in written form along with a brief statement explaining the CARP's rationale. Currently, § 251.50 states that the CARP may issue rulings or orders that are necessary to resolve issues in the proceedings. This authority is based on the requirements contained in the Administrative Procedure Act at 5 U.S.C., subchapter II.

Currently, the only record of oral decisions is in the transcripts of the proceedings and one has to review the hearing transcript to find any reference to them. The proposed amendment has several benefits. It will provide a more structured approach to the decision making process and preserve orders in a more accessible form.

Section 555(e) of the Administrative Procedure Act already requires that denials of written applications, petitions or other requests be accompanied by a brief statement of the grounds for denial. The Copyright Office requests comments about this proposed change, in particular whether it should be limited to denials or whether it should apply to other types of orders.

VIII. Review of the CARP Report

The CARP must conclude its work and submit its determination within 180 days from publication of the notice of commencement of a CARP proceeding in the **Federal Register**. The statute also requires that "[s]uch report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination." 17 U.S.C. 802(e). The Register of Copyrights then reviews the CARP's report and makes a recommendation to the Librarian of Congress whether to accept or reject it.

If the Librarian rejects the Panel's determination, he or she issues an order setting the rate or distribution of royalty fees. *Id.*

Currently, § 251.55 allows any party to file with the Librarian of Congress a petition to modify or set aside the determination of the CARP during the first 14 days of the Librarian's review. 37 CFR 251.55(a). The regulations also allow an additional 14 days for replies to such petitions. 37 CFR 251.55(b). The petitions have proven extremely useful to the Librarian and the Register of Copyrights in their review of the CARP's report. The CARP itself, however, has no opportunity to review the petitions and replies to consider the arguments made therein. The Copyright Office believes that there have been occasions in past CARP proceedings when a Panel might well have modified its own decision if it had had the opportunity to consider the petitions that were filed with the Librarian. Thus, it might well increase the efficiency of the review process and the quality of the decisionmaking to give the CARP itself an opportunity to do so. Therefore, the Office seeks comment from interested parties on whether the CARP should have an opportunity to consider the petitions and to revise its report before the Register and the Librarian engage in their review.

Alternatively, the Office seeks comment on the possibility of remanding a determination of a CARP for further consideration in light of a determination by the Librarian that the report is arbitrary or contrary to law, or in those instances where the Librarian cannot determine whether there exist sufficient facts to support a conclusion that the Panel did not act arbitrarily. Cases might also occur where the record might indicate that the Panel acted arbitrarily, but there are insufficient facts on the record to allow the Librarian to substitute his or her own determination.

At this time, the Copyright Office is not proposing specific regulations which would require the parties to submit the petitions to modify directly to the CARP or provide for the possibility of a remand to the Panel under the circumstances outlined above. Instead, the Office invites comment from the interested parties on the advantages and disadvantages of instituting changes to the CARP system along the lines proposed herein.

IX. Other Suggestions Welcome

The Copyright Office welcomes any additional comments and suggestions from interested parties on other

substantive or procedural matters not covered by these proposed changes.

List of Subjects in 37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

Proposed Rules

For the reasons set out in the Preamble, Chapter II of Title 37 of the Code of Federal Regulations is proposed to be amended as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURES

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

2. Section 251.21 is amended by revising paragraph (a) to read as follows:

§ 251.21 Public records.

(a) All official reports of a Copyright Arbitration Royalty Panel are available for inspection and copying at the address provided in § 251.1.

* * * * *

3. Section 251.43 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 251.43 Written cases.

* * * * *

(c) Each party may include in its direct case designated portions of past testimony from prior Copyright Arbitration Royalty Panel or the Copyright Royalty Tribunal proceedings, including any exhibits associated with the designated testimony. Such designation may be done by reference to the appropriate proceeding or by including the text of the past testimony in the direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate and, if applicable, terms. If, within ten days of the filing of the direct case, all the other parties to the proceeding accept the proffered claim or rate and terms as the basis for a distribution or rate adjustment, they may so notify the Librarian. The Librarian may make the distribution or rate adjustment on that basis. The distribution or rate adjustment will have no precedential effect on future proceedings, unless all the parties to the

proceeding request otherwise. Until and unless all the other parties to the proceeding accept the proffered claim or rate, no party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP has taken official notice, or in the case of incorporation by reference of past testimony, or for good cause shown.

* * * * *

4. Section 251.44 is amended by adding a sentence at the end of paragraph (e)(2) to read as follows:

§ 251.44 Filing and service of written cases and pleadings.

* * * * *

(e) Subscription and verification. (1) * * *

(2) * * * A party's signature constitutes certification that to the best of his or her knowledge and belief there is good ground to support the document, and that it has not been interposed for purposes of delay.

* * * * *

5. Section 251.45 is amended by adding a sentence at the end of paragraph (a), revising paragraph (c), redesignating current paragraph (d) as paragraph (f), and adding new paragraphs (d) and (e) to read as follows:

§ 251.45 Discovery and prehearing motions.

(a) * * * All parties who file a notice of intention to participate shall identify any and all controversies in which they have an interest and intend to pursue that interest.

(b) * * *

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of rebuttal cases in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the initiation of a CARP proceeding, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised with the CARP before the closing of the record, or the party may thereafter be precluded from raising such an objection.

(d) *Limitations on discovery.* The following requirements apply to all proceedings conducted pursuant to this section:

(1) Parties may request of an opposing party nonprivileged documents that underlie a witness' factual assertions. In order to discover the documents that underlie a witness' factual assertions, the requesting party must identify the witness by name and specify the factual assertions of that witness for which supporting documents are sought. Documents that underlie a witness' factual assertions are those documents that the witness relied upon to make his or her assertion.

(2) Parties who offer total numeric or financial figures in a CARP proceeding without supporting documentation must be prepared to share underlying data that contributed to those totals so that the figures may be verified, notwithstanding any assertions of confidentiality.

(3) The parties may negotiate, under good faith, protective orders, subject to approval by the Librarian, so that the underlying data can be revealed and confidentiality can be protected.

(4) All parties to a proceeding must continue to comply with the discovery schedule for the exchange of any noncontroversial evidence, even when motions relating to discovery have been filed with the Librarian or the Copyright Arbitration Royalty Panel and are pending decision. Failure to show good cause as to why responsive documents were not produced by the deadlines established in a precontroversy discovery schedule shall result in the striking of testimony that the dilatory documents support.

(5) All documents offered in response must be furnished in as organized and usable a form as possible. Produced documents must be labeled to correspond with the categories in the request.

(e) *Precedential rulings.* The procedural rules of Subchapter B of 37 CFR are rules of general applicability to CARP proceedings. Interpretations of those rules by the Librarian of Congress or the CARP that are made in the context of such proceedings apply with equal force to all subsequent proceedings.

(f) * * *

* * * * *

§ 251.50 Rulings and orders.

6. Section 251.50 is amended by removing the words "contained in this subchapter" and in their place, adding the words "of the Copyright Office", and by adding a new sentence to the end of the paragraph to read, "Any such

rulings or orders must be issued in writing, accompanied by a brief statement in support of the ruling.”

* * * * *

Dated: November 23, 1998.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98-33607 Filed 12-17-98; 8:45 am]

BILLING CODE 1410-33-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC-035-1-9833b; FRL-6203-9]

Approval and Promulgation of Implementation Plans; South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) which updates the emissions inventory and emissions budgets for use in determination of Transportation Conformity in the Cherokee County Ozone Maintenance Area. This SIP revises emissions for the 1990 emissions inventory, and the 2000 and 2002 emissions budgets for Cherokee County. 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: Written comments must be received on or before January 19, 1999.

ADDRESSES: Written comments should be addressed to: Lynorae Benjamin at the EPA Region 4 Air, Pesticides and

Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, 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 SC-035-1-9833. 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), EPA, 401 M Street, SW, Washington, DC 20460.

EPA, Region 4 Air, Pesticides, and Toxic Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

SC DHEC, Environmental Quality Control District Offices, call (803) 734-4750 for nearest location.

FOR FURTHER INFORMATION CONTACT:

Lynorae Benjamin at (404) 562-9040. Reference file SC-035-1-9833.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rule's section of this **Federal Register**.

Dated: November 25, 1998.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 98-33472 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN 183-1-9824b; FRL-6204-3]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Section 111(d)/129 State Plans for Nashville/Davidson County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on December 24, 1996, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW) and

existing Municipal Solid Waste Landfills. The plans were submitted by the State to satisfy certain federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the State plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed 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. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by January 19, 1999.

ADDRESSES: Written comments should be addressed to Steven M. Scofield at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Steven M. Scofield, 404/562-9034.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531. 615/532-0554.

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville and Davidson County, 311-23rd Avenue, North, Nashville, Tennessee 37203. 615/340-5653.

FOR FURTHER INFORMATION CONTACT: Scott Davis at 404/562-9127 or Steven M. Scofield at 404/562-9034.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: July 30, 1998.

Winston A. Smith,

Acting Regional Administrator, Region 4.

[FR Doc. 98-33482 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62156E; FRL-6048-3]

RIN 2070-AC63

Lead; Identification of Dangerous Levels of Lead; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: EPA is making corrections to a proposed rule that would provide guidelines for managing lead in paint, dust, and soil in residences and child-occupied facilities. The proposed rule was issued under section 403 of the Toxic Substances Control Act (TSCA). The corrections address typographical errors and other drafting errors.

DATES: Written comments on the proposed rule remain due on or before December 31, 1998.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: For general information contact: National Lead Information Center's Clearinghouse, 1-800-424-LEAD (5323). For technical and policy questions contact: Jonathan Jacobson, Telephone: 202-260-3779, e-mail: jacobson.jonathan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply To Me?

The following table identifies the entities that would be involved in the implementation of regulations that would be affected by today's proposal and the effect of the proposal on implementation of those regulations.

Category	Examples of Entities	Effect of Proposal
Lead abatement professionals	Workers, supervisors, inspectors, risk assessors, and project designers engaged in lead-based paint activities	Provides standards that risk assessors would use to identify hazards and evaluate clearance tests; helps determine when certified professionals would be required to perform abatements
Training providers	Firms providing training services in lead-based paint activities	Provides standards that training providers would have to teach in their courses
HUD and other Federal agencies that own residential property		Proposed standards identify hazards that Federal agencies would have to abate in pre-1960 housing prior to sale
Property owners that receive assistance through Federal housing programs	State and city public housing authorities, owners of multifamily rental properties that receive project-based assistance, owners of rental properties that lease units under HUD's tenant-based assistance program	Proposed standards identify hazards that property owners would have to abate or reduce as specified by regulations currently being developed by HUD under authority of Title X, section 1012
Property owners	Owner occupants, rental property owners, public housing authorities, Federal agencies	Proposed standards identify hazards that would have to be disclosed under EPA/HUD joint regulations promulgated under Title X, section 1018

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be affected by this action through implementation of the elements of the programs discussed in this notice. To determine whether you, your business, or your agency is affected, you should carefully examine the Requirements for Lead-Based Paint Activities at 40 CFR part 745, subpart L and subpart Q and Lead-Based Paint Disclosure at 40 CFR part 745, subpart F and 24 CFR part 35, subpart H. The regulations covering evaluation and control of lead-based paint hazards in HUD-associated and Federally-owned housing are currently under development. Proposed regulations were published in the **Federal Register** on June 7, 1996 (61 FR 29169). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Documents?

A. Electronic Availability

Electronic copies of this document are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgstr/>).

B. In Person or By Phone

If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this proposed rule, including the public version, has been established for this proposed rule under docket control number OPPTS-62156E (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential

Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE-B607, Waterside Mall, 401 M St., SW., Washington, DC, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Nonconfidential Information Center telephone number is 202-260-7099.

III. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPPTS-62156E, in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Rm. G-099, East Tower, Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G-099, East Tower, Waterside Mall, 401 M St., SW.,

Washington, DC, Telephone: 202-260-7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS-62156E. Electronic comments on this proposed rule may also be filed online at many Federal Depository Libraries.

IV. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

V. What Should I Consider As I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.

• Make sure to submit your comments by the deadline in this notice.

• At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the document, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

VI. What Related Actions Preceded Today's Document?

In the **Federal Register** of June 3, 1998 (63 FR 30302) (FRL-5791-9), EPA published a proposed rule under Title IV of the Toxic Substances Control Act (TSCA). On July 22, 1998 (63 FR 39262) (FRL-6017-4), EPA extended the public comment period by 30 days, until October 1, 1998. On October 1, 1998, EPA announced in the **Federal Register** (63 FR 52662) (FRL-6037-7) that it would extend the public comment period until November 30, 1998. On November 5, 1998 (63 FR 59754) (FRL-6044-9), EPA announced in the **Federal Register** that it would hold a public meeting on December 4, 1998 and extend the public comment period until December 31, 1998 to accommodate the meeting. The corrections in this document are minor and do not affect anyone's ability to comment with the current public comment period. As such, comments remain due to EPA on or before December 31, 1998.

During the public comment period, interested parties have identified several errors in the proposed rule published in the **Federal Register** of June 3, 1998 (63 FR 30302). The errors consist of typographical errors and other drafting errors. This document corrects these errors.

VII. What Actions Were Required By the Various Regulatory Assessment Mandates?

This document does not impose any requirements. It only corrects errors in a proposed rule. As such, this document does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), or Executive Order 12898, entitled *Federal Actions to*

Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note). In addition, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). These determinations are based on this document. For information about the determinations made for the original proposed rule, please refer to the **Federal Register** of June 3, 1998 (63 FR 30349).

VIII. Are There Any Impacts on Tribal, State, and Local Governments?

There are no impacts on the State, local, or tribal governments. Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with those governments. If 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."

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

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely

affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those 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 officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

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

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: December 11, 1998.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

In FR Doc. 98-14736 published on June 3, 1998 (63 FR 30302) make the following corrections:

1. On page 30322, in the table entitled "Table 3.—Hazard Evaluation and Control Costs", under the second heading of the table entitled "Single-Family", in the fifth entry, "45,706" is corrected to read "5,706".

2. On the same page, in the same table, under the third heading of the table entitled "Multi-family (per unit)", in the fifth entry, "12,275" is corrected to read "2,275".

3. On page 30351, in the first column, under the paragraph entitled "4. Sensitivity and uncertainty analyses.", in the second paragraph, in the seventh line, "(Refs. 109 and 110)." is corrected to read "(Refs. 107 and 108)."

§ 745.227 [Corrected]

4. On page 30354, in the third column, in § 745.227(d)(4), remove the second sentence.

[FR Doc. 98-33630 Filed 12-17-98; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 91-346; FCC 98-322]

Intelligent Networks

AGENCY: Federal Communications Commission.

ACTION: Termination of proposed rule proceeding.

SUMMARY: The Federal Communications Commission terminates the proceeding concerning third-party access to the local exchange carriers' intelligent networks. Since we conclude that most of the issues raised in this proceeding have been addressed by the *Local Competition Order*, or are being considered in the *Computer III Further Notice*, which is the Commission's current review of its *Open Network Architecture* (ONA) and *Computer III* requirements, we terminate this proceeding.

FOR FURTHER INFORMATION CONTACT: Claudia Fox, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1580 or via the Internet at cfox@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202-418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 2, 1998, and released December 4, 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 of this document also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc98322.wp>, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th St., NW, Washington, DC 20036.

Synopsis of Order

1. In this Order, we terminate the proceeding concerning third-party access to the local exchange carriers' (LECs') intelligent networks. We conclude that most of the issues raised in this proceeding have been addressed

by the *Local Competition Order*, 61 FR 45476, August 29, 1996, or are being considered in the *Computer III Further Notice*, 63 FR 9749, February 26, 1998, which is the Commission's current review of its *Open Network Architecture* (ONA) and *Computer III* requirements.

2. The Commission initiated the *Intelligent Networks* proceeding (56 FR 65721, Dec. 18, 1991) in 1991 to consider whether the Commission should apply ONA requirements for the unbundling of network functionalities to the LECs' deployment of intelligent network technology. In 1993, the Commission adopted a Notice of Proposed Rulemaking that proposed requiring all Tier 1 LECs that deploy advanced intelligent networks (AIN) to provide third parties with mediated access to those capabilities. The Commission specifically proposed to require that Tier 1 LECs provide third parties with access to their service management systems for the creation and deployment of AIN-based services.

3. In February 1996, the Telecommunications Act of 1996 (1996 Act) became law, bringing sweeping changes to regulation of the telecommunications industry. Among other things, section 251 of the Act requires that incumbent LECs: (1) provide interconnection with requesting telecommunications carriers; (2) provide requesting telecommunications carriers with access to unbundled network elements; (3) offer retail services for resale at wholesale rates; and (4) provide physical collocation necessary for interconnection or access to unbundled network elements at the premises of the incumbent LEC.

4. In August 1996, the Commission adopted regulations that implement the local competition provisions of the 1996 Act. With respect to AIN, the Commission determined that it was technically feasible for incumbent LECs to provide requesting telecommunication carriers with unbundled access to both the service creation environment and service management system, and access to the service control point for the purpose of interconnecting with a requesting carrier's switch. The Commission also concluded that there was not enough evidence to determine the technical feasibility of interconnecting third-party call-related databases to the incumbent LEC's signaling system.

5. On January 30, 1998, the Commission released the *Computer III Further Notice*, which proposes to revise the safeguards under which the Bell Operating Companies provide information services in light of the requirements of the 1996 Act. Among

other things, the Commission sought comment on whether the public interest would be served by Commission action, pursuant to our general rulemaking authority, to extend the availability of unbundling similar to that provided for in section 251 of the Act to information service providers. These entities do not have access to unbundled network elements under section 251 of the Act because they are not telecommunications carriers.

6. Most of the proposals in this proceeding concerning access to AIN by telecommunications carriers were adopted by the Commission in the *Local Competition Order*. Most of the issues in this proceeding concerning access to AIN by information service providers are now under consideration in the *Computer III Further Notice*. Based on the information currently available to us, it does not appear that there is a need to address the few remaining issues in this proceeding at present. If a need for consideration of these issues should arise in the future, we will institute appropriate proceedings.

7. Accordingly, it is ordered that the proceeding, *In the Matter of Intelligent Networks*, CC Docket No. 91-346, is hereby terminated.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98-33484 Filed 12-17-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98-200; FCC 98-298]

Assessment and Collection of Regulatory Fees For Fiscal Year 1999

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is seeking proposals to assist it in revising its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1999. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1999 sections 9(b) (2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of

reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due January 7, 1999 and Reply Comments are due January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418-0445, or the Fees Hotline at (202) 418-0192.

SUPPLEMENTARY INFORMATION:

Adopted: November 10, 1998.

Released: December 4, 1998.

TABLE OF CONTENTS

Topic	Paragraph No.
I. Introduction	1
II. Background	2
III. Discussion	4
a. Commercial Mobile Radio Services ("CMRS")	5
b. Space Stations	
i. Geostationary Orbit Space Stations ("GSOs")	10
ii. Non-geostationary Orbit Space Stations ("NGSOs")	11
c. Interstate Telephone Service Providers	12
d. Treatment of New Services in all Feeable Categories	16
IV. Procedural Matters	
a. Comment Period and Procedures	19
b. <i>Ex Parte</i> Rules	24
c. Authority and Further Information	25

I. Introduction

1. By this *Notice of Inquiry* ("NOI"), the Commission begins a rulemaking proceeding seeking comments and suggestions for revising its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress requires it to collect for Fiscal Year ("FY") 1999.¹

II. Background

2. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.² In our FY 1994 *Report and Order*,³ we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required

¹ 47 U.S.C. 159(a).

² *Id.*

³ 59 FR 30984 (Jun. 16, 1994).

by Congress.⁴ Subsequently, in our FY 1995, FY 1996, FY 1997 and FY 1998 fee Orders,⁵ we modified the Schedule to increase by approximately 93 percent, 9 percent, 21 percent, and 7 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect for FY 1995, FY 1996, FY 1997 and FY 1998. Also, in our FY 1995, FY 1996, FY 1997 and FY 1998 fee Orders, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years.⁶

3. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services."⁷

III. Discussion

4. Pursuant to its FY 1998 *Notice of Proposed Rulemaking* ("NPRM"),⁸ the Commission received comments from interested parties concerning its proposed "permitted amendments" to the fee schedule. However, the Commission rejected some and was unable to resolve several other of the commenters' proposals in time for inclusion in its FY 1998 *Report and Order*,⁹ due to the statutory 90-day advance notice required by Congress.¹⁰ Further, in its FY 1998 *Report and Order*, the Commission stated its intention to issue this *NOI* requesting that interested parties comment on possible solutions to these unresolved issues.¹¹ Briefly, the issues for which we seek comment include: (1) Clarification of the Commercial Mobile Radio Services ("CMRS") fee categories and demarcation of which types of services or usage to include in each category; (2) determination of the appropriate basis for assessing regulatory fees on geostationary orbit space stations ("GSOs"); (3) determination of the appropriate method of assessing our regulatory costs associated with non-

⁴ 47 U.S.C. 159(b), (f)(1).

⁵ 60 FR 34004 (Jun. 29, 1995), 61 FR 36629 (Jul. 12, 1996), 62 FR 37408 (Jul. 11, 1997), and 63 FR 35847 (Jul. 1, 1998), respectively.

⁶ 47 CFR 1.1151 *et seq.*

⁷ 47 U.S.C. 159(b)(3).

⁸ 63 FR 16188, (Apr. 2, 1998).

⁹ 63 FR 35847, (Jul. 1, 1998).

¹⁰ 47 U.S.C. 159(b)(4)(B).

¹¹ See FY 1998 *Report and Order* at paragraphs 48, 53, 55, and 67.

geostationary orbit space station systems ("NGSOs") to licensees which have launched satellites or to all NGSO licensees; (4) whether we should base revenues for interstate telephone service providers on the Universal Services Fund's end user methodology rather than the Telecommunication Relay Services Fund adjusted gross revenue methodology; and (5) whether we should create a "new services" category in our cost accounting system in which costs associated with development of new services, regardless of the service, would be proportionately assessed to all feeable categories rather than assessed to existing licensees in the same service category.

a. Commercial Mobile Radio Services ("CMRS")

5. For FY 1998, CMRS licensees authorized for operation on broadband spectrum¹² are subject to payment of the CMRS Mobile Services fee¹³ and licensees authorized for operation on narrowband spectrum¹⁴ are subject to payment of the CMRS Messaging Services fee.¹⁵ Our fee schedule considers the nature of the services offered only to the extent that services offered on broadband spectrum and services offered on narrowband spectrum are subject to different categories of fee payment. In our FY 1998 *NPRM*, we invited interested parties to comment on our proposal to continue this fee structure for CMRS services.

6. Several parties filed comments, in particular, concerning the demarcation between the CMRS Mobile Services and CMRS Messaging Services fee categories. SBC Communications Inc. ("SBC") urged us to adopt only a single CMRS fee covering all CMRS services, contending that both Congress and the Commission intended to create regulatory symmetry among the CMRS services, and, thereby avoid any

competitive advantage to narrowband personal communication service ("PCS") and specialized mobile radio ("SMR") service over cellular and broadband PCS.¹⁶ In contrast, Paging Network, Inc. ("Pagenet") supported retention of the existing fee category structure, but recommended adoption of a subcategory for non-voice networks and services within the CMRS Mobile Services fee category which would be subject to the same fee payment as licensees within the CMRS Messaging Services fee category.¹⁷ Pagenet argued that there are significant differences in network efficiency and the level of Commission regulation required between voice and non-voice operations such that non-voice services are being charged a disproportionate share of the CMRS Mobile Services costs.

7. BellSouth Wireless Data ("BellSouth WD") suggested that 900 MHz SMR licensees should be classified in the CMRS Messaging Services fee category, and not in the CMRS Mobile Services fee category in which 900 MHz SMR licensees are currently classified.¹⁸ BellSouth WD argued that regulatory fees should be governed by how the service bands are predominantly used on a licensee by licensee basis. BellSouth WD stated that the Commission has allocated 5 MHz of spectrum in each geographic region for 900 MHz SMR systems and that, in practice, this spectrum is licensed in 20 blocks, each consisting of 10 two-way 12.5 kHz paths, or 0.25 MHz per 10-channel block. Further, BellSouth WD contended that 900 MHz SMR systems do not have the capacity to compete with true broadband systems, lacking the amount of spectrum of those services included in the CMRS Mobile Services fee category. Thus, BellSouth WD suggested that either we include any authorization providing 25 kHz or less spectrum in the CMRS Messaging Services fee category, or we establish a third CMRS fee payment category for systems that operate in the 900 MHz SMR band and other CMRS services that are allocated no more than 5 MHz of spectrum. American Mobile Telecommunications Association ("AMTA") supported BellSouth WD's proposal.¹⁹

8. Small Business in Telecommunications ("SBT") argued that, because we classify narrowband PCS, which operates on 50 kHz paired

channels, in the CMRS Messaging Services fee category,²⁰ we should clarify that all CMRS stations which are authorized with channel bandwidth not exceeding 50 kHz are within the CMRS Messaging Services fee category. Moreover, SBT contended we should clarify that SMR systems and public coast stations are within the CMRS Messaging Services fee category since these stations are authorized with substantially less channel capacity than narrowband PCS stations.²¹

9. We must be able to determine, or estimate with some degree of precision, the number of feeable units that are within each fee payment category and be able to determine the pro rata share of our regulatory costs that must be assessed per feeable unit. We are not aware of any existing records or other sources of information that would permit development of any of the proposals offered by the commenters as summarized above. Therefore, we seek comments on these and solicit any other proposals to revise the methodology the Commission uses to determine its CMRS fee categories. Further, we ask that all comments on the above and any new proposals include data (or available sources for data) that would enable the Commission to definitively assign each type of service to the appropriate proposed fee category and provide an estimate of the number of feeable units contained in each category for FY 1999.

b. Space Stations

i. Geostationary Orbit Space Stations ("GSOs")

10. In the past, we have adopted the statutory fee schedule's "per satellite" method for assessment of fees upon licensees of geostationary (GSOs) space stations, 47 U.S.C. 159(g). The calculation of annual regulatory fees for GSOs has however been a matter of dispute for several years during which proposals for alternate methods of calculation have been presented. Therefore, we are seeking alternative methods of calculating fees based on different criteria and/or information from affected parties. We ask commentors to suggest alternative methods for assessing regulatory fees for GSO space stations. Along with suggestions, we ask commentors to specify the data upon which we can base any alternative approach and the most feasible method for obtaining the data necessary to calculate fees.

¹² Includes specialized mobile radio services (part 90), personal communications services (part 24), wireless communications services (part 27), public coast stations (part 80), and public mobile radio stations (cellular radio, 800 MHz air-ground radiotelephone, and offshore radio services (part 22)). See FY 1998 *Report and Order* at Attachment H, paragraph 14.

¹³ For FY 1998, this fee is \$0.29 per feeable unit. See FY 1998 *Report and Order* at Attachment F.

¹⁴ Includes licensees formerly licensed as part of the private radio services (private paging, qualifying interconnected business radio services, and 220-222 MHz land mobile systems (part 90)), and licensees formerly licensed as part of the common carrier radio services (public mobile one-way paging (part 22)) and licensees of personal communications services (one-way and two-way paging (part 24)). See FY 1998 *Report and Order* at Attachment H, paragraph 15.

¹⁵ For FY 1998, this fee is \$0.04 per feeable unit. See FY 1998 *Report and Order* at Attachment F.

¹⁶ See Comments of SBC Communications, Inc. at p. 7.

¹⁷ See Comments of Paging Network, Inc. at p. 2.

¹⁸ See Comments of BellSouth Wireless Data, L.P. at p. 2.

¹⁹ See Reply Comments of American Mobile Telecommunications Association, Inc. at pp. 2-4.

²⁰ See FY 1998 *Report and Order* at Attachment H, paragraph 15.

²¹ See Comments of Small Business in Telecommunications at pp. 5-6.

ii. Non-geostationary Orbit Space Stations ("NGSOs")

11. In our FY 1998 *Report and Order*, we continued to require that NGSO licensees pay for NGSO systems by requiring a fee payment "upon the commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g) or upon certification of operation of a single satellite pursuant to section 25.121(d)." In our FY 1998 proceeding, Orbital Communications Corporation ("ORBCOMM") contended that, because all NGSO licensees benefit from our policy, enforcement and information activities and services, the Commission should recover its NGSO space station regulatory costs from all NGSO licensees, rather than from only those that have launched their initial satellite.²² As we stated in our FY 1998 *Report and Order*, we are including ORBCOMM's proposal in this *NOI* and seek comment here on ORBCOMM's proposal, as well as alternative proposals.

c. Interstate Telephone Service Providers

12. For FY 1998 we adopted the methodology for assessing fees upon interstate telephone service providers that we had employed in past years. Under this methodology, interstate telephone service providers calculate their regulatory fees based upon their proportionate share of interstate revenues using the methodology we developed for contribution to the TRS Fund.²³ However, in order to avoid imposing a double fee payment upon certain interstate telephone service providers (e.g. resellers), we permit those interstate telephone service providers to remove, from their gross interstate revenue, payments made to underlying carriers for telecommunications facilities and services, including payments for interstate access services.

13. In our FY 1998 proceeding, SBC contended that our methodology imposes an undue burden upon the local exchange carriers ("LECs") because we permit interexchange carriers ("IXCs") to deduct payments made to underlying common carriers from their gross interstate revenues while LECs do not have such payments to deduct. SBC suggested that use of end user revenues—the same contribution base used for the Universal Service

Fund—to calculate the annual fees would alleviate that burden and be more competitively neutral.²⁴

14. In our FY 1998 proceeding, we declined to adopt SBC's proposal. We disagreed with SBC's description that end user revenues are more competitively neutral than our current methodology. Specifically, assuming that all fees are recovered from customers, including customers of interstate telephone service providers that purchase their service for resale, retail customers would still pay the same rates. To the extent that services are provided in competition with other interstate telephone service providers, those interstate telephone service providers would pay the same percentage amounts when providing the same services to the same customers. Additionally, in the FY 1998 proceeding, we said we do not have adequate data to estimate total common carrier interstate end user revenue.²⁵

15. As we indicated in our FY 1998 *Report and Order*, we are revisiting SBC's proposal here. Thus, we ask the common carrier industry to comment on the feasibility of relying on end user revenues as provided to the Universal Services Fund, as opposed to net revenues based upon the TRS Fund. Further, we ask that commenters specify the data upon which we can base this or any other alternative approach and the most feasible method for obtaining this information.

d. Treatment of New Services in All Feeable Categories

16. In our FY 1998 proceeding, a number of payors of GSO fees argued that licensees in existing GSO satellite services unfairly bear the cost of our policy and rulemaking activities related to the development of rules and procedures for "new" GSO satellite services. They suggested that we create a separate regulatory category in our regulatory cost accounting system for "new services" where the Commission has not yet authorized a licensee. Regulatory costs associated with the development of policy and rules for such new services throughout the Commission would be charged to this cost category and distributed across all fee payors when calculating regulatory fee rates for any given fiscal year. Regulatory costs associated with these new services would be charged to the appropriate service, as they are now, upon the grant of the first authorization or license for that service.

17. In our FY 1998 *Report and Order*, we concluded that due to a tight collection schedule, as a practical matter, we had no viable alternative other than adoption of the fees as proposed in the *NPRM*, without any of the amendments proposed by commenters. However, as indicated in our FY 1998 *Report and Order*, we seek comment on this and other alternative approaches to our current regulatory fee cost recovery methodology for new and developmental services. Specifically, we seek comment on whether a regulatory category for "new services," which would impact payors in all services, should be added to our cost accounting system.

18. In addition, in our FY 1998 proceeding, some parties suggested that the Commission identify more clearly costs related to those activities intended to be covered by regulatory fees. We seek comment on whether and how we should further distinguish our costs, in particular those costs related to regulatory activities and ongoing regulation of licensees. Further, we seek suggestions as to how we can ensure that the amounts collected are distributed properly among our fee categories.

IV. Procedural Matters

a. Comment Period and Procedures

19. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 7, 1999, and reply comments on or before July 19, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

20. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail

²² See Comments of Orbital Communications Corporation at p. 3.

²³ See *Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993).

²⁴ See *Report and Order In the Matter of Universal Service*, 62 FR 32861 (Jun. 17, 1997).

²⁵ See FY 1998 *Report and Order* at paragraph 67.

address." A sample form and directions will be sent in reply.

21. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

22. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th St., SW, Room 1-C807, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case MD Docket No. 98-200, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

23. Documents filed in this proceeding will be available for public inspection during regular business hours in the FCC Reference Center, of the Federal Communications Commission, Room 239, 1919 M Street, NW, Washington, D C 20554, and will be placed on the Commission's Internet site.

b. *Ex Parte* Rules

24. This is an *NOI* which is exempt from the *ex parte* rules, and presentations to or from Commission decision making personnel are permissible and need not be disclosed.²⁶

c. Authority and Further Information

25. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of

1934, as amended, 47 U.S.C. 154(i)—(j), 159, and 303(r). It is ordered that this *NOI* is adopted.

26. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418-0192, or you may e-mail your questions to mcontee@fcc.gov.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-33564 Filed 12-17-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 120998C]

RIN 0648-AK31

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 16A

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 16A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before February 16, 1999.
ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 16A, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266, Phone: 813-228-2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was

prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 16A would prohibit the use of fish traps in the exclusive economic zone of the Gulf of Mexico south of 25°03' N. lat. after February 7, 2001; prohibit possession of reef fish exhibiting trap rash on board a vessel that does not have a valid fish trap endorsement; and require fish trap vessel owners or operators to provide trip initiation and trip termination reports and to comply with a vessel/gear inspection requirement. In addition, Amendment 16A proposes that NMFS develop a system design, protocol, and implementation schedule for a fish trap vessel monitoring system.

Availability of and Comments on Amendment 16A

NMFS has prepared a proposed rule to implement Amendment 16A. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule and may publish it in the **Federal Register** for public review and comment.

Comments received by February 16, 1999, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 16A. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 16A or on the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: December 15, 1998.

Gary C. Matlock,

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

[FR Doc. 98-33603 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. ; I.D. 110998F]

RIN 0648-AJ33

Fisheries of the Northeastern United States; Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

²⁶ 47 CFR 1.204(b)(1).

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement proposed Amendment 7 to the Fishery Management Plan (FMP) for the Atlantic Sea Scallop Fishery. Amendment 7 and these proposed regulations would reduce the fishing mortality rate in the Atlantic sea scallop fishery to eliminate overfishing and rebuild the biomass in accordance with the requirements of the Sustainable Fisheries Act (SFA). Amendment 7 and these proposed regulations would substantially reduce the level of fishing for Atlantic sea scallops in the exclusive economic zone (EEZ) through fishing year 2008 by revising the fishing effort reduction schedule presently in effect by significantly reducing the allowable days-at-sea (DAS) for Atlantic sea scallop vessels starting with fishing year 2000. A less severe reduction is proposed for fishing year 1999. In addition, Amendment 7 and these proposed regulations would implement an annual monitoring process, increase the types of management measures that would be put into effect through framework adjustments, and continue two Mid-Atlantic closed areas until March 1, 2001. The intent of Amendment 7 and these proposed regulations is to eliminate overfishing and rebuild the stocks.

DATES: Comments must be received on or before January 29, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Jon C. Ratters, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Proposed Rule for Amendment 7."

Copies of Amendment 7, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), the final supplemental environmental impact statement (FSEIS), and the supporting documents for Amendment 7 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Sausalito, MA 01906-1036.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978-281-9273.

SUPPLEMENTARY INFORMATION:

Proposed Management Measures

Amendment 7 to the FMP was prepared by the New England Fishery Management Council (Council). A notice of availability for the proposed amendment was published in the

Federal Register on November 18, 1998 (63 FR 64032). The amendment would: (1) Redefine overfishing; (2) revise the existing fishing mortality reduction schedule through fishing year 2008 to reduce the allowable DAS for Atlantic sea scallop vessels in order to rebuild the scallop stock within 10 years; (3) establish an annual monitoring and review process to adjust management measures to meet the stock rebuilding objectives; (4) continue the Mid-Atlantic closed areas in order to protect high concentrations of juvenile scallops; and (5) allow the following management measures to be implemented and adjusted through framework adjustment: Closed areas, changes in the overfishing definition, size restrictions, aquaculture projects, and four DAS management options, including leasing DAS. The most contentious feature of Amendment 7 is the proposed stock rebuilding schedule that would set the allocation for fishing year 1999 at 120 DAS. Under the existing schedule, DAS would be 108 days for fishing year 1999. The allocation for fishing year 2000 would be reduced to 51 DAS and would remain low for the remainder of the 10-year rebuilding period. The intent of Amendment 7 is to eliminate overfishing and rebuild the stock consistent with new requirements of the Magnuson-Stevens Act. Amendment 4 was implemented in 1994 and included restrictions on DAS that were to be phased in over a 7-year rebuilding period as the primary means of achieving fishing mortality reductions. In 1997, the Council's Plan Development Team (PDT) evaluated the current FMP's effectiveness in achieving the target fishing mortality rate. The PDT concluded that further reductions in DAS (to 80 DAS) than originally scheduled (to 108 days) would be necessary for the 1998 - 1999 fishing years. The Council voted against the PDT recommendation to reduce DAS and proposed an interim action to close two Mid-Atlantic areas until March 26, 1999. These closures serve to protect concentrations of juvenile scallops in order to achieve spawning stock biomass targets.

The current fishing mortality rate is 1.05 in the Mid-Atlantic, 0.51 on Georges Bank, and 0.94 for the overall scallop resource. The recommended fishing mortality rate to reduce overfishing and rebuild biomass in accordance with the SFA requirements is currently estimated at 0.24 for the resource.

To achieve the necessary mortality rate reductions, proposed Amendment 7 would continue reduction of fishing effort through significant reductions in

DAS. For fishing year 1999 (which begins on March 1, 1999), DAS would be set at 120 for full-time, 48 for part-time, and 10 for occasional vessels.

The 120 DAS for fishing year 1999 is greater than the PDT's 1997 estimation of the DAS that would be needed to achieve the target mortality rate levels previously set by Amendment 4 (80 DAS). The Council decided to propose an intermediate level of 120 DAS for fishing year 1999 in order to minimize adverse social and economic impacts on the scallop fleet during the first year of the revised schedule, to allow the Council to further develop and consider rotational scallop closed areas, and to allow industry and the Council time to develop a vessel buyback program. Setting the DAS level at an intermediate level in the first year, means greater reductions in DAS during years 2-10. In year two, beginning on March 1, 2000, DAS would be reduced to 51 for full-time vessels and proportionately for the other categories. DAS are projected to remain below this level until year 10 of the program (2008). Annual monitoring and adjustment would allow increases in the DAS allocated if mortality and biomass levels needed to achieve a 10-year rebuilding schedule were attained.

If the effective date of the final rule implementing Amendment 7 falls after the start of the fishing year on March 1, 1999, fishing may continue. However, DAS used by a vessel on or after March 1, 1999, will be counted against any DAS allocation the vessel ultimately receives for the fishing year beginning March 1, 1999, through February 29, 2000.

Amendment 7 would redefine overfishing to mean:

If stock biomass is equal to or greater than MSY, as measured by the NMFS sea scallop survey weight per tow index of sea scallops age 3 and older, overfishing occurs when fishing mortality exceeds MSY, currently estimated at 0.24. If stock biomass is below MSY, overfishing occurs when fishing mortality exceeds the level that has a 50-percent probability to rebuild stock biomass to MSY in 10 years. The stock is in an overfished condition when stock biomass is below 1/4 MSY, and overfishing occurs when fishing mortality is above zero.

Amendment 7 would continue the Virginia Beach and Hudson Canyon scallop closures until March 1, 2001, originally closed on an interim basis from April 3, 1998, through September 27, 1998 (63 FR 15324, March 31, 1998), and extended again on September 28, 1998, through March 26, 1999 (63 FR 51862, September 29, 1998). The intent of this action is to afford continued protection to the resource by protecting high concentrations of 4-year-old

scallops. The benefits of these two closures will be evident through a more balanced age structure of the scallop stock. Also, significant reductions in fishing mortality and increases in yield per recruit are possible from the relatively small closures. Fishers pursuing species other than scallops will not be excluded from the closed areas.

Amendment 7 proposes an annual review by the Scallop PDT to evaluate the condition of the scallop resource and the effectiveness of the measures in achieving the stock-rebuilding objectives. The second review process scheduled for 1999 specified by Amendment 4 would be eliminated. In addition, the following framework measures are proposed: (1) Modifications to the overfishing definition; (2) leasing of DAS (provided that the Council holds a full set of public hearings); (3) scallop size restrictions; (4) approval of aquaculture projects; (4) modifications to Mid-Atlantic closed areas; (5) modifications to the demarcation line for DAS monitoring; (6) allocate DAS according to gear type; (7) implement closed areas to lessen DAS reductions; and (8) implement closed areas to increase scallop size.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the Magnuson-Stevens Act and with other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a FSEIS for the amendment; a notice of availability for the Draft EIS was published on June 26, 1998 (63 FR 34871). The proposed action will substantially reduce the level of fishing in the Atlantic sea scallop fishery in the EEZ.

This proposed rule has been determined to be significant for purposes of E.O. 12866.

To comply with the requirements of the Regulatory Flexibility Act (SFA), the Council prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities.

The Council initially considered three alternatives: (1) A baseline or status quo alternative based upon management measures implemented under Amendment 4 to the FMP, (2) a 7-year rebuilding plan, and (3) a 10-year rebuilding plan. After receiving comments on the DEIS for Amendment

7, the Council decided to add a new option as its preferred alternative that would still have an ambitious rebuilding schedule in years 2 through 10 of the plan but not in year one compared to the 7 and 10-year rebuilding plan. Under the baseline or status quo alternative, the DAS for full-time vessels would have been reduced from 142 in this current fishing year to 80 in year one to comply with Amendment 4. Instead, under the preferred alternative, the DAS for full-time vessels would be 120 in year one, a measure that would reduce the first year impacts on small entities compared to any of the other alternatives considered. The Council hopes that this will allow enough time for a buyout plan to be implemented for some vessels wishing to leave the sea scallop fishery (i.e., the total DAS available to the fishery would be divided among less vessels beginning in March 2000). Also, during the first year of effectiveness of the preferred alternative enough data might be collected in areas currently closed to harvest of groundfish and sea scallops to allow for some rotational, seasonal openings of these areas to harvest scallops. This approach is designed to minimize economic impacts on small entities, especially in the first year that the Amendment is effective. Recognizing the limitations on implementing the Council's recommendations under the Magnuson-Stevens Act, NMFS seeks comments on these alternatives and any others that may achieve the objectives of the rulemaking while minimizing its economic impact on small entities.

The proposed action would reduce the overall scallop revenues of the fleet by approximately 38 percent in the year 2000 (compared to the baseline) and by about 10 percent in the year 2007. A change in DAS is assumed to reduce a vessel's landings almost in the same proportion. Ex-vessel prices may increase to some extent as landings decrease. Of the full-time vessels, 184 of the 197 vessels derived more than 60 percent of their income from scallops in 1997. Of the 31 part-time vessels, 23 derived at least 31 percent of their income from scallops in 1997.

In the 1997 fishing year, there were only 26 vessels with limited access occasional permits, and only 5 of these vessels landed any scallops. These vessels did not have much dependence on the scallop fishery, and derived less than 5 percent of their revenues from scallops. Therefore, the proposed regulations are not expected to significantly affect occasional scallop

permit holders. Except in 1999, more than 2 percent of the full-time vessels may be forced to cease operations each year from the years 2000 through 2007.

If the draft Monkfish FMP is approved and implemented about the same time as Amendment 7 to the Atlantic Sea Scallops FMP, scallop vessels will be restricted to landing their monkfish while using their scallop DAS. The percentage of total annual revenues from monkfish landed while not on scallop trips is 8.3 percent for full-time dredges, 7.9 percent for part-time dredges, and 0.2 percent for occasional dredges. For scallop trawlers it is 12 percent, 2 percent for full-time vessels, 4 percent for part-time vessels and 6.1 percent for occasional vessels. A copy of this analysis is available from the Council (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 14, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.14, paragraphs (a)(110) and (a)(111) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(110) Fish for, possess or retain sea scallops in or from the areas described in § 648.57.

(111) Transit or be in the areas described in § 648.57 with scallop gear that is not properly stowed as required in § 648.57.

* * * * *

3. Section 648.53 is amended by revising the last sentence and chart of paragraph (b) as follows:

§ 648.53 DAS allocations.

* * * * *

(b) *DAS allocations.* * * * The annual allocations of DAS for each category of vessel for the fishing years indicated are as follows:

DAS category	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008+
Full-time	120	51	49	46	45	34	35	38	36	60
Part-time	48	20	19	18	18	14	14	15	17	24
Occasional	10	4	4	4	4	3	3	3	4	5

* * * * *

4. In § 648.55, revise paragraph (a) and the first sentence of paragraph (b), redesignate paragraph (h) as paragraph (j), redesignate paragraphs (c) through (g) as (d) through (h), add new paragraph (c), in redesignated paragraph (d), further redesignate paragraph (d)(12) as (d)(21) and add new paragraphs (d)(12) through (d)(20), and add new paragraph (i) to read as follows:

§ 648.55 Framework specifications.

(a) Annually, or upon request from the NEFMC, the Regional Administrator will provide NEFMC with information on the status of the scallop resource.

(b) Within 60 days of receipt of that information, the NEFMC PDT shall assess the condition of the scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 648.53 (b), and other management measures, to achieve the stock-rebuilding objectives. * * *

(c) Based on this review, the NEFMC PDT shall recommend total allowable DAS reduction schedules and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The NEFMC PDT must demonstrate through analysis and documentation that the options it develops are expected to meet the Scallop FMP goals and objectives. The range of options developed by the NEFMC PDT may include any of the management measures in the Scallop FMP, including, but not limited to the categories described in § 648.53 (d).

(d) * * *

(12) Modifications to the overfishing definition.

(13) VMS Demarcation Line for DAS monitoring.

(14) DAS allocations by gear type.

(15) Temporary leasing of scallop DAS requiring full public hearings.

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch.

(17) Aquaculture enhancement measures and closures.

(18) Closed areas to lessen the amount of DAS reductions.

(19) Closed areas to increase the size of scallops caught.

(20) Modifications to the opening dates of closed areas.

* * * * *

(i) If the Regional Administrator concurs in the NEFMC's recommendation, a final rule shall be published in the **Federal Register** on or about February 1 of each year. If the NEFMC fails to submit a recommendation to the Regional Administrator by December 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

* * * * *

5. Section 648.57 is revised to read as follows:

§ 648.57 Closed areas.

(a) Hudson Canyon South Closed Area. Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops in or from the area known as the Hudson Canyon South Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of §§ 648.23(b) and 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops in this area must stow scallop

dredge gear in accordance with the provisions of §§ 648.23(b) and 648.81(e). The Hudson Canyon South Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
H1	39 30' N.	73 10' W.
H2	39 30' N.	72 30' W.
H3	38 30' N.	73 30' W.
H4	38 40' N.	73 50' W.

(b) *Virginia Beach Closed Area.* Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops in or from the area known as the Virginia Beach Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of §§ 648.23(b) and 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops or not in possession of scallops in this area must stow scallop dredge gear in accordance with the provisions of §§ 648.23(b) and 648.81(e). The Virginia Beach Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
V1	37 00' N.	74 55' W.
V2	37 00' N.	74 35' W.
V3	36 25' N.	74 45' W.
V4	36 25' N.	74 55' W.

[FR Doc. 98-33483 Filed 12-15-98; 10:39 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 63, No. 243

Friday, December 18, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ramshorn Forest Vegetation Management, Shoshone Indian National Forest, Fremont County, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Shoshone National Forest previously published a notice of intent to prepare an environmental impact statement for forest vegetation management (**Federal Register** July 11, 1997, pages 37188–37189). This revised notice supplements the earlier notice, and does not contravene any of the information provided therein.

There are two reasons for filing a revised notice. First, at the time of the original filing, our estimate for publishing a draft EIS was February 1998. At the present time, we expect to publish a draft EIS in May of 1999. Second, the proposed action and the decision to be made have changed. For purposes of paperwork reduction, and to provide a reasonably timely response to a current oil and gas lessee, we are incorporating the analysis of a proposed exploratory well into the EIS.

The lease area and the proposed well site are located within the area being evaluated for vegetation management. While the vegetation management Interdisciplinary Team is performing site-specific analyses for prescribed fire and mechanical treatment of vegetation (including timber harvest), it can concurrently perform analysis for the proposed well and access road. Since most of the team members would be the same in either case, it is deemed to be more effective with our limited resources to produce one environmental document rather than two, for which the affected environments are the same.

The EIS document will adopt a purpose and need statement, a proposed action, and alternatives that will clearly separate the analyses, while recognizing that similar actions, issues, and potential effects accrue to both. All those who have indicated an interest in the vegetation management EIS will be notified directly of this change. Comments were received from some during the initial scoping process that encouraged joint analysis of the two actions, in part because they felt it would facilitate the display of cumulative impacts.

DATE: Additional comments concerning the revised notice should be sent in writing by January 22, 1999.

ADDRESSES: Send written comments to Bob Rossman, Project Interdisciplinary Team Leader, Shoshone National Forest, 808 Meadow Lane, Cody, Wyoming 82414.

FOR FURTHER INFORMATION CONTACT: Bob Rossman at the above address or phone (307) 527–6241. A detailed scoping statement for the proposed exploration well can be obtained. Also, updated information on the vegetation management portion of the project is available. Most of these items will soon be available at the web site reading room for the Shoshone National Forest. See www.fs.fed.us/r2/shoshone.

For those who intend to comment, please note the following. 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 only submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. 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.

Rebecca Aus,

Forest Supervisor.

[FR Doc. 98–33544 Filed 12–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Salado Creek Watershed, Bexar County, TX, Floodwater Retarding Structure Nos. 15Rev

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Salado Creek Watershed, Floodwater Retarding Structure (FRS) No. 15Rev, Bexar County, Texas.

FOR FURTHER INFORMATION CONTACT: John P. Burt, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, Telephone (254) 742–9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John P. Burt, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The recommended actions included in the original work plan as supplemented proposed installing 14 floodwater retarding structures as well as land treatment measures. All of the land treatment measures and 13 floodwater retarding structures have been installed. The environmental assessment addresses the installation of the remaining floodwater retarding structure (FRS 15Rev) that remain to be installed.

Installation of the site, including dam, emergency spillway, and additional borrow areas will require 58 acres. The dam will be planted to grasses that have wildlife values. The dam and emergency spillway will not be fenced to allow public access through McAllister Park.

The structures will not impact any prime farmland. Downstream flooding will be reduced.

Floodwater Retarding Structure No. 15Rev will be designed to drain the retained floodwaters within a 5 day period once inflow ceases. The environmental assessment will complete the necessary requirements for FRS 15Rev. Federal assistance will be provided under authority of Public Law 83-566, the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1008). Project costs for Floodwater Retarding Structure Nos. 15Rev is estimated to be \$3,821,400 of which \$3,350,000 will be paid from Public Law 83-566 funds and \$471,000 from local funds for landrights and project administration.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basis data developed during the environmental assessment are on file and may be reviewed by contacting John P. Burt.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: December 1998.

John P. Burt,

State Conservationist.

[FR Doc. 98-33497 Filed 12-17-98; 8:45 am]

BILLING CODE 3410-16-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities Submission for OMB Review; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled has submitted initial certification forms (Form 401 and Form 402) and annual certification forms (Form 403 and Form 404) to OMB for review and clearance under the provisions of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: Comments must be submitted on or before January 19, 1999.

ADDRESSES: Written comments should be sent to: Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for information, including copies of the forms and supporting documentation, should be directed to: Beverly L. Milkman, Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, VA 22202-4302, (703) 603-7740.

Title: Initial Certification-Qualified Nonprofit Agency Serving People Who Are Blind. (Form 401).

SUPPLEMENTARY INFORMATION: The Committee has an initial certification form for nonprofit agencies serving people who are blind. The information included on the form is required to ensure that nonprofit agencies requesting to participate in the Committee's program meet the requirements of 41 USC 46-48c.

Title: Initial Certification-Qualified Nonprofit Agency Serving People With Severe Disabilities (Form 402).

SUPPLEMENTARY INFORMATION: The Committee has an initial certification form for nonprofit agencies serving people with severe disabilities. The information included on the form is required to ensure that nonprofit agencies requesting to participate in the Committee's program meet the requirements of 41 USC 46-48c.

Title: Annual Certification-Qualified Nonprofit Agency Serving People Who Are Blind (Form 403).

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who are blind. The information included on the form is required to ensure that nonprofit agencies participating in the Committee's program meet the requirements of 41 USC 46-48c.

Title: Annual Certification-Qualified Nonprofit Agency Serving People With Severe Disabilities (Form 404).

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who have severe disabilities. The information included on the form is required to ensure that nonprofit agencies participating in the Committee's program meet the requirements of 41 USC 46-48c.

Dated: December 15, 1998.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-33613 Filed 12-17-98; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 20, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On September 4 and October 30, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 47226, 47227, 58361 and 58362) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Battleboard Kit, ID
 2590-01-398-8077
 2590-01-398-8078
 2590-01-398-8076
 2590-01-398-8079
 2590-01-398-8080
 2590-01-398-8072
 2590-01-398-8073
 2590-01-398-8075
 2590-01-398-8074
 2590-01-398-8087
 2590-01-398-8086
 2590-01-398-8089
 2590-01-398-8081
 2590-01-398-8082
 2590-01-398-8083
 2590-01-398-8090
 2590-01-398-7187
 2590-01-398-7188
 2590-01-398-7197
 2590-01-398-7194
 2590-01-398-7195
 2590-01-398-7193
 2590-01-398-7196
 2590-01-398-7189
 2590-01-398-7190
 2590-01-398-7192
 2590-01-398-7191
 2590-01-411-3170
 2590-01-411-3171
 2590-01-411-2566
 2590-01-411-3172
 2590-01-411-3174
 2590-01-406-0481
 2590-01-420-5984
 2590-01-421-7060
 2590-01-420-2878
 2590-01-421-7067
 2590-01-411-4390
 2590-01-411-4391
 2590-01-411-4393
 2590-01-420-2877
 2590-01-420-2875
 2590-01-399-1362
 2590-01-399-2933
 2590-01-399-2932
 2590-01-399-1363
 2590-01-399-1364
 2590-01-399-1365
 2590-01-398-6773
 2590-01-399-3840
 2590-01-398-3837
 2590-01-398-3838
 2590-01-398-3836
 2590-01-398-3839
 2590-01-398-3841
 2590-01-398-3835
 2590-01-398-3172
 2590-01-398-5161
 2590-01-398-5163
 2590-01-398-3847
 2590-01-398-5164
 2590-01-398-3842
 2590-01-398-5165
 2590-01-394-5639

2590-01-394-5640
 2590-01-394-5638
 2590-01-394-2530
 2590-01-394-2531
 2590-01-394-5635
 2590-01-398-5166
 2590-01-398-5172
 2590-01-398-5171
 2590-01-398-5168
 2590-01-398-6718
 2590-01-398-6719
 Dispenser, Glue Tape & Refill Cartridge
 8040-01-441-0178
 8040-01-441-0175
 8040-01-441-0169
 8040-01-441-0173

Service

Recycling Service, Island of Oahu, Hawaii, for the following U.S. Army Garrison Hawaii (USAG-HI) installations:
 Aliamanu Military Reservation (AMR)
 Fort Shafter (FS)
 Helemano Military Reservation (HMR)
 Tripler Army Medical Center (TAMC)
 Wainae Recreation Center (WRC)
 Wheeler Army Airfield (WAAF)
 Schofield Barracks (SB)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 98-33611 Filed 12-17-98; 8:45 am]

BILLING CODE 6355-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 20, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on

the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, Offutt Air Force Base, Nebraska, NPA: Envision, Inc., Wichita, Kansas.

Food Service Attendant, MacDill Air Force Base, Florida, NPA: Jobworks, Inc., St. Petersburg, Florida.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for deletion from the Procurement List.

The following services have been proposed for deletion from the Procurement List:

Access Control, Fleet and Industrial Supply Center, Oakland, California.
 Cardboard & Paper Scrap Recovery, Bonneville Power Administration, 11743 NE Sumner Street, Portland, Oregon.
 Document Processing, Naval Air Station, Alameda, California.
 Grounds Maintenance, Department of the Army, Television and Audio Support Activities, Mather Air Force Base, California.
 Janitorial/Custodial, Bonneville Power Administration, Kalispell Maintenance Complex, 2520 Highway #2 East, Kalispell, Montana.
 Janitorial/Custodial, Basewide, Fort Indiantown Gap, Annville, Pennsylvania.
 Janitorial/Custodial, Philadelphia International Airport, Air Mobility Command Terminal D/Concourse D, Philadelphia, Pennsylvania.
 Janitorial/Custodial, U.S. Army Reserve Center #3, 400 Dry Hill Road, Beckley, West Virginia.
 Laundry Service, Naval Station, Long Beach, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-33612 Filed 12-17-98; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSEA is seeking approximately three private-sector members with senior control expertise and direct experience in one or more of the following industries: machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals. Please send a short biographical sketch on the individual who wishes to become a candidate. The material may be faxed to the number below.

DEADLINE: This request will be open for 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482-2583. Materials may be faxed to (202) 501-8024, to the attention of Ms. Lee Ann Carpenter.

Dated: December 14, 1998.

R. Roger Majak,
Assistant Secretary for Export Administration.

[FR Doc. 98-33576 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Amended Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On April 16, 1998, the Department of Commerce published in the **Federal Register** (63 FR 18877) a notice of final court decision and amended final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al* for the period May 1, 1991, through April 30, 1992. After publication of the amended final results, we discovered that due to a ministerial error the weighted-average margins published for FAG Italia S.p.A. in the Italian case are incorrect. We are amending those results to correct this error.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Anne Copper, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4794 or 482-0090, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

Background

On April 16, 1998, the Department published in the **Federal Register** (63 FR 18877) amended final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al* covering the period May 1, 1991, through April 30, 1992. Subsequent to

the publication of the amended final results, we discovered a ministerial error with regard to the weighted-average margins published for FAG Italia S.p.A. in the Italian case. Specifically, for this company we published the weighted-average margins from prior remand results. The final weighted-average margins for FAG Italia S.p.A. were established in *FAG Kugelfischer Georg Schafer KgaA., FAG Italia S.p.A., FAG (U.K.) Limited, Barden Corporation Limited, FAG Bearings Corporation and The Barden Corporation v. United States*, Slip Op. 96-108 (July 10, 1996). The Court of International Trade affirmed those rates on December 12, 1996.

Amendment to Final Results

In accordance with section 735(e) of the Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy for the period May 1, 1991, through April 30, 1992. The revised weighted-average margin is as follows:

Company	BBs	CRBs
FAG Italia S.p.A.	5.19	21.90

Accordingly, the Department will determine and the Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by FAG Italia S.p.A. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department will issue appraisal instructions to the Customs Service after publication of these amended final results of reviews.

We are issuing and publishing this determination in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 353.28(c).

Dated: December 14, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-33606 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-830, A-475-822, A-580-831, A-791-805, A-583-830]

Postponement of Final Antidumping Determinations: Stainless Steel Plate in Coils From Canada, Italy, Republic of Korea, South Africa and Taiwan

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

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-0405 or (202) 482-3833, respectively.

EFFECTIVE DATE: December 18, 1998.

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, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Postponement of Final Determinations

The Department received requests pursuant to section 735(a)(2) of the Act to postpone its final determination to 135 days after publication of the Department's preliminary determination from the following producers/exporters of the subject merchandise:

- September 30, 1998—Yieh United Steel Corp. (Taiwan)
- October 29, 1998—Pohang Iron and Steel Co., Ltd. (Korea)
- November 2, 1998—Atlas Stainless Steels (Sammi Atlas) (Canada).

In November 1998, these respondents amended their requests to include a concurrent extension of the provisional measures (i.e., suspension of liquidation) for the same period, in accordance with the Department's regulations (19 CFR 351.210(e)(2)). The following additional respondents also requested postponement and extension of the provisional measures:

- November 5, 1998—Columbus Stainless (South Africa)
- November 16, 1998—Acciai Speciali Terni S.p.A.; Acciai Speciali Terni USA, Inc. (Italy).

In addition, on November 4, 1998, petitioners requested postponement of the final determination for 60 days if the preliminary determination with respect

to Taiwan is amended and results in a negative determination. On November 27, 1998, the amended preliminary determination was signed but continued to be affirmative. Therefore, in accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determinations are affirmative, (2) respondents requesting a postponement account for a significant proportion of exports from their respective countries of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' requests and are postponing the final determinations to no later than March 19, 1999, which is 135 days after the publication of the preliminary determinations. See Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Canada, 63 FR 59527; Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Italy, 63 FR 59530; Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 63 FR 59535; Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from South Africa, 63 FR 59540; and Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Taiwan, 63 FR 59524 (November 4, 1998). Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: December 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-33605 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice of final Certification of no degradation in service for the Combined Consolidation and/or Automation and Closure of 52 Weather Service Offices (WSO).

SUMMARY: On November 30, 1998, the Under Secretary for Oceans and

Atmosphere approved and transmitted 21 office consolidation, 51 office automation, and 52 office closure certifications to Congress. Pub. L. 102-567 requires such final certifications of no degradation in service be published in the **Federal Register**. This notice is intended to satisfy the requirements of Public Law 102-567.

EFFECTIVE DATE: December 18, 1998.

ADDRESSES: Requests for copies of the final certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301-713-0300 ext. 141.

SUPPLEMENTARY INFORMATION: The Charleston, West Virginia, Automation and Closure certifications were proposed in the January 7, 1997, **Federal Register**, and the 60-day public comment period closed on March 10, 1997. No public comments were received. The following certifications were proposed in the April 11, 1997, **Federal Register** and the 60-day public comment period closed on June 10, 1997.

Bridgeport, CT—Automation/Closure
 Indianapolis, IN—Automation/Closure
 Kansas City MO—Automation/Closure
 Lansing, MI—Automation/Closure
 Lincoln, NE—Automation/Closure
 Louisville, KY—Automation/Closure
 Milwaukee, WI—Automation/Closure
 Newark, NJ—Automation/Closure
 Rockford, IL—Automation/Closure
 Abilene, TX—Consolidation
 International Falls, MN—Consolidation
 Madison, WI—Consolidation/
 Automation/Closure
 Peoria, IL—Consolidation/Automation/
 Closure
 Rochester, NY—Consolidation/
 Automation/Closure
 Tucson, AZ—Consolidation/
 Automation/Closure

Six public comments were received pertaining to WSO International Falls, Minnesota, and two pertaining to WSO Lincoln, Nebraska. These comments and the NWS response are set forth here for reference.

Comments on International Falls: 1. A public comment from Gary Davison, City Clerk, International Falls stated, "The City had fought for years to keep the weather station here, because there was a large concern the forecasts would not be accurate from Duluth. The City had legislators supporting them for the same reason, and we are very disappointed with the final consolidation, and as expected, the forecasts are not accurate at all. We have a large vacation area here and it is very

disappointing that the forecasts are so unreliable."

2. A public comment from Tom West, President, International Falls Chamber of Commerce. His comments included the following, "* * * NEXRAD coverage over Int'l Falls and the north central portion of Minnesota is at and beyond the extreme limit of NEXRAD capabilities. NWS maps indicate that Int'l Falls is barely in the 10,000 ft. coverage level and areas west of Int'l Falls and east of Lake of the Woods are not covered at this level at all. Considering that much of our severe weather comes from the northwest, and the large bodies of water heavily used for recreational purposes are within that area, it is critical to upgrade rather than degrade weather services." Although not relevant to this consolidation certification, he also commented that the Automated Surface Observing System (ASOS) was unreliable and that the trained contract observers were "at a level well below that which has been provided in the past."

3. A public comment from Paul Nevanen, Director, Minnesota Cold Weather Resource Center. His comments included much of the same information about NEXRAD as stated by Tom West plus he added, "Also, during winter severe events, many significant types of weather develop below the 10,000 foot threshold. This is compounded by the fact that the Duluth NWS office was originally to be staffed by 10 forecasters. This level of staffing has not been [sic: been] met and the current level of 6 will be strained during the severe weather season. * * * This is the only area east of the Rocky Mountains that is not covered at the 10,000 foot threshold." He also included comments on perceived problems with ASOS which are not relevant to the consolidation certification.

4. The fourth public comment was from Jack E. Murray, Mayor, International Falls. Like the previous two comments Mr. Murray commented on lack of NEXRAD coverage and lack of full staffing at Duluth. He added, "I can tell you that the NWS no longer has the confidence that existed in this area for so many years. * * * There were a lot of promises made about the capabilities of the modernization. We certainly haven't seen this effect in our area."

5. The Honorable Irv Anderson, State Representative, Minnesota House of Representatives was the fifth commentator. Mr. Anderson's comments included, "By not providing the radar coverage level the rest of the country receives (most of the country enjoys multiple radar coverage) compounded

by removing trained NWS personnel constitutes a degradation of service.

* * * The modernization process has been one which seems to be filled with antagonism, when, in fact we are both seeking the same goal—better, more technologically advanced weather services for all our citizens. The NWS has set criteria, sited offices and radar units, but has never successfully addressed the concerns of the taxpayers of the northern border area of Minnesota. * * * I urge the National Weather Service to work with the people of northern Minnesota to correct this oversight by maintaining a 24 hour NWS manned station in International Falls and siting a NEXRAD unit there."

6. The sixth public comment was from James A. Sanders, Acting Superintendent, Voyager National Park, International Falls. He states, "Since the closure of the International Falls Weather Service Station, we have not had a reliable forecast for our local conditions or the approach of severe weather from the northwest. The safety of visitors, residents, and employees has been directly dependent on the International Falls Weather Service Station. The relocation of their duties to Fargo and Duluth has drastically reduced the reliability and accuracy of the local forecasts [sic: forecasts] we receive and increased the risk to all people working and enjoying the outdoors in this area."

NWS Response: NWS agrees WSR-88D coverage is about 10,000 feet in northwest Minnesota. International Falls was one of the 32 areas of concern that was studied by the Secretary's Report Team. The Team concluded, "* * * that there is no degradation in radar coverage in the International Falls area as a result of the NWS Modernization. Coverage from surrounding WSR-88Ds in Duluth and Grand Forks will provide radar data for the International Falls area which is equivalent or better to the current radar information available from the Duluth WSR-74C and the Fargo WSR-74S."

The Duluth office is currently (July 1997) staffed with the required forecasters and supervisors for Stage 1 operations. Five additional forecasters will be added in 1998 when Duluth receives its Advanced Weather Interactive Processing System (AWIPS). (AWIPS was installed in January 1998 and the 5 additional forecasters were in place in March 1998.)

The Duluth office is working closely with the U.S. Park Service (USPS) to improve forecasts and warning products for Voyageur's National Park (VNP). The forecasts for this area have always been prepared by the Duluth office and

consolidating the warning services from international Falls to the Duluth office has had no impact on the forecasts. Additional effort and coordination with personnel from VNP continues. On July 11, 1997, the acting Meteorologist in Charge (MIC) and the Weather Coordination Officer traveled to VNP and met with USPS staff. The following actions were initiated.

(a) NWS and USPS will work together to improve the reception of NOAA Weather Radio in the park. Currently, the eastern portion of the park is beyond the effective range of the current antenna. The USPS is looking into "gifting" a transmitter to the NWS. This transmitter would be located in VNP.

(b) NWS will continue the lake wind study to improve forecasts in the future.

(c) The Duluth Fire Weather Forecaster will coordinate with the Canada's atmospheric Environmental Scientists (AES) fire weather forecaster for the region.

(d) The Duluth office will obtain all available surface weather observations in the VNP area. A new observation was initiated at the Visitors Center providing information in a data-void area. (Local products began including specific reference to VNP on September 2, 1998.)

(e) NWS will continue to pursue the acquisition of radar data from Canada's AES to supplement the data from the NEXRAD Weather Service Office Duluth WSR-88D. (Duluth began receiving Canadian radar data on October 2, 1998.)

Addendum to Reply: AWIPS was installed at the future Duluth Weather Forecast Office (WFO) on January 9, 1998, and is operating using Build 3.0 software. Currently (February 1998), all but two senior meteorologists required for modernized operations are in place at Duluth. The two senior meteorologists have been selected and one is scheduled to arrive on March 1 and the second will arrive at Duluth on March 15, 1998, (Both were in place on March 15, 1998). Current (January 1998) meteorologist staffing at Duluth consists of:

- 1 Meteorologist in Charge,
- 1 Warning Coordination Meteorologist (WCM),
- 1 Science and Operations Officer (SOO),
- 3 Senior Meteorologists (remaining 2 were in place on March 15, 1998),
- 3 Journey Level Meteorologists, and
- 2 Meteorologist Interns (MI),
- 11 Meteorologists + 2 more on March 15, 1998, = total 13.

The remaining staff includes:

- 1 Data Acquisition Program Manager,
- 4 Hydrometeorological Technicians,
- 1 Electronic Systems Analyst,

- 2 Electronics Technicians, and
- 1 Administrative Assistant.

Comments on Lincoln, Nebraska: Two public comments were received, one from Mr. Les Myers, Jr. and a second from Mr. William E. Whitney. A public comment from Les Myers, Jr., Lincoln-Lancaster County Emergency Services, stated his concern over the "closing of any National Weather Service Offices." He said it was his opinion services had "deteriorated tremendously since the closing of the Lincoln Weather Service office and the transfer of responsibility to the Omaha office located in Valley, Nebraska." Mr. Myers listed several instances where warnings had been issued without previous watches and identified notification problems to emergency services by stating, "I found that long-standing policies have become unknown recently." He concluded with, "Service in severe weather situations has deteriorated measurably to Lincoln and Lancaster County and the above information testifies to that fact."

NWS Response: The MIC of the Omaha NEXRAD Weather Service Forecast Office (NWSFO) arranged for the Emergency Managers to visit NWSFO Omaha and for key members of NWSFO Omaha to visit the Lincoln-Lancaster County Emergency Operations Center (EOC).

—June 24, 1997, Carol Whitfoth, Assistant Coordinator of Lincoln-Lancaster County Emergency Services visited and received a briefing and tour of the NWSFO Omaha facility.

—June 30, 1997, NWSFO Omaha personnel, Steve Byrd (SOO), Brian Smith (WCM), and David Theophilus (MIC) visited and received a briefing and toured the EOC.

—July 9, 1997, Les Myers, Jr., and Jason Orth from EOC visited, received a briefing, and toured NWSFO Omaha.

The results of these meetings were positive, gave each of the office staffs a better appreciation for the operations at the other office, and resolved the communications problems. The issuance of tornado warnings for specific parts of the counties and the actual dividing lines to split the counties into sections (i.e., northeast Lancaster, southern Lincoln, etc.) were reviewed and agreed upon. Both parties agreed to work more closely together to ensure proper and timely issuance of severe weather statements to the public. Dave Theophilus (MIC) asked if a member of NWSFO Omaha could be included on the County Disaster Committee. EOC personnel said they would consider the offer. These coordination meetings have already paid dividends. On July 8, 1997, Steve

Byrd (SOO) had given Mr. Myers advance notice of possible non-supercell funnel clouds in Lancaster County. Mr. Myers said he really appreciated the call. Both agencies are satisfied the previously identified problems have been resolved and the agencies are working together to ensure timely relay of severe weather information.

A second public comment from William Whitney, Assistant Director State of Nebraska Emergency Management Agency (NEMA), said, "This closure plus other features of the National Weather Service (NWS) modernization in Nebraska has caused a significant degradation of service * * *". Mr. Whitney described several misunderstood aspects of the modernization. First, he did not understand what services would be provided from the Omaha office when WSO Lincoln was "automated at FAA Weather Observation Service Level B," nor did he understand "the relationship between the current Valley WSO and the Omaha WFO." Second, the modernization is not as responsive as the previous organization when "one meteorologist was responsible for forecasting warning and preparedness throughout the State." Currently, "we are forced to coordinate statewide matters with as many as six individual WSOs." Third, "The Valley WSO originally was built in the Lower Platte River 100 year flood plain contrary to Presidential Executive Order 11988." Fourth, "After several years we still cannot understand why it is "better" to deal with four different hydrologists especially when their areas of responsibility do not correspond to our river basins." Finally, WSO Lincoln used to advise us directly when severe weather was forecast or imminent and this was continued by the Valley office but we are now told that NWS "can no longer provide this service."

NWS Response: Further discussion and communication with Mr. Whitney have clarified any misunderstandings. Automation at FAA Weather Observation Service Level B means the ASOS will provide the primary observations and be backed up by observer trained FAA personnel at Lincoln. These individuals also are responsible for augmenting the ASOS observations for: Thunderstorm occurrence, tornadic activity, hail, virga, volcanic ash, tower visibility, long-line runway visual range, freezing drizzle, ice pellets, snow depth on ground, snow increasing rapidly remark, thunderstorm/lightning location remark, and observed significant weather not at station. The official name of the office

is Omaha although the office is actually located at Valley, Nebraska. The Omaha office started as a WSFO, then became a NWSFO when the WSR-88D was declared operational and will be a WFO after AWIPS becomes operational. There are six WCMs in Nebraska, each with a designated area of responsibility. One WCM is responsible for coordinating activities and coordinating with the NEMA. During siting of the office, NWS believed construction of the Union Dike would remove the area from the flood plain. Unfortunately this did not occur. However, the office has been elevated three feet above the 100-year flood level. Although there are four hydrologists spread among the six weather offices, two hydrologists are responsible for 88 of the 93 counties in Nebraska. In 1997, NWSFO Sioux Falls provided information about the Missouri River upstream from Gavins Point Dam that had not been available in prior years. NWSFO Omaha ensured this information reached NEMA. NWS will continue to work with NEMA to ensure river basin responsibility matches closely with county areas of responsibility and simplify notification of flood events. To be effective, communication of severe weather events to emergency management agencies must be rapid and reliable. On March 10, 1997, Dave Theophilus (MIC) met with Mr. Whitney and his staff to discuss severe weather warning notification, and especially after hours notification. They developed several ways to better distribute the required information. NEMA agreed to adopt a paging system and NWS personnel agreed to continue the present coordination method indefinitely. NWS believes all issues have been resolved.

The Modernization Transition Committee (MTC) at its June 25, 1997, meeting concluded these actions would not result in any degradation of service and endorsed the certifications.

The following certifications were proposed in the July 14, 1997, **Federal Register** and the 60-day public comment period closed on September 12, 1997.

Colorado Springs, CO—Automation/
Closure
Des Moines, IA—Automation/Closure
Dubuque, IA—Automation/Closure
Elkins, WV—Automation/Closure
Las Vegas, NV—Automation/Closure
Minneapolis, MN—Automation/Closure
Portland, OR—Automation/Closure
San Francisco, CA—Automation/
Closure
Spokane, WA—Automation/Closure
Casper, WY—Consolidation/
Automation/Closure
Huron, SD—Consolidation/Automation/
Closure

Rochester, MN—Consolidation/
Automation/Closure
Waterloo, IA—Consolidation/
Automation/Closure
Yakima, WA—Consolidation/
Automation/Closure
Yuma, AZ—Closure

No negative public comments were received. The MTC, at its September 24, 1997, meeting, concluded these actions would not result in any degradation of service and endorsed the certifications.

The following certifications were proposed in the October 2, 1997, **Federal Register** and the 60-day public comment period closed on December 1, 1997.

Abilene, TX—Automation/Closure
Concordia, KS—Automation/Closure
Ely, NV—Automation/Closure
Havre, MT—Automation/Closure
International Falls, MN—Automation/
Closure
Santa Maria, CA—Automation/Closure
Tupelo, MS—Automation/Closure
Valentine, NE—Automation/Closure
Wichita Falls, TX—Automation/Closure
Winnemucca, NV—Automation/Closure
Alamosa, CO—Consolidation/
Automation/Closure
Alpena, MI—Consolidation/
Automation/Closure
Houghton Lake, MI—Consolidation/
Automation/Closure
Kalispell, MT—Consolidation/
Automation/Closure
Lander, WY—Consolidation/
Automation/Closure
Norfolk, NE—Consolidation/
Automation/Closure
Sault Ste Marie, MI—Consolidation/
Automation/Closure
Scottsbluff, NE—Consolidation/
Automation/Closure
Sheridan, WY—Consolidation/
Automation/Closure
St. Cloud, MN—Consolidation/
Automation/Closure

One negative public comment was received for each Alamosa, Alpena, Houghton Lake, Kalispell, Norfolk, and St. Cloud. Fourteen public comments were received for Valentine. These comments and the NWS responses are set forth here for reference.

Comment on Alamosa, Colorado: One public comment received from Mr. Steven E. Vandiver, Division Engineer, Division of Water Resources, Water Division Three. Mr. Vandiver's comments were mainly concerned with what he felt to be a lack of complete radar coverage. His comments included, "There has historically been a NWS office at the Bergman Field Airport in Alamosa * * * and service is now provided out of Pueblo, Colorado. I do not feel that product is necessarily

better than what has historically been available from staff locally just because of the modernization * * *. The ring of mountains which surround this intermountain region do not allow the radars to pick up most storms. We have had increasing numbers of unusual weather, including tornadoes, funnel clouds, hail events, and severe windstorms. At least when personnel were stationed at the NWS office here, they could give visual reports of these events and worked closely with observers to give timely updated data * * *. The area that is missed by the three radars, even as evidenced by the coverage maps, is one of the highest precipitation areas in the Rocky Mountain range. Our agency uses rainfall and snowfall data to forecast resulting runoff and flooding possibilities * * *. These comments are by no means a reflection of the excellent staff and their efforts in the Pueblo NWS office. Bill Fortune and his crew have bent over backwards to serve this area and provide the best information possible. They have generated special products to meet specific needs of our agency and have done an excellent job."

NWS Response: NWS agrees the NEXRAD coverage is not complete over south-central Colorado. However, when compared to the pre-modernized coverage, the NEXRAD coverage from three radars in Colorado is improved over the single pre-modernized radar located near Limon. Warning verification statistics for severe weather show improvement. For severe weather, the probability of detection improved from 4 percent pre-modernized, to 42 percent under modernization. The Pueblo office is developing new products to meet customer needs. We are confident these new products will continue to improve with the modernization.

Comment on Alpena, Michigan: One public comment received from Mr. Jeff Welch, President, Welch Aviation. Mr. Welch stated, "I am not in favor of the Alpena, MI (APN) ASOS being certified * * *. In the interest of flight safety, I respectfully request that you do not certify the ASOS at Alpena, MI." In between, he listed a series of ASOS observations which resulted in a missed approach.

NWS Response: NWS reviewed the ASOS performance with Mr. Welch. He agreed the ASOS was performing accurately and all current information was available on the ground-to-air (GTA) radio. NWS provided Mr. Welch with more information on how to obtain weather via the GTA radio and an explanation about the additional meteorological discontinuity sensor.

Comment on Houghton Lake, Michigan: One public comment was received from Mr. Robert E. Howey concerning access to NEXRAD data from the Grand Rapids WSR-88D. Mr. Howey stated, "The Modernization Transition Committee can rest assured that my concern was addressed by the Meteorologist In Charge at the Grand Rapids office, but my concerns were certainly not resolved. The Grand Rapids' web page for radar coverage refers to the *National Weather Service Policy and Guidelines on Server Content for Internet Use*. Upon deciphering the reference, we users discover that our only access to NEXRAD weather radar coverage of our country is through something called UCAR. Whatever or wherever that is, it is slower and more prone to interruption than if I could be accessing the splendid radar information being collected and distributed by Grand Rapids station, which incidentally, displays a pleasingly high degree of excellence."

NWS Response: The NWS advised Mr. Hawley distribution of NEXRAD data was available through any of four NEXRAD Information Dissemination Service (NIDS) vendors.

Comment on Kalispell, MT: One public comment was received from Monte M. Eliason, Airport Manager, Flathead Municipal Airport Authority. Mr. Eliason's comments included, "As we have previously documented and stated, and ASOS cannot replace a manned weather service office without serious degradation of service. The government is wrong by any measure in a finding otherwise. The terminal area reports by ASOS, frequently lack the timely accuracy and broader picture of approaching weather such as thunderstorms, freezing rain, or area mountaintop obscuration."

NWS Response: NWS reviewed ASOS performance at Kalispell and determined it met specified standards. During the last year there have been 35 ASOS outages, and average repair times have been 15 minutes. Both the freezing rain sensor and the lightning sensor are operational. Video cameras were installed in June 1997 to visually depict local conditions, including the mountain obscurations. Forecasters have access to the video camera displays, and the images are also available on the Internet. Airport service level classifications were determined by the FAA. Kalispell was designated as a Service Level D site meaning it can operate with a stand-alone ASOS.

In the summer of 1997, the Aircraft Owners and Pilots Association Air Safety Foundation (ASF) requested

information from a random selection of pilots living in proximity to 25 service level D ASOS sites. The data collection was to determine pilot acceptance and use of ASOS. Requests were mailed to 10,000 pilots, and 1,027 responses were received.

Final conclusions of the ASF study, endorsed by the MTC, were that ASOS is representative and meets the needs of the identified service level D sites without degrading services.

Comment on Norfolk, Nebraska: One public comment was received from the Norfolk Airport Authority and was signed by Doris A. Kingsbury, Chairman; Gerald Arkfeld, Vice Chairman; Robert L. Carlisle, Secretary; Daniel E. Geary, Member; and Charles W. Balsiger, Member. They objected to the proposed automation. Their comments included, "The Norfolk Airport Authority strongly objects to the National Weather Service proposal to certify the automation of surface observations at Karl Stefan Memorial Airport, Norfolk, NE."

1. The system still makes significant errors regarding ceiling and visibility which must be corrected by the contract observer.

2. The system does not detect and reliably report freezing precipitation.

3. The system does not reliably report thunderstorms.

4. The system cannot detect and report rapidly changing local adverse weather conditions.

5. No provision has been identified for backup observations should the system fail, which would render the airport unusable to FAR Part 121 and 135 air carriers.

We fail to see how the system as it presently exists can be considered "equal or better service" and we further fail to see how this can be considered a safety enhancement to aviation. The previous system of human observers had no problem dealing with weather observations especially as regards rapidly changing weather events. From an aviation standpoint, the present system is poor at best. The augmentation of the system by contract observers makes the system acceptable, since there is a good chance that between the system and the contract observer the reported weather will be fairly accurate."

NWS Response: In the summer of 1997, the ASF requested information from a random selection of pilots living in proximity to 25 service level D ASOS sites. The data collection was to determine pilot acceptance and use of ASOS. Requests were mailed to 10,000 pilots, and 1,027 responses were received.

Final conclusions of the ASF study, endorsed by the MTC, were that ASOS is representative and meets the needs of the identified service level D sites without degrading services.

Comment on St. Cloud, Minnesota: One public comment was received from Brian D. Ryks, A.A.E., Airport Manager, St. Cloud Regional Airport. Mr. Ryks stated, "Although the ASOS has been fairly reliable during good weather conditions, there have been numerous occasions when outages have occurred or data recorded by the System has not been accurate during adverse weather. Fortunately, during these periods, augmentation from weather observers stationed at the Airport have prevented a loss of air service for our users. It is critical we maintain an augmented system consisting of both observers and the ASOS. An augmented system will ensure the highest degree of safety and reliability available to the traveling public and users of the airport."

NWS Response: NWS reviewed ASOS performance at St. Cloud and determined it met specified standards. Airport service level classifications were determined by the FAA. St. Cloud was designated as a Service Level D site which means it can operate with a stand alone-ASOS.

In the summer of 1997, the ASF requested information from a random selection of pilots living in proximity to 25 service level D ASOS sites. The data collection was to determine pilot acceptance and use of ASOS. Requests were mailed to 10,000 pilots, and 1,027 responses were received.

Final conclusions of the ASF study, endorsed by the MTC, were that ASOS is representative and meets the needs of the identified service level D sites without degrading services.

Comments on Valentine, Nebraska: Fourteen public comments were received concerning the automation certification of WSO Valentine, Nebraska. Eleven of the letters were exactly the same and the comments from those letters included, "Due to government cut backs in spending, the Federal Aviation Administration (FAA), and the National Weather Service (NWS), has decided not to man Automated Surface Observing Systems (ASOS) stations around the U.S. except those with towers. Augmentation of the Valentine ASOS station has proven to be essential to pilots flying into the area. People who have landed at the Valentine airport have expressed their appreciation to the airport officials for having a manned sight at Miller Field due to the isolation of the area. There have been instances of the ASOS reporting total overcast skies and

low landing minimums, deterring flights from landing, when there were only scattered skies that happened to be over the sensors, or reversely, not reporting very low landing minimums causing aircraft to fly into dangerous situations. Now, not only do we have to worry about such inaccuracies in landing minimums, but the newly installed, untested, Thunderstorm sensor is a concern * * *. Many doctors who serve this area fly into Valentine to provide much needed health care and training * * *. What cut in spending is so imperative that it should jeopardize peoples lives * * *." One letter included 14 signatures which in part stated, "The community of Valentine protests the full automation of service which the FAA and NWS feel can be observed from North Platte, Ne. will not work."

A public comment from Curtis Price, Jr., President, C. Price & Associates stated, "C. Price & Associates is the current contractor for the weather observation support services at Miller Field, Valentine Nebraska. We would like to register a protest against the proposed Recommendation for Automation and Closure of this site * * * it has been our experience that the current method of taking readings is far superior to the proposed ASOS method. We have documented several instances at other sites, where the ASOS system has been inadequate * * *." Finally, a public comment from Dean Jacobs, Executive Director, Valentine Chamber of Commerce stated, "We consider augmentation of the Valentine ASOS station essential * * *. The people of this area need and deserve the most accurate weather reports for their safety and the safety of their passengers. The very reason for PL 102-567 (the weather service modernization bill), which protects weather stations from degradation [sic: from degradation] of service * * *."

NWS Response: NWS reviewed ASOS performance at Valentine and determined it met specified standards. The thunderstorm sensor is operational. Airport service level classifications were determined by the FAA. Valentine was designated as a service level D site meaning it can operate with a stand-alone ASOS.

In the summer of 1997, the (ASF) requested information from a random selection of pilots living in proximity to 25 service level D ASOS sites. The data collection was to determine pilot acceptance and use of ASOS. Requests were mailed to 10,000 pilots, and 1,027 responses were received.

Final conclusions of the ASF study, endorsed by the MTC, were that ASOS is representative and meets the needs of the identified service level D sites without degrading services.

The MTC, at its December 10, 1997, meeting, concluded these actions would not result in any degradation of service and endorsed the certifications.

The Astoria, Oregon, and Lexington, Kentucky, Automation and Closure Certifications were proposed in the January 9, 1998, **Federal Register**, and the 60-day public comment period closed on March 10, 1998. No public comments were received for Lexington. The MTC, at its March 18, 1998, meeting, concluded these actions would not result in any degradation of service and endorsed the certifications. Three public comments were received for Astoria. These comments and the NWS response are set forth here for reference.

Comments on Astoria, OR: Three public comments were applicable to the proposed Astoria automation and closure certification.

First, a letter dated April 24, 1997, was received from the Columbia River Pilots. The letter states, "The proposed closure of the Astoria weather station will degrade the quality of available weather information and hamper our ability to provide safe and timely service to vessels calling in the Columbia River at both Oregon and Washington ports."

Second, a letter dated June 3, 1997, was received from Representative Elizabeth Furse stating, "Enclosed is a copy of Senate Concurrent Resolution 8, recently adopted by both the Senate and the House of the Oregon legislature which requests that closure proceedings of the station be reversed."

Third, a letter dated January 29, 1998, signed by Ron Larsen, Airport manager; George Waer, Columbia River Bar Pilots; and John Raichl, Clatsop County Sheriff, commented on their concerns about the ASOS. They stated, "The Portland office has been helpful and concerned. They established a working relationship with the Columbia River Bar Pilots that seems to meet the Bar Pilots needs. In addition they placed remote cameras on the airport to help observe actual conditions that ASOS may or may not report. However, ASOS is still reporting conditions that are not accurate over the entire airport caused by the lack of remote sensors."

NWS Response: At a March 18, 1998, meeting, the NWS advised the MTC it had worked with the Bar Pilots and all issues were resolved. Additional communications links to the Portland office have been established with the Astoria community. NWS reported

ASOS system limitations will not permit the addition of a second set of discontinuity sensors as requested by the Astoria airport manager. The MTC directed NWS to compare the number of surface observation remarks for a 1-year period before ASOS was installed to the number of remarks for a 1-year period after ASOS and its discontinuity sensor was installed.

At the June 18, 1998, meeting, NWS presented results of the comparisons to the MTC. The comparison showed more remarks have been reported with ASOS than prior to ASOS. The comparison also showed the ASOS ceiling discontinuity sensor is located in the proper quadrant to detect lower ceilings. However, the visibility discontinuity sensor would be more effective if moved to the northeast quadrant. The ASOS permits splitting of the ceiling and visibility discontinuity sensors. This option was offered to the airport manager, but he prefers to keep both discontinuity sensors together in the northwest quadrant. After reviewing the before and after comparison, the MTC concluded there was no safety impact to aviation operations at the airfield, and the current ASOS and discontinuity sensor provided an accurate observation for the airfield.

The Honolulu Automation and Closure certifications were proposed in the April 9, 1998, **Federal Register**, and the 60-day public comment period closed on June 8, 1998. No public comments were received for Honolulu. The MTC, at its June 18, 1998, meeting concluded these Astoria and Honolulu actions would not result in any degradation of service and endorsed the certifications.

After consideration of the public comments received and the MTC endorsements, the Under Secretary for Oceans and Atmosphere approved these 52 combined consolidation and/or automation and closure certifications finding there would not be any degradation of service. The Under Secretary transmitted a list of the approved certifications to Congress on November 30, 1998. Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is now completing the certification requirements of Public Law 102-567 by publishing this notice of the final consolidation and/or automation and closure certifications in the **Federal Register**.

Dated: December 14, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98-33551 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-KE-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1999. The limit for Category 443 has been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66057,

published on December 17, 1997).

Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,146,696 dozen.
342/642	423,310 dozen.
347/348	1,932,437 dozen.
443	205,635 numbers.
447	11,783 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 1999 and extending through December 31, 1999:

Category	Guaranteed access level
340/640	650,000 dozen.

Category	Guaranteed access level
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of May 15, 1990, as amended, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98-33502 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 369-S is being increased for carryover and swing, reducing the limits for the Fabric Group and Category 227 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67829, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on December 17, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
Fabric Group 218-220, 224-227, 313-O ² , 314-O ³ , 315-O ⁴ , 317-O ⁵ , and 326-O ⁶ , as a group.	101,168,329 square meters equivalent.
Sublevel within Fabric Group 227	18,524,290 square meters.
Level not in a group 369-S ⁷	1,640,539 kilograms.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1997.

² Category 313-O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

³ Category 314-O: all HTS numbers except 5209.51.6015.

⁴ Category 315-O: all HTS numbers except 5208.52.4055.

⁵ Category 317-O: all HTS numbers except 5208.59.2085.

⁶ Category 326-O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

⁷Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-33505 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels for textile products, produced or manufactured in El Salvador and exported during the periods January 1, 1999 through March 28, 1999 (Categories 342/642) and January 1, 1999 through December 31, 1999 (Categories 340/640) are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and Memoranda of Understanding (MOUs) dated September 26, 1994 and July 18, 1996 between the Governments of the United States and El Salvador.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); and Memoranda of Understanding (MOUs) dated September 26, 1996 and July 18, 1996 between the Governments of the United States and El Salvador, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the periods January 1, 1999 through March 28, 1999 (Categories 342/642) and January 1, 1999 through December 31, 1999 (Categories 340/640), in excess of the following restraint limits:

Category	Restraint limit
340/640	1,229,436 dozen.
342/642	90,388 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC and Memoranda of Understanding dated September 26, 1994

and July 18, 1996 between the Governments of the United States and El Salvador; and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 1999, guaranteed access levels are being established for properly certified textile products assembled in El Salvador from fabric formed and cut in the United States in the following categories which are re-exported to the United States from El Salvador during the periods January 1, 1999 through March 28, 1999 (Categories 342/642) and January 1, 1999 through December 31, 1999 (Categories 340/640):

Category	Guaranteed Access Level
340/640	1,000,000 dozen.
342/642	95,342 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 6, 1995, as amended, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-33500 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 340 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 60828, published on November 13, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on December 17, 1998, you are directed to increase the limit for Category 340 to 446,529 dozen¹, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-33501 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63524, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on December 17, 1998, you are directed to increase the limits for the

¹ The limit has not been adjusted to account for any imports exported after December 31, 1997.

following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit ¹
334/634	313,037 dozen.
336/636	548,942 dozen.
338	5,969,702 dozen.
339	1,588,830 dozen.
340/640	719,424 dozen of which not more than 239,089 dozen shall be in Categories 340-D/640-D ² .
347/348	1,054,179 dozen.
638/639	269,413 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1997.

² Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98-33503 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 1999 through December 31, 1999.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for 1999.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of 53,060 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

Products in the above category exported during 1998 shall be charged to the applicable category limit for that year (see directive dated November 24, 1997) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products

shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98-33499 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Export Visa Arrangement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Cambodia

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to exchange of notes dated March 11 and August 8, 1997, the Governments of the United States and Cambodia agreed to establish a new Export Visa Arrangement for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670 and 800-899, produced or manufactured in Cambodia and exported from Cambodia on and after January 1, 1999. Products exported during the period January 1, 1999 through January 31, 1999 shall not be denied entry for lack of a visa. All

products exported on and after February 1, 1999 must be accompanied by an appropriate export visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Export Visa Arrangement, effected by exchange of notes dated March 11 and August 8, 1997, between the Governments of the United States and Cambodia, you are directed to prohibit, effective on January 1, 1999, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, produced or manufactured in Cambodia and exported from Cambodia on and after January 1, 1999 for which the Government of Cambodia has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories become subject to import quota, the merged or part category(s) automatically shall be included in the coverage of this visa arrangement. Merchandise in the category(s) exported on or after the date the category(s) becomes subject to import quotas shall

require a visa. Products exported during the period January 1, 1999 through January 31, 1999 shall not be denied entry for lack of an export visa. All products exported on and after February 1, 1999 must be accompanied by an appropriate export visa.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice or successor document. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (the code for the Cambodia is "KH"), and a six digit numerical serial number identifying the shipment; e.g., 9KH123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature and the printed name of the issuing official authorized by the Government of Cambodia.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 340–510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Visaed quantities are rounded to the closest whole number if the quantity exported exceeds one whole unit, but is less than the next whole unit. Half units are rounded up. If the quantity visaed is less than one unit, the shipment is rounded upwards to one unit. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. For example, quota Category 347/348 may be visaed as "Category 347/348" or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Category 347" but not as "Category 348."

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category,

quantity or units of quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of a company(s) actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

If the visa is not acceptable then a new correct visa or a visa waiver must be presented to the U.S. Customs Service before any portion of the shipment will be released. A visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of Cambodia through its Embassy in Washington, DC. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirements. Visa waivers will only be issued for classification purposes or for one-time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Cambodia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. \$800 or less do not require an export visa for entry and shall not be charged to existing quota levels.

A facsimile of the visa stamp is enclosed.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-F

The Specimen of Visa Stamp



Export Visa Stamp for Cambodia

[FR Doc. 98-33504 Filed 12-17-98; 8:45 am]
BILLING CODE 3510-DR-C

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries

December 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendments of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on November 12, 1998 (63 FR 63297) requested public comments on CITA's intention to extend through December 31, 2000, the current

exemption periods for women's and girls' (December 23, 1997 through December 22, 1998) and men's and boys' (September 23, 1998 through September 22, 1999) "hymo" type interlinings.

Effective on December 23, 1998, the exemption period for women's and girls' and men's and boys' chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 443, 633 and 643, which are entered under the Special Access Program (9802.00.8015), shall be extended for the periods December 23, 1998 through December 31, 2000 for women's and girls'; and September 23, 1998 through December 31, 2000 for men's and boys'.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 66057, published on

December 17, 1997; and 63 FR 51903, published on September 29, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 11, 1997 and September 23, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern the foreign origin exception for findings and trimmings under the Special Access Program.

Effective on December 23, 1998, by date of export, you are directed to extend through December 31, 2000, the amendment to treat non-U.S. formed, U.S.-cut interlinings for chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 as qualifying for exception for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article. Non-U.S. formed, U.S.-cut interlinings may be used in imports of women's and girls' and men's and boys' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut

in the United States and of a type described above.

The amendment implemented by this directive shall be for the periods December 23, 1998 through December 31, 2000 for women's and girls' "hymo" type interlinings and September 23, 1998 through December 31, 2000 for men's and boys' "hymo" type interlinings.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-33604 Filed 12-17-98; 8:45 am]

BILLING CODE 3510-DR-F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, (44 U.S.C. Chapter 35)). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Learn and Serve America, Amy Cohen, (202) 606-5000, Extension 484. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606-5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 20503, (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: National Service-Learning Leader Schools Program Application.

OMB Number: None.

Agency Number: None.

Affected Public: High schools that choose to seek recognition.

Total Respondents: Approximately 250.

Frequency: Annual.

Average Time Per Response: 6 hours.

Estimated Total Burden Hours: 1,500 hours.

Total Burden Cost (capital/startup): \$35,000 (250 applicants @ \$140 each: \$20 for copying, assembly, and mailing plus 6 hours per response @ \$20 an hour).

Total Burden Cost (operating/maintenance): None.

Description: The information being collected in this application package and forms will be used as part of the standard application package to facilitate the identification and recognition of public and private high schools that have demonstrated exemplary practices in service-learning, and will be used by the Corporation and its review panel of experts to evaluate a school's merit for recognition, as well as public awareness, educational and information purposes consistent with the Corporation's mission. There were no comments received during the initial 60-day public comment period.

Dated: December 15, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98-33622 Filed 12-17-98; 8:45 am]

BILLING CODE 6050-28-U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of availability of funds to support AmeriCorps Promise Fellowships in support of the goals of the Presidents' Summit in North Dakota and South Dakota

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: Earlier this year, the Corporation for National and Community Service (the Corporation) selected organizations to sponsor AmeriCorps Promise Fellows in support of the five goals for children and youth set at the Presidents' Summit for America's Future. We do not expect that process to result in Fellows being placed in North Dakota and South Dakota. By this announcement, the Corporation announces its intent to use up to approximately \$130,000 to award grants to nonprofit organizations local governments, or state governments to sponsor AmeriCorps Promise Fellows in North Dakota and South Dakota. These Fellows will spend one year serving with organizations that are committed to helping to meet one or more of the five goals of the Presidents' Summit. Each Fellow will receive a living allowance of \$13,000 for a 12-month term of service and, upon successful completion of a term, will receive a \$4,725 AmeriCorps education award.

Last year at Philadelphia, President Clinton, former Presidents Bush, Carter, and Ford, Mrs. Nancy Reagan, and General Colin Powell, with the endorsement of many governors, mayors and leaders of the independent sector, declared: "We have a special obligation to America's children to see that all young Americans have:

1. Caring adults in their lives, as parents, mentors, tutors, coaches;
2. Safe places with structured activities in which to learn and grow;
3. A health start and healthy future;
4. An effective education that equips them with marketable skills; and
5. An opportunity to give back to their communities through their own service."

These five goals are now the five fundamental resources sought by America's Promise—The Alliance for Youth, the organization following up on the goals of the Presidents' Summit.

As a major partner in this effort, the Corporation devotes a substantial part of its activities to help meet these goals, including the work of AmeriCorps, Learn and Serve America, and the National Senior Service Corps. This new Fellowship program will provide States and local communities with additional and unique support to help carry out their plans to provide States and local communities with additional and unique support to help carry out their plans to provide America's children with these five fundamental resources.

DATES: All sponsor proposals must be submitted by January 19, 1999. The

Corporation anticipates announcing selections under this announcement no later than February 16, 1999. The project period is negotiable, but will generally end no later than March 31, 2000.

ADDRESSES: Proposals to sponsor one or more Fellows must be submitted to the Corporation at the following address: Corporation for National Service, Attn: H.B. Hicks, 1201 New York Avenue NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a sponsor application, contact the Corporation for National Service, H.B. Hicks at (202) 606-5000, ext. 564. T.D.D. (202) 565-2799. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service address the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengths the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. For more information about the Corporation and the activities that it supports, go to <http://www.nationalservice.org>.

Pursuant to the National and Community Service Act of 1990, as amended (the Act), the Corporation may support "innovative and model programs" and may award national service fellowships. 42 U.S.C. 12653b. In addition, the Corporation may approve the provision of education awards to individuals who successfully complete a term of service in "national service positions as the Corporation determines to be appropriate". 42 U.S.C. 12573(7).

Through this notice, the Corporation invites grant proposals from eligible entities in North Dakota and South Dakota that wish to sponsor one or more AmeriCorps Promise Fellows.

Eligible sponsors

The following entities in North Dakota and South Dakota are eligible to apply to become a sponsor; nonprofit organizations, local governments, state governments.

Substance of the Fellowship Program

An AmeriCorps Promise Fellowship provides the Fellow with an opportunity to make a unique contribution to organizations helping to meet one or more of the five fundamental needs declared at the Presidents' Summit and being advanced by America's Promise—The Alliance for Youth; national, state, and local nonprofit organizations; and the national service network. For more information about the five goals of the Presidents' Summit, go to <http://www.americaspromise.org>.

Although AmeriCorps Promise Fellows may be placed by a sponsor at a host organization that focuses its resources on only one of the goals of the Presidents' Summit, the host organization must be part of a larger effort (e.g., Community of Promise) that supports the delivery of all of the five fundamental resources to children and young people.

Eligible sponsor applicants have considerable freedom to identify the structure of their Fellowship program and the projects or activities that AmeriCorps Promise Fellows will pursue. The most important considerations in establishing a program are that the prospective Fellows help meet the goals of the Presidents' Summit and that they have the ability to produce a defined outcome. The following are examples of specific tasks that Fellows may perform; these tasks are included here for illustrative purposes:

- A full-time coordinator for a Community of Promise campaign providing a targeted number of young people with all or several of the America's Promise fundamental resources.
- A full-time coordinator of individual or multiple sites, such as schools and housing complexes, that provide access to multiple or all five fundamental resources.
- An entrepreneur initiating a program to provide multiple resources to targeted young people, for example, adding a service component and access to dental care to an existing after-school tutoring program.
- A recruiter of Communities of Promise.
- A recruiter and manager of volunteers in a local or regional effort providing all or multiple resources to a number of young people.

The following are examples of organizational activities that could be supported by Fellows as part of an effort to provide the five fundamental resources to children and youth. They

are included here for illustrative purposes only:

- Expansion of Volunteer Center activities to promote the goals of the Presidents' Summit.
- State Education Agency efforts to stimulate service-learning opportunities by K-12 students.
- Community and school efforts to provide after-school programs in safe places.
- Youth leadership to stimulate service and service-learning by inner-city youth.
- Support to community volunteer and Federal-Work-Study efforts to promote literacy.
- Immunization efforts aimed at young children and their families.
- Efforts to secure access to health care providers and facilities.
- Mentoring programs linking adults with youth in need of additional support.
- Recruitment of placement of Federal-Work-Study students for community service.
- New models for involving professions in organizing to meet the goals of the Presidents' Summit, e.g., health care professionals, librarians, museum administrators, and teachers.
- Efforts to stimulate service by diverse groups to meet the Presidents' Summit's goals, including diverse ethnic, religious, racial, and cultural groups.

A sponsor may determine its own process to identify projects and programs in which AmeriCorps Promise Fellows will serve, and may either participate directly in the recruitment and selection of individual AmeriCorps Promise Fellows or delegate that responsibility to local programs or another entity (e.g., a university). One model a sponsor may consider is first to identify organizations where Fellows may serve, establish that the activities of those organizations meet the criteria for the AmeriCorps Promise Fellowship program and then simply publicize a list of eligible host organizations for individuals interested in pursuing a Fellowship.

Fellows will be viewed as leaders in the efforts to implement the goals of the Presidents' Summit, and as a group will have an identity tied to this overall effort, including opportunities to meet and to assess the overall impact of their efforts. Although no particular academic credentials or work experience are required to become a Fellow, confidence in the ability of applicants to produce outcomes in support of the goals of the Presidents' Summit, such as the implementation of commitments made at the Presidents' Summit and follow-up

state and local summits, is the central criterion for selection. This is evidenced by: strong academic credentials; substantial and successful work experience in a field related to the organization's activities; and experience performing significant service related activities, particularly various national service leaders' programs, including AmeriCorps leaders, AmeriCorps*VISTA leaders, AmeriCorps*National Civilian Community Corps leaders, and leadership activities in programs sponsored by Learn and Serve America and the National Senior Service Corps. Each sponsor may adapt the above concepts to meet its specific needs.

An AmeriCorps Promise Fellow must: (1) Be at least 17 years of age; (2) be a U.S. citizen, national, or lawful permanent resident alien; and (3) have a high school diploma or GED. Individuals who have already served in two approved national service positions (a position for which an educational award is provided) are, by statute, not eligible for a third education award.

Fellowships are expected to be for at least 10 months and must be completed within 12 months. To qualify for an education award of \$4,725, a Fellow must serve on a full-time basis, perform at least 1,700 hours of service, and successfully complete the Fellowship.

Fellows who serve for twelve months receive a living allowance of \$13,000, paid in regular increments. Fellows who serve fewer than twelve months receive a prorated living allowance. Fellows may receive a living allowance greater than \$13,000 only if they are part of a professional corps and are supported entirely by public or private organizations (e.g., Fellows on paid sabbaticals), with the Corporation's support limited to the provision of education awards.

Sponsor's Role

Each sponsor determines the process for the recruitment and selection of AmeriCorps Promise Fellows in its respective area. The sponsor must certify that the organization in which the Fellow is being placed is conducting activities that contribute to one or more of the five goals of the Presidents' Summit, and that this is part of a larger effort to provide all five of the fundamental resources to children and youth.

The Corporation anticipates that host organizations generally will be local nonprofit organizations that are engaged in activities in support of the goals of the Presidents' Summit.

Sponsors are responsible for ensuring compliance with required elements of

the Fellowship program. These requirements, which will be individually described in the grant agreement between the Corporation and the sponsor, include, but are not limited to, the following:

- Providing office space, supplies, and equipment
- Providing a living allowance
- Paying and withholding FICA taxes
- Withholding income taxes
- Providing unemployment insurance if required by State law
- Providing workers' compensation if required by State law or obtaining insurance to cover service-related injuries
- Providing liability insurance to cover claims relating to Fellows
- Providing adequate training and supervision
- Ensuring that Fellows not engage in prohibited activities (such as lobbying)
- Complying with statutory prohibitions on uses of assistance (such as displacement, discrimination)
- Providing a grievance procedure that meets statutory standards
- Verifying and submitting timely documentation relating to each Fellow's eligibility for an education award
- Providing an adequate financial management system
- Complying with other reporting requirements.

Contents of the Sponsor Application

Sponsor applications must contain the following information:

1. Background concerning the applicant's current efforts to achieve the goals of the Presidents' Summit.
2. A designation of the organizations where the Fellows will be assigned, including the process used to select host organizations and background concerning the selected organizations and the roles they are playing in local summit follow-up. If the organizations are not yet designated, the application should describe the process that the sponsor will use to designate such entities.
3. A description of the activities that the Fellows will perform, including an indication about how the activities will support significant growth and/or improvements in the quality of efforts to meet the five goals of the Presidents' Summit.
4. An estimated budget to carry out the program, consistent with the description below.

The application may not exceed 21 double-spaced pages in length; more detailed instructions concerning the contents of the application are contained in the application package.

Budget and Finances

The Corporation will issue grants on a fixed amount per Fellow basis, not to exceed \$13,000. These amounts exclude the education award. The sponsor assumes full financial responsibility for the program. Sponsors must provide the additional financial support necessary to carry out their proposed Fellowship program. To the extent that a sponsor provides a significant portion of the costs such that it notably reduces the Corporation's funding per Fellowship, additional Fellowships may be supported. The Corporation strongly encourages cost-sharing proposals, consistent with the guidelines in this Notice, to leverage Corporation resources and maximize the number of Fellows.

For the Fellows program, the Corporation is implementing a fixed price award mechanism that does not require Corporation monitoring of actual costs incurred or compliance by the grantee with the Federal Cost Principles. The award will be dependent on the grantee's acceptance of its terms and conditions, including recruiting, placing, and retaining the number of Fellows specified in the award to carry out the activities and to achieve the specific project objectives as approved by the Corporation.

In addition to the approved grant amount, the Corporation will provide an education award to Fellows who successfully complete their term of service. The Corporation expects to sponsor national training events to provide Fellows with an opportunity to come together to assess national progress in meeting the goals of the President's Summit. The Corporation will also promote the availability of these Fellowships.

The Corporation anticipates that these grants will be renewable for up to a three-year period, subject to performance and the availability of appropriations.

Process for selecting sponsors

In selecting sponsors, the Corporation will consider: program design (60%), including (in order of importance) getting things done to help achieve the five goals of the Presidents' Summit, fostering the skills and leadership development of Fellows, and strengthening communities; organizational capacity (25%); and budget/cost effectiveness (15%). The Corporation will make all final decisions concerning approval of these grants for Fellowships. Given the Corporation's interest in having the common elements for the Fellowships

that are described above, the Corporation announces its intent to enter into such negotiations with any sponsor in a manner that may require revisions to the original grant proposal.

Dated: December 15, 1998.

Kenneth L. Klothen,

General Counsel, Corporation for National and Community Service.

[FR Doc. 98-33535 Filed 12-17-98; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Proposed Alamo Lake Reoperation and Ecosystem Restoration Feasibility Study, La Paz and Mohave Counties, Arizona; dated December 1998

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers has prepared a Draft Alamo Lake Reoperation and Ecosystem Restoration Feasibility Study, La Paz and Mohave Counties, Arizona; dated December 1998. Alamo Dam is located on the Bill Williams River, on the border of Mohave and La Paz Counties, in west-central Arizona, approximately 110 miles northwest of Phoenix, Arizona. Construction of the dam and appurtenant works was completed in 1968 as a multipurpose project (flood control, water conservation and supply, and recreation) under authorization of the Flood Control Act of December 22, 1944. Since the late 1970's local, state, and federal offices, interest groups, and private parties have raised issues and concerns surrounding the operation of Alamo Dam and its impact, both upstream and downstream, upon recreation, fisheries, endangered species, and riparian habitat. In response to these concerns, the Corps of Engineers is studying the impacts of alternative water storage elevations to optimize biological and recreational benefits while still meeting the authorized project purposes.

The general planning objective guiding the development of alternatives was the balance between minimum flows needed to sustain and enhance riparian resources below the dam, and sustenance of suitable lake elevations with minimal fluctuations for reservoir resources and uses. The 1,125-foot, 1,100-foot, and 1,070-foot plans are

analyzed in consideration of all pertinent environmental resources potentially affected under these operational scenarios. This analysis is presented in the DEIS to serve as the basis for comparing the relative level of impact that each alternative would have on the environment.

FOR FURTHER INFORMATION CONTACT:

For further information on the Draft Feasibility Report contact Mr. Mike Smiley, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL-PD-WC, 3636 N. Central Avenue, Room 740, Phoenix, Arizona 85012-1936, at (602) 640-2003; and for information on the DEIS contact Mr. Timothy Smith, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL-PD-RN, P.O. Box 532711, Los Angeles CA 90053-2325, at phone (213) 452-3854, or via E-mail to: tjsmith@spl.usace.army.mil.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers has prepared a DEIS to assess the environmental effects associated with the Proposed Alamo Lake Reoperation and Ecosystem Restoration Feasibility Study, La Paz and Mohave Counties, Arizona; dated December 1998. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Scoping:

The Army Corps of Engineers conducted a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. This meeting was held in Parker, Arizona on May 6, 1998.

Individuals and agencies may present written comments relevant to the DEIS by sending the information to Mr. Timothy Smith at the address above prior to February 1, 1999. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Final EIS, should be sent to Timothy Smith, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL-PD-RN, PO Box 532711, Los Angeles, CA 90053-2325, or via E-mail to: tjsmith@spl.usace.army.mil, or FAX at (213) 452-4204.

Availability of the Draft EIS

Copies of the DEIS are available from Mr. Tim Smith at the address above. Review copies are also available at the following Corps' offices:

U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 911 Wilshire Boulevard, 14th Floor, Los Angeles, CA

U.S. Army Corps of Engineers, Los Angeles District, Planning Section C, 3636 N. Central Avenue, Room 740, Phoenix, Arizona 85012-1936

Dated: December 11, 1998.

John P. Carroll,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 98-33563 Filed 12-17-98; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Shock Trial of the DDG 81 Flight IIA Class Destroyer

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of a proposal to conduct ship shock trials on the AEGIS Destroyer, WINSTON CHURCHILL (DDG 81) at a site located off the east coast or gulf coast of the United States.

Pursuant to 40 CFR 1501.6, the Department of the Navy has requested that the National Marine Fisheries Service act as a cooperating agency.

A "shock trial" is necessary to evaluate the effect that shock waves, resulting from a series of underwater explosions and designed to emulate conditions encountered in combat, have when they propagate through a ship's hull. The congressionally mandated (10 USC 2366) Live Fire Test and Evaluation (LFT&E) Program requires realistic survivability testing on each new class of Navy ships, or on an existing class of ships when significant design changes that may affect ship survivability are made. A "shock trial" is part of the Navy's LFT&E program to ensure survivability. The test results provide important information that is applied to follow-on ships and is used to improve the initial ship design and enhance the effectiveness and overall survivability of the ship and crew. Shock trials have proven their value as recently as the Persian Gulf War when ships were able to survive battle damage and continue their mission because of ship design, crew survivability, and crew training lessons learned during previous shock tests.

The proposed action would subject the WINSTON CHURCHILL to no more than four explosive charges, 10,000 pounds each, while monitoring the effects on the ship. The EIS will thoroughly address reasonable alternatives to the proposed action, the existing environments of the proposed test areas, and the impact to the environment at those areas. Mayport, Florida, Pascagoula, Mississippi, and Norfolk, Virginia were chosen initially for evaluation because they effectively meet the operational criteria necessary to conduct a shock trial on a surface combatant. These criteria include: Water depth of at least 600 feet; geographic location; proximity to a Naval Station, Ship Repair Facility, Military Airbase, Ordnance Loading Station, naval ships and aircraft; sea traffic; weather and sea state; and personnel tempo requirements. The proposed shock trial is scheduled to occur over a consecutive period of four weeks between May 1, and September 1, 2001.

The EIS will analyze impacts of the proposed action on air and water quality, marine life (including marine mammals and endangered and threatened species), commercial fishing and shipping, recreation, and economic and commercial resources.

DATES: The Navy will hold the following three public meetings in January 1999:

1. January 19, 1999, from 7 p.m. to 9 p.m.;
2. January 20, 1999, from 7 p.m. to 9 p.m.; and
3. January 21, 1999, from 7 p.m. to 9 p.m.

ADDRESSES: The public meetings will be held at a location near each of the proposed test areas:

1. January 19, 1999, at Granby High School, 7101 Granby Road, Norfolk, Virginia.
2. January 20, 1999, at Fair Hall at Jackson County Fairgrounds, Corner of Shortcut and Hospital Road, Pascagoula, Mississippi.
3. January 21, 1999, at Mayport Middle School, 2600 Mayport Road, Atlantic Beach, Florida.

The meetings will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than

February 1, 1999 to: Commanding Officer, Southern Division, Naval Facilities Engineering Command (Attn: Mr. Will Sloger, Code 064WS), 2155 Eagle Drive, N. Charleston, South Carolina, telephone 843-802-5797, FAX 843-802-7472.

SUPPLEMENTARY INFORMATION: A brief presentation will precede the request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies, and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Dated: December 14, 1998.

Ralph W. Corey,

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

[FR Doc. 98-33569 Filed 12-17-98; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: January 14 and 15, 1999.

TIME: January 14, 9 a.m. to 5 p.m.; January 15, 9 a.m. to 4:30 p.m.

LOCATION: Room 100, 80 F St., NW, Washington, DC 20208-7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208-7564. Tel.: (202) 219-2065; fax: (202) 219-1528; e-mail: Thelma__Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208-0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination,

and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting is open to the public. On January 14, the Board will discuss issues relating to the OERI reauthorization and Joint Research Initiative and will hear a report on the third-year evaluation of the Regional Education Laboratories. On January 15 the Board will hear committee and officers' reports and a presentation on expectations for education policy in the 106th Congress. A final agenda will be available from the Board office on January 7, 1999.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208-7564.

Dated: December 14, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98-33534 Filed 12-17-98; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Notice of Intent to issue a Solicitation for Cooperative Agreement Proposal (SCAP)

AGENCY: Federal Energy Technology Center (FETC), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent to issue a SCAP No. DE-SC26-99FT40528 entitled "Energy Efficient Building Equipment and Envelope Technologies." The SCAP will solicit the submission of innovative technologies that have the potential for significant energy savings in residential and commercial buildings. Through this solicitation the Department of Energy is seeking to support projects that are advancing energy efficient building equipment and envelope technologies. Specifically, the objective of the procurement is to accelerate technologies that, because of their risk, are unlikely to be developed in time commensurate with their potential payoff to the nation without a partnership between industry and the Federal government.

DATES: Requests for information concerning the solicitation should be submitted in writing at the address above, by facsimile at 304/285-4683, or by E-mail to raymond.jarr@fetc.doe.gov. Telephone requests for the solicitation package will not be accepted.

ADDRESSES: Acquisition and Assistance Division, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jarr, Contract Specialist, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880; Telephone 304/285-4088.

SUPPLEMENTARY INFORMATION: DOE/FETC intends to select a group of projects programmatically balanced with respect to: (1) End use category (such as water heating, lighting, and space cooling); (2) sector (residential and/or commercial); and (3) time of commercialization (short-term or long-term market potential of the technology). The solicitation will cover research and development on materials, components and systems applicable to both residential and commercial buildings. The solicitation will not support demonstration projects to deploy the technology on a large scale.

The research and development areas of interest are as follows: Building Equipment—energy conversion and control equipment supplying services such as lighting, space heating, cooling, dehumidification and ventilation, water heating, appliance services and electric power to building occupants and commercial operations; and Building Envelope—materials, components and systems for the windows, walls, roofs, foundations and other elements which comprise building exteriors and provide day lighting and thermal integrity.

The solicitation is divided into four technology maturation stages. Technology Maturation Stage 2 involves applied research; Technology Maturation Stage 3 involves exploratory development (non-specific applications and bench-scale testing); Technology Maturation Stage 4 involves advanced development (specific applications and bench-scale testing); and Maturation Stage 5 involves engineering development (pilot-scale and/or field testing).

Multiple awards are expected regardless of the technology maturation stage proposed with decision points to continue occurring at the completion of each technology maturation stage. The solicitation will be available on DOE/FETC's Internet address at <http://www.fetc.doe.gov/business>. Those

prospective offerors who obtain a copy of the solicitation through the Internet should check the location frequently for any solicitation amendments. Those prospective offerors who request in writing a copy of the solicitation will receive an electronic version of the solicitation on diskette in WordPerfect 6.1 format. Solicitations will not be distributed in paper form. Requests for information concerning the solicitation should be submitted in writing at the address above, by facsimile at 304/285-4683, or by E-mail to raymond.jarr@fetc.doe.gov. All requests should reference the SCAP solicitation number and title, and should include a point-of-contact at the requestor's location. Telephone requests for the solicitation package will not be accepted. The solicitation will be available on or about January 11, 1999. The exact date and time for the submission of proposals will be indicated in the solicitation. However, at least a forty-five day response time is currently planned. It is DOE's desire to encourage the widest participation included the involvement of small business concerns, and small disadvantaged business concerns. However, this procurement is not a partial set-aside. In order to gain the necessary expertise to review proposals, non-Federal personnel may be used as evaluators or advisors in the evaluation of proposals, but will not serve as members of the technical evaluation committee. This particular program is covered by section 3001 and 3002 of the Energy Policy Act (EPAAct), 42 U.S.C. 13542 for financial assistance awards. EPAAct 3002 requires a cost share commitment of 20 percent from non-Federal sources for research and development projects. In accordance with FAR 52.232-18, "Availability of Funds," funds are not presently available for this procurement. The Government's obligation under this award is contingent upon the availability of appropriated funds from which payment for award purposes can be made.

Dated: December 11, 1998.

Randolph L. Kesling,

Supervisory Contract Specialist, Acquisition and Assistance Division.

[FR Doc. 98-33589 Filed 12-17-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-101-000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

December 14, 1998.

Take notice that on December 3, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax 22030-1046, filed in Docket No. CP99-101-000 a request pursuant to Sections 157.201 and 157.216(b) of the Commission's Regulations under the natural Gas Act (18 CFR 157.205 and 157.216(b)) for authorization to abandon by retirement approximately 0.07 mile of 8-inch transmission Line 10036, appurtenances and one point of delivery to Columbia Gas of Pennsylvania, Inc. (CPA), under the blanket certificate issued in Docket No. CP83-76-000, pursuant to Section 7(b) 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.

Columbia states that Line No. 10036, which is located in Beaver County, Pennsylvania, provided service to CPA but has not been used for approximately 2 years and CPA has indicated that it no longer requires this point of delivery. Columbia included in its application a copy of CPA's letter agreeing to the abandonment of the point of delivery.

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 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. 98-33560 Filed 12-17-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP99-105-000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

December 14, 1998.

Take notice that on December 7, 1998, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a request with the Commission in Docket No. CP99-105-000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate an existing valve setting and to construct and operate certain measurement facilities as a new delivery point to the city of Watertown, South Dakota authorized in blanket certificate issued in Docket No. CP84-420-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern border proposes to operate an existing 4-inch valve setting and to construct and operate a single 4-inch turbine meter and associated piping, valves, RTU, and buildings to serve as a delivery point to the city of Watertown. The estimated cost of the proposed facilities is \$465,000. Northern Border would be reimbursed for all costs incurred to constructing the proposed delivery point.

The natural gas volumes to be delivered at the proposed delivery point are volumes currently being transported by Northern Border. Northern Border would deliver to the city of Watertown up to 15,000 Mcf on a peak day and an estimated 1.8 Bcf annually the natural gas volumes delivered at the Watertown delivery point would be used to serve the city of Watertown. There would not be any impact on the peak day capability of Northern Border's existing shippers as a result of the proposed interconnect and any impact on annual deliveries would be minimal.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 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. 98-33561 Filed 12-17-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP99-110-000]

Portland Natural Gas Transmission System; Notice of Application

December 14, 1998.

Take notice that on December 10, 1998, Portland Natural Gas Transmission System (PNGTS), One Harbour Place, Portsmouth, New Hampshire 03801, filed in Docket No. CP99-110-000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of facilities in Newington, New Hampshire, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, PNGTS proposes to construct and own a short "T" on the pipeline, together with a valve and flange, near mile post 0.48 on the Newington lateral in Newington, New Hampshire. PNGTS states that Maritimes & Northeast Pipeline, L.L.C., will operate the proposed facility which consists of a 4-inch pipe that extends three feet above ground, a 4-inch valve and a flange, and would be enclosed within a standard six-foot high and ten-foot square chain link fence. PNGTS says that the facility is located on property not owned by the prospective customer and that the facility site would be located entirely on the Newington lateral permanent right of way. PNGTS states that the facility is intended to support a tap envisioned to served G-P Gypsum. PNGTS contends that it is more efficient, less expensive, environmentally preferable, and safer to construct the proposed facilities during construction of the Joint Facilities Project rather than after the pipeline has been placed into operation. PNGTS states that the estimated cost of the project is \$32,000. PNGTS also states that under the current projected work schedule, the pipeline crews will complete construction of the Newington lateral on or before January 1, 1999,

therefore authorization is requested by that date.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 28, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the

NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for PNGTS to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98-33562 Filed 12-17-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91-195-034, et al.]

Western Systems Power Pool, et al. Electric Rate and Corporate Regulation Filings

December 10, 1998.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91-195-034]

Take notice that on December 4, 1998, the Western Systems Power Pool (WSPP) filed certain information to update its October 30, 1998 quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting in Part And Denying In Part Privileged Treatment.

Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order.

Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Systems Power Pool

[Docket Nos. ER91-195-027, ER91-195-028, ER91-195-029, ER91-195-030, ER91-195-031, ER91-195-032, and ER91-195-033]

Take notice that on December 3, 1998, the Western Systems Power Pool (WSPP) filed a supplement to its October 21, 1998 compliance filing made in response to the deficiency letter issued September 22, 1998 by the Division of Rate Applications in the proceedings listed above.

WSPP states that the purpose of this filing is to provide the information required by the deficiency letter for certain members for whom the quarterly reports required by the Federal Energy Regulatory Commission's (Commission) earlier orders in this proceeding have not been filed. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information. Copies of WSPP's informational filing are on file with the Commission and the non-privileged portions are available for public inspection.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Western Power Services, Inc.

[Docket No. ER95-748-015]

Take notice that on December 1, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. EnerConnect, Inc., EnerConnect, Inc., Gateway Energy Marketing

[Docket No. ER96-1424-008, Docket No. ER96-1424-009, Docket No. ER96-795-007]

Take notice that on November 30, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. Cleco Energy LCC

[Docket No. ER98-1170-001]

Take notice that on November 27, 1998, the above-mentioned power marketer filed quarterly reports with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference

Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. Idaho Power Company

[Docket No. ER99-184-000]

Take notice that on December 2, 1998, Idaho Power Company tendered for filing a notice of withdrawal pursuant to Rules 202 and 216 of the Commission's Rules of Practice and Procedure, of its October 13, 1998 and October 30, 1998 filings in the above-referenced proceeding.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C.

[Docket No. ER99-371-000]

Take notice that on December 7, 1998, PJM Interconnection, L.L.C., tendered for filing notice that PJM Interconnection, L.L.C., does not oppose extending the effective date of the PECO Service Agreement to and including February 1, 1999, filed on November 24, 1998 in the above-referenced docket.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER99-831-000]

Take notice that on December 7, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to UGI Energy Services Inc., d/b/a POWERMARK pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 9, 1998.

Copies of the filing have been served upon POWERMARK and the New Jersey Board of Public Utilities.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Company

[Docket No. ER99-832-000]

Take notice that on December 7, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Horizon Energy Corporation d/b/a Exelon Energy (Exelon), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 9, 1998.

Copies of the filing have been served upon Exelon and the New Jersey Board of Public Utilities.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric and Gas Company

[Docket No. ER99-833-000]

Take notice that on December 7, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Engage Energy US, L.P. (Engage), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 9, 1998.

Copies of the filing have been served upon Engage and the New Jersey Board of Public Utilities.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER99-834-000]

Take notice that on December 7, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to WPS Energy Services, Inc. (WPS), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 9, 1998.

Copies of the filing have been served upon WPS and the New Jersey Board of Public Utilities.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER99-835-000]

Take notice that on December 7, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Central Hudson Gas & Electric Corporation (CHG&E) pursuant to the PSE&G Wholesale Power Market Based

Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 9, 1998.

Copies of the filing have been served upon CHG&E and the New Jersey Board of Public Utilities.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER99-836-000]

Take notice that on December 7, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Griffin Energy Marketing L.L.C. (Griffin), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of November 9, 1998.

Copies of the filing have been served upon Griffin and the New Jersey Board of Public Utilities.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Rochester Gas and Electric Corporation

[Docket No. ER99-837-000]

Take notice that on December 7, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Constellation Power Source Inc., on (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission (80 FERC ¶ 61,284 (1997)). RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 4, 1998, for Constellation Power Source's Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER99-838-000]

Take notice that on December 7, 1998, Tucson Electric Power Company

tendered for filing two transmission service agreements (one for non-firm service and one for short-term firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96-140-000.

The Service Agreement for Non-Firm Point-to-Point Transmission Service with Arizona Electric Power Cooperative, Inc., is dated November 9, 1998. Service under this agreement commenced November 9, 1998.

The Umbrella Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Arizona Electric Power Cooperative, Inc., is dated November 9, 1998. Service under this agreement has not yet commenced.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER99-839-000]

Take notice that on December 7, 1998, Portland General Electric Company (PGE), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination for Service Agreement No. 129 under FERC Electric Tariff, First Revised Volume No. 2 between PGE and Vastar Power Marketing, Inc.

PGE respectfully requests the Commission accept this filing and terminate the Agreement on or before February 1, 1999.

A copy of the filing was served upon Southern Company Energy Marketing L.P., as noted in the body of the filing letter.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER99-840-000]

Take notice that on December 7, 1998, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with El Paso Power Services Company for service pursuant to Tariff No. 1, for Sales of Power and Energy by Florida Power & Light.

FPL requests that the Service Agreement be made effective on November 9, 1998.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER99-841-000]

Take notice that on December 4, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement

under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and TransAlta Energy Marketing (U.S.) Inc., (TransAlta).

Cinergy and TransAlta are requesting an effective date of November 15, 1998.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER99-842-000]

Take notice that on December 7, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff), entered into between Cinergy and TransAlta Energy Marketing (U.S.) Inc., (TransAlta).

Cinergy and TransAlta are requesting an effective date of November 5, 1998.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER99-843-000]

Take notice that on December 7, 1998, Delmarva Power & Light Company (Delmarva), tendered for filing executed umbrella service agreements with The City of Vineland, New Jersey, under Delmarva's market rate sales tariff.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Company Services, Inc.

[Docket No. ER99-844-000]

Take notice that on December 7, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing a Request for Expedited Treatment and Notice of Cancellation of a service agreement for non-firm point-to-point transmission service executed by SCS, as agent for Southern Company, and NP Energy, Inc., under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Original Volume No. 5).

Southern Company requests that the Commission waive its sixty day prior notice requirement and that the Notice of Cancellation of Service Agreement No. 164 be given an effective date of December 8, 1998, the next business day after this filing.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER99-845-000]

Take notice that on December 7, 1998, Puget Sound Energy, Inc. (Puget Sound), tendered for filing its FERC Electric Tariff, Original Volume No. 8, an initial rate schedule for the sale of electric energy at market based rates.

Puget Sound requests that the enclosed Market Rate Tariff be effective as of February 8, 1999, or the date that the Commission enters an order in this docket.

A copy of this filing was served upon the Washington Utilities and Transportation Commission.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PJM Interconnection, L.L.C.

[Docket No. ER99-846-000]

Take notice that on December 7, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing nine signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17, listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. PJM Interconnection, L.L.C.

[Docket No. ER99-847-000]

Take notice that on December 7, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed service agreements with Tenaska Power Service Company for point-to-point service under the PJM Open Access Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Niagara Mohawk Power Corporation

[Docket No. ER99-848-000]

Take notice that on December 7, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing Notice of Cancellation that effective December 24, 1998, Rate Schedule FERC No. 225, effective date August 30, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Copies of this Notice of Cancellation has been served upon Engelhard Power Marketing, Inc.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER99-849-000]

Take notice that on December 7, 1998, Niagara Mohawk Power Corporation tendered for filing notice that effective December 24, 1998, Rate Schedule FERC No. 227, effective date September 22, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Electric Clearinghouse, Inc.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-850-000]

Take notice that on December 7, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations revisions to Attachment A of the Localized Market Power Mitigation Measures Applicable to Sales of Capacity, Energy and Certain Ancillary Services from Specified Generating Units in New York City.

Con Edison states that a copy of this filing was served on the New York Public Service Commission.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Otter Tail Power Company

[Docket No. ER99-851-000]

Take notice that on December 7, 1998, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and Ameren Services Company. The Service Agreement allows Ameren Services Company to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Edison Mission Marketing & Trading, Inc.

[Docket No. ER99-852-000]

Take notice that on December 7, 1998, Edison Mission Marketing & Trading, Inc., a developer, owner, and operator of electric generating facilities,

incorporated under the laws of California, petitioned the Commission for acceptance of its market-based rate schedule, waiver of the 60-day notice requirement, and waiver of certain requirements under Subparts B and C of Part 35 of the Commission's regulations. Edison Mission Marketing & Trading, Inc. is an indirect subsidiary of Edison International.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Rochester Gas and Electric

[Docket No. ER99-853-000]

Take notice that on December 7, 1998, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the TransAlta Energy Marketing (US) Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96-141-000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 1, 1998 for the TransAlta Energy Marketing (US) Inc. Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Automated Power Exchange, Inc.

[Docket No. ER99-854-000]

Take notice that on December 7, 1998, Automated Power Exchange, Inc. (APX) filed a rate schedule under which APX will offer power exchange services in the Mid-Columbia market.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Louisville Gas and Electric Company/Kentucky Utilities

[Docket No. ER99-855-000]

Take notice that on December 7, 1998, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU) tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and TransAlta Energy Marketing (U.S.), Inc. under LG&E/KU's Open Access Transmission Tariff.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Niagara Mohawk Power Corporation

[Docket No. ER99-856-000]

Take notice that on December 7, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission, in accordance with 18 CFR 35.15 and 131.53, a Notice of Cancellation of FERC Rate Schedule No. 230, effective October 28, 1995, and any supplements thereto with National Fuel Resources, Inc.

The cancellation is effective December 23, 1998.

The Notice of Cancellation has been served on National Fuel Resources, Inc.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Pine Bluff Energy LLC

[Docket No. QF97-61-003]

Take notice that on December 7, 1998, Pine Bluff Energy LLC located at Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, IL 60062 filed with the Federal Energy Regulatory Commission an application for certification of a facility as a qualifying cogeneration facility pursuant to 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility located at the Pine Bluff Energy Center is a gas turbine combined cycle cogeneration facility that uses natural gas as its primary fuel source and distillate oil as secondary fuel. The facility includes a combustion turbine generator with a rated capacity of approximately 160,000 kW at ISO conditions, a heat recovery steam generator, and a condensing steam turbine rated at approximately 50,000 kW. The facility will be located at the International Paper Mill near Pine Bluff, Arkansas in Jefferson County, Arkansas.

The Facility will interconnect directly with the transmission system of Entergy Arkansas Inc., and will sell its useful output at wholesale to various qualified buyers.

Comment date: January 6, 1999, 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. 98-33495 Filed 12-17-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of New Docket Prefix "JR"

December 11, 1998.

Notice is hereby given that a new docket prefix JR has been established for jurisdictional reviews of licensed projects under the Federal Power Act.

The Commission will use this docket prefix when opening a docket for applications for jurisdictional reviews of hydroelectric projects operating under a Commission license.¹

The prefix will be JRFY-NNN-000, where "FY" stands for the fiscal year in which the filing was made, and "NNN" is a sequential number.

David P. Boergers,

Secretary.

[FR Doc. 98-33496 Filed 12-17-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5498-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 30, 1998 Through December 04, 1998 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements

¹ The Commission will continue to use the "UL" prefix for applications for jurisdictional reviews of existing hydroelectric projects that are *not* operating under a Commission license.

(EISs) was published in FR dated April 10, 1998 (62 FR 17856).

DRAFT EISs

ERP No. D-AFS-J65286-MT Rating EO2, Hemlock Point Access Project, Construction of 860 feet of Low Standard Road, Plum Creek, Swan Valley, Flathead National Forest, Missoula County, MT.

Summary: EPA expressed environmental objections about predicted adverse effects to water quality and fisheries, and about adverse effects to the threatened grizzly bear.

ERP No. D-NPS-D61048-PA Rating EC2, Gettysburg National Military Park, General Management Plan, Implementation, Develop a Partnership with the Gettysburg National Battlefield Museum Foundation, Gettysburg, PA.

Summary: EPA expressed environmental concerns with the potential on aquatic resources, including non-tidal wetlands adverse impacts. The final EIS should examine avoiding and mitigating for the permanent and temporary effects to the aquatic resource.

Final EISs

ERP No. F-AFS-J65274-MT Beaver Creek Ecosystem Management Project and Associate Timber Sale, Implementation, Little and Big Beaver Creek Drainage, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT.

Summary: EPA expressed environmental concerns about the potential adverse effects of increased peak flow and erosion and sediment transport and that the aquatic monitoring program should be improved to allow adequate measurement and detection of aquatic impacts.

ERP No. F-AFS-K61132-CA Eight Eastside Rivers, Wild and Scenic River Study, Suitability or Nonsuitability, Tahoe National Forest and Lake Tahoe Management Unit, Land and Resource Management Plans, Alpine, El Dorado, Placer, Nevada and Sierra Counties, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-AFS-L65301-AK Crane and Rowan Mountain Timber Sales, Implementation, Tongass National Forest, Stikine Area, Kuiu Island, AK.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-COE-K35036-CA Montezuma Wetlands Project, Use of Cover and Non-cover Dredged Materials

to restore Wetland, Implementation, Conditional-Use-Permit, NPDES and COE Section 10 and 404 Permit, Suisun Marsh in Collinsville, Solano County, CA.

Summary: EPA found the final EIS to be generally responsive to EPA's prior concerns on the draft EIS and will continue to work with the Corps to develop specific conditions for the Section 404 permit and to ensure that potential adverse environmental impacts are avoided, minimized and mitigated as fully as possible. EPA noted that if the project is properly constructed, operated and monitored, it could be a significant environmental benefit to the San Francisco Bay region and substantially advance the overall goals of the Federal-State strategy to manage the placement of dredged material in the region.

ERP No. F-NPS-E61073-MS Natchez Trace Parkway, Construction of Section 3X Southern Terminus, Adam Counties, MS.

Summary: EPA concerns were addressed in the final EIS about the wetland mitigation and stormwater runoff from road construction for the termination point in Natchez of the Natchez Trace Parkway.

ERP No. FS-AFS-J65213-MT Helena National Forest and Elkhorn Mountain portion of the Deerlodge National Forest Land and Resource Management Plan, Updated Information on Oil and Gas Leasing, Implementation several counties, MT.

Summary: EPA found no objections with the preferred alternative.

ERP No. FS-NPS-K65187-CA Santa Rosa Island Resources Management Plan Improvements of Water Quality and Conservation of Rare Species and their Habitats, Channel Islands National Park, Santa Barbara County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: December 15, 1998.

William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98-33614 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5497-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed December 07, 1998 Through December 11, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980499, DRAFT EIS, DOA, HI, Lower Hamakua Ditch Watershed Plan, To Provide a Stable and Affordable Supply of Agricultural Water to Farmer and Other Agricultural Producers, COE Section 404 Permit, Watershed Protection and Flood Prevention, Hawaii County, HI, Due: February 01, 1999, Contact: Kenneth Kaneshiro (808) 541-2600.

EIS No. 980500, FINAL EIS, COE, NJ, Brigantine Inlet to Great Egg Harbor Inlet Feasibility Study, Storm Damage Reduction Project, New Jersey Shore Protection, City of Brigantine, Brigantine Island, Along the Atlantic Coast, NJ, Due: January 18, 1999, Contact: Ms. Susan Lucas (215) 656-6573.

EIS No. 980501, DRAFT EIS, FHW, MN, Phalen Boulevard Project, Construction of a new 4.3 Kilometer Roadway, from I35E to Johnson Parkway, Funding, in the City of St. Paul, Ramsey County, MN, Due: February 10, 1999, Contact: Bill Lohr (612) 291-6100.

EIS No. 980502, FINAL EIS, USN, MD, VA, DE, Patuxent River Complex Project, Increased Flight and Related Ground Operations in Test Area, Naval Air Warfare Center Aircraft Division (NAWCAD) Chesapeake Bay, Patuxent River, several counties, MD, DE and VA, Due: January 18, 1999, Contact: Ms. Kelly Burdick (888) 276-5201.

EIS No. 980503, FINAL EIS, AFS, MI, Perkins-Manistique 138 kV Transmission Line Project, Wisconsin Electric/Edison Sault Electric, Construction and Operation, Application for a Special-Use-Permit, Hiawatha National Forest, Upper Peninsula, MI, Due: January 18, 1999, Contact: Lee Ann Loupe (906) 786-4062.

EIS No. 980504, DRAFT SUPPLEMENT, SFW, WA, Plum Creek Timber Sale, Issuance of a Permit to Allow Incidental Take and Habitat Conservation Plan (HCP) for Threatened and Endangered Species, Implementation, Updated Information on the Proposed Exchange of Private and Federal Lands Eastern and Western Cascade Provinces in the Cascade Mountains, King and Kittitas Counties, WA, Due: February 08, 1999, Contact: William Vogel (360) 753-4367.

EIS No. 980505, DRAFT SUPPLEMENT, TVA, TN, Kingston Fossil Plant Alternative Coal Receiving Systems, New Rail Spur Construction near the Cities of Kingston and Harriman, Roane County, TN, Due:

February 01, 1999, Contact: Harold M. Draper (423) 632-6889.

EIS No. 980506, DRAFT EIS, COE, AZ, Alamo Lake Reoperation and Ecosystem Restoration Feasibility Study, Implementation, Reoperation of Alma Dam on the Bill Williams River, La Paz and Mohave Counties, AZ, Due: February 01, 1999, Contact: Timothy Smith (213) 452-3854.

EIS No. 980507, FINAL EIS, USN, HI, Pacific Missile Range Facility Enhanced Capabilities, To Accommodate Theater Ballistic Missile Defense (TBMD) Training & Testing and Theater Missile Defense (TMD) Testing, NPDES Permit, several counties, HI, Due: January 18, 1999, Contact: Ms. Vida Mossman (808) 335-4740.

EIS No. 980508, FINAL EIS, BLM, ID, Challis Land and Resource Management Plan, Implementation, Upper Columbus—Salmon Clearwater Districts, Salmon River, Lemhi and Custer Counties, ID, Due: January 18, 1999, Contact: Kathe Rhodes (208) 756-5440.

EIS No. 980509, DRAFT EIS, NCP, MD, National Harbor Project, Construction and Operation along the Potomac River on a 534 acre site adjacent to the Capital Beltway and Oxon Hill Manor, COE Section 10 and 404 Permits, Prince George's County, MD, Due: February 01, 1999, Contact: Eugene Keller (202) 482-7251.

Dated: December 15, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98-33615 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6205-5]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92-463), the U.S. Environmental Protection Agency gives notice of a meeting of the Good Neighbor Environmental Board.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure

issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually.

Members of the public are invited to provide oral and/or written comments to the Board. Time will be provided at the meeting to obtain input from the public.

DATES: The Board will meet on February 11 and 12, 1999. The Board will meet on February 11 from 8:30 a.m. to 5:00 p.m. and on February 12 from 8:30 a.m. to 3:30 p.m.

ADDRESSES: El Paso Marriott Hotel, 1600 Airway Boulevard, El Paso, Texas 79925. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202-260-2477.

Dated: December 7, 1998.

Robert Hardaker,

Designated Federal Officer, Good Neighbor Environmental Board.

[FR Doc. 98-33625 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6205-3]

Governmental Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92-463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to

the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103-182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from state, local and tribal governments.

DATES: The Committee will meet on January 21 and 22, 1999. On January 21, the Committee will meet from 8:30 a.m. until 5:30 p.m. On January 22, the Committee will meet from 8:00 a.m. until 3:30 p.m.

ADDRESSES: The Hyatt Regency Hotel, 208 Barton Springs Road, Austin, Texas 78704. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202-260-2477.

Dated: December 7, 1998.

Robert Hardaker,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 98-33624 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6205-4]

National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to

the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. 103-182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on January 21 and 22, 1999. On January 21, the Committee will meet from 8:30 a.m. until 5:30 p.m. On January 22, the Committee will meet from 8:00 a.m. until 3:30 p.m.

ADDRESSES: The Hyatt Regency Hotel, 208 Barton Springs Road, Austin, Texas 78704. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202-260-2477.

Dated: December 7, 1998.

Robert Hardaker,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 98-33626 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34158; FRL-6052-6]

Increasing Transparency For the Tolerance Reassessment Process; Availability of Preliminary Risk Assessments for Four Organophosphates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the Environmental Protection Agency's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic

Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary ecological risk assessments and related documents for ethoprop, methyl parathion, temephos, and terbufos and the preliminary human health assessment for the methyl parathion. This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments are to be limited to issues directly associated with the four organophosphates that have risk assessments placed in the docket and should be limited to issues raised in those documents. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these four pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Written comments on these assessments must be submitted on or before February 16, 1999.

ADDRESSES: By mail, submit written comments in triplicate to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket without prior notice.

To request a copy of any of the preliminary risk assessments and related documents listed in this notice,

contact or visit the OPP Pesticide Docket at the addresses given in this unit, or call (703) 305-5805. The Docket staff will inform callers as to which of the documents can be sent directly from the docket and which need to be requested from the Freedom of Information Act Office due to their bulk. The public docket is available for public inspection in Rm. 119 at the Virginia address given in this unit from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically to: opp-docket@epa.gov. Follow the instructions under Unit II. of this document. No CBI should be submitted through e-mail. Copies of the preliminary risk assessments for the four organophosphate pesticides may also be accessed at: <http://www.epa.gov/opprrd1/op>.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (703) 308-8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA as amended by the FQPA. The Agency's preliminary ecological effects risk assessments for the following four organophosphate pesticides are available in the individual pesticide dockets: Ethoprop, temephos, and terbufos. The Agency's preliminary human health and ecological effects risk assessments for methyl parathion are also available in the docket.

Included in the individual pesticide dockets are the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the four organophosphate pesticides listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these four pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/

or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

To provide users with the most recent information on the four organophosphates, EPA has also included in each docket the Agency's July 7, 1998, "Hazard Assessment of the Organophosphates" and the Agency's July 9, 1998, "FQPA Safety Factor Recommendations for the Organophosphates." In general, these two documents were completed at a different time than the four individual pesticide preliminary risk assessments discussed in this notice. The Agency notes that where the preliminary risk assessments are inconsistent with the Hazard Assessment and FQPA Assessment, these Assessments will supersede the relevant portions of the preliminary risk assessments and will be incorporated into the revised individual pesticide risk assessments. The Agency also notes that these documents reflect only the work and analysis conducted as of the time they were produced, and as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemicals specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment

processes. All comments should be submitted by February 16, 1999 of the Agency record for each individual pesticide to which they pertain.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under the following docket control numbers. When submitting written or electronic comments regarding the four organophosphates, use the following docket control numbers:

Chemical	OPP Docket No.
Ethioprop	OPP-34144A
Methyl parathion	OPP-34161
Temephos	OPP-34147A
Terbufos	OPP-34139A

A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket control number OPP-34158. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 14, 1998.

Jack E. Housenger,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98-33631 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-OR; FRL-6049-7]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Oregon Authorization of Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: On March 31, 1998, the State of Oregon submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work-practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the approval of Oregon's application, and the authorization of the Oregon State Health Division's Lead-Based Paint Activities Program to apply in the State of Oregon effective September 3, 1998, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Lead-Based Paint Activities Program authorization was granted to the State of Oregon effective on September 3, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Ross, Regional Lead Coordinator, Environmental Protection Agency, Region X, 1200 Sixth Ave., WCM-128, Seattle, WA 98101, telephone: (206) 553-1985, e-mail address: ross.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work-practice standards. Under section 404 of TSCA (15 U.S.C. 2684), a State

may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

Notice of Oregon's application, a solicitation for public comment regarding the application, and background information supporting the application was published in the July 16, 1998, **Federal Register** (63 FR 38402) (FRL-5799-5). As determined by EPA's review and assessment, Oregon's application successfully demonstrated that the State's Lead-Based Paint Activities Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Oregon's application.

II. Federal Overfiling

Section 404(b) of TSCA, makes it unlawful for any person to violate, or fail, or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure, or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the Administrator may withdraw a State

or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (*Regulatory Planning and Review*, 58 FR 51735, October 4, 1993), and Executive Order 13045 (*Protection of Children from Environmental Health Risks and Safety Risks*, 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

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

containing significant unfunded mandates."

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

C. Executive Order 13084

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

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

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 10, 1998.

Chuck Clarke,

Regional Administrator, Region X.

[FR Doc. 98-33632 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION**Public Information Collection
Approved by Office of Management
and Budget**

December 9, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, 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. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418-0214.

Federal Communications Commission*OMB Control No.:* 3060-0867.*Expiration Date:* 03/31/99.

Title: Requests for Waiver of Section 20.18(c) of the Commission's Rules Regarding Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Estimated Annual Burden: 72,000 annual hours; .40 hours per response; 1,800 responses.

Needs and Uses: The various coordination, certification, and consent requirements will ensure licensee compliance with Commission rules and regulations, and ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1994. The requirements will also help to ensure that individuals who use TTY devices will be able to utilize such devices to make emergency 911 calls.

Federal Communications Commission.

Shirley S. Suggs,*Chief, Publications Branch.*

[FR Doc. 98-33485 Filed 12-17-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION**Sunshine Act Meeting**

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, January 5, 1999 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

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.

* * * * *

PERSON TO CONTACT FOR INFORMATION:Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.**Kathleen Ryan,***Special Assistant to the Secretary of the Commission.*

[FR Doc. 98-33752 Filed 12-16-98; 2:41 pm]

BILLING CODE 6715-01-M

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****Agency Information Collective
Activities: Proposed Collection;
Comment Request**

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of community floodplain management information pertaining to the National Flood Insurance Program (NFIP). Specifically, comments are encouraged to be submitted about the currently used Community Visit Report (CAV) form and Community Contact Report (CAC) form. Both of these forms are used to gather information regarding local community floodplain management activities.

SUPPLEMENTARY INFORMATION:

The National Flood Insurance Act of 1968, Section 1361 authorizes the development of criteria that will assist in reducing the damage of floods.

Communities that join the NFIP adopt these criteria through local ordinances. The CAV and CAC process serves a dual role. It provides a means for FEMA to give technical assistance about floodplain management to communities. Additionally, it affords FEMA an opportunity to measure the effectiveness and successes of local floodplain management activities in support for the NEIP. The data and information obtained through the CAV and CAC process is used to make program and policy changes to improve the NFIP. The knowledge gained from discussing implementation of the NEIP by local community official is critical to keeping the NFIP up to date and current.

Collection of Information

Title: Effectiveness of a Community's Implementation of the National Flood Insurance Program: Community Assistant Contact (CAC) Report and Community Assistant Visit (CAV) Report.

Type of Information Collection. Extension of a currently approved collection.

OMB Number: 3067-0198.

Form Numbers: FEMA Form 81-68, Community Contact Report (CAC), FEMA Form 81-68, Community Visit Report (CAV)

Abstract: FEMA's National Flood Insurance Program (NEIP) Community Assistant Program (CAP) is designed to assure that communities participating in the NFIP are achieving the flood loss reduction objectives of the program. The CAP also provides needed floodplain management assistance services to NFIP communities to identify, prevent, and resolve floodplain management issues before they develop into problems requirement enforcement actions. The Community Assistant Contact (CAC) is a telephone contact or brief visit with NFIP community to determine if program-related problems exist and offer assistance. The Community Assistant Visit (CAV) is a scheduled visit to NFIP communities for the purpose of conducting a comprehensive assessment of the community's floodplain management program and to assist the community in understanding the NFIP and its requirements and implementing effective flood loss reduction measures.

Affected Public: State, Local and Tribal Government

Estimated Total Annual Burden Hours:

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A×B×C)
81-68	1,900	1	2	3,800
81-69	1,900	2	3	11,400
Total	3,800	1	5	15,200

Estimated Cost: \$380,500.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524 or e.mail address muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Robert F. Shea, Director, Program Support Division, Mitigation Directorate (202) 646-4621 for additional information. Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Dated: December 11, 1998.

Muriel B. Anderson,
*Acting Director, Program Services Division,
Operations Support Directorate.*
[FR Doc. 98-33579 Filed 12-17-98; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1257-DR]

Texas; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-1257-DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: In a letter dated December 7, 1998, the President amended his initial declaration letter to reflect the incident period for this disaster as October 17, 1998, through and including November 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,
Deputy Associate Director, Response and Recovery Directorate.
[FR Doc. 98-33577 Filed 12-17-98; 8:45 am]
BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1257-DR]

Texas; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA-1257-DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include following

areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Grimes, Polk, and Trinity Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,
Deputy Associate Director, Response and Recovery Directorate.
[FR Doc. 98-33578 Filed 12-17-98; 8:45 am]
BILLING CODE 6718-02-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 January 11, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *John B. Turner Holding Company*, Jackson, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Marie R. Turner Holding Company, Jackson, Kentucky, and Citizens Bank & Trust Company of Jackson, Jackson, Kentucky.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *BCC Bancshares, Inc.*, Hardin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Calhoun County, Hardin, Illinois.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Umpqua Holdings Corporation*, Roseburg, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of South Umpqua State Bank, Roseburg, Oregon.

Board of Governors of the Federal Reserve System, December 14, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98-33494 Filed 12-17-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 14, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Avondale Financial Corp.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Coal City Corporation, Chicago, Illinois, and Manufacturers Corporation, Chicago, Illinois, and thereby indirectly acquire Manufacturers National Bank, Chicago, Illinois.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *United Security Bancorporation*, Spokane, Washington; to merge with Bancwest Financial Corporation, Walla Walla, Washington, and thereby indirectly acquire the Bank of the West, Walla Walla, Washington.

Board of Governors of the Federal Reserve System, December 15, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98-33608 Filed 12-17-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-32550) published on page 67693 of the issue for Tuesday, December 8, 1998.

Under the Federal Reserve Bank of Richmond heading, the entry for BankAmerica Corporation, Charlotte, North Carolina; BancWest Corporation,

Honolulu, Hawaii; BB&T Corporation, Winston-Salem, North Carolina; First Union Corporation, Charlotte, North Carolina; SunTrust Banks, Inc., Atlanta, Georgia; Wachovia Corporation, Winston-Salem, North Carolina; and Zions Bancorporation, Salt Lake City, Utah, is revised to read as follows:

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *BankAmerica Corporation*, Charlotte, North Carolina; BancWest Corporation, Honolulu, Hawaii; BB&T Corporation, Winston-Salem, North Carolina; First Union Corporation, Charlotte, North Carolina; SunTrust Banks, Inc., Atlanta, Georgia; Wachovia Corporation, Winston-Salem, North Carolina; and Zions Bancorporation, Salt Lake City, Utah; to acquire H&S Holding Company, Maitland, Florida; and thereby indirectly acquire HONOR Technologies, Inc., Maitland, Florida, and STAR Systems, Inc., San Diego, California, and thereby engage in certain data processing and electronic funds transfer services, management consulting services, and check verification services, pursuant to §§ 225.28 (b)(2), (b)(9) and (b)(14) of Regulation Y. These activities will be conducted worldwide.

Comments on this application must be received by December 30, 1998.

Board of Governors of the Federal Reserve System, December 14, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98-33492 Filed 12-17-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Chambers Bancshares, Inc., Danville, Arkansas, and its wholly owned subsidiary, Community Investment, Inc., Elkins, Arkansas; to acquire Community Bank, F.S.B., Elkins, Arkansas, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 14, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98-33493 Filed 12-17-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engage in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-31847) published on page 66187 of the issue for Tuesday, December 1, 1998.

Under the Federal Reserve Bank of Cleveland heading, the entry for Mellon Bank Corporation, Pittsburgh, Pennsylvania, is revised to read as follows:

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Mellon Financial Markets, Inc., Pittsburgh, Pennsylvania, in underwriting and dealing in all types of debt and equity securities on a limited basis, pursuant to the conditions set forth in 12 CFR 225.200; in agency transaction services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; in investment transactions as principal, pursuant to § 225.28(b)(8) of Regulation

Y; and in providing financial and investment advice, pursuant to § 225.28(b)(6) of Regulation Y.

Comments on this application must be received by December 29, 1998.

Board of Governors of the Federal Reserve System, December 15, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98-33609 Filed 12-17-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

[Docket No. R-1032]

Settlement-day Finality for Automated Clearing House Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is requesting comment on the benefits and drawbacks of providing settlement finality on the morning of the settlement day for ACH credit transactions processed by the Federal Reserve.

DATES: Comments must be submitted on or before March 18, 1999.

ADDRESSES: Comments should refer to Docket No. R-1032 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. on weekdays, and to the security control room at all other times. The mail room and the security control rooms are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT:

Wesley M. Horn, Manager, ACH Payments (202/452-2756); Myriam Y. Payne, Senior Financial Services Analyst, Payment Systems Risk and Net Settlement (202/452-3219); Jeffrey S. H. Yeganeh, Senior Financial Services Analyst (202/728-5801), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only, contact Diane Jenkins, Telecommunication Device for the Deaf (TDD) (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Background

The Board is considering the merits of providing settlement finality on the morning of the settlement day for ACH credit transactions processed by the Federal Reserve Banks. The issue of settlement finality for ACH transactions processed by the Reserve Banks has been a subject of industry discussion since the 1980s. Currently, the Reserve Bank's uniform ACH operating circular gives the Reserve Banks the right to reverse settlement for either debit or credit transactions until 8:30 a.m. eastern time on the morning of the business day following the settlement day. A Reserve Bank can reverse settlement if it does not receive actually and finally collected funds from the depository institution funding the payments (the originating depository financial institution (ODFI) in the case of credit transactions or the receiving depository financial institution (RDFI) in the case of debit transactions) by 8:30 a.m. eastern time on the morning of the business day following the settlement day, with notification to the ODFIs and RDFIs as soon as possible thereafter. In comparison, private-sector ACH operators provide settlement finality either on the settlement day or on the business day after the settlement day, depending on the type of net settlement arrangement the operator uses. The Board expects that all private-sector ACH operators will be able to provide settlement-day finality to their customers once the Reserve Banks fully implement their enhanced settlement service (63 FR 60000, November 6, 1998).

The Board requested comment on proposals to improve settlement finality for ACH transactions processed by the Reserve Banks in 1986 and 1989. The 1986 proposal would have provided settlement finality for ACH credit transactions of \$5,000 or less at 1:00 p.m. local time on the settlement day and for ACH credit transactions of more than \$5,000 and ACH debit transactions when the Reserve Bank received actually and finally collected funds (51 FR 45043, December 16, 1986). The 1989 proposal would have provided settlement finality for ACH credit transactions at 6:30 p.m. local time on the settlement day and for ACH debit transactions at 10:00 a.m. local time on the business day after settlement. Commenters did not support either proposal because neither provided finality at the opening of business on the settlement day (54 FR 8822, March 2, 1989).

Over the last several years, there have been renewed calls for the Reserve Banks to improve the finality of the ACH mechanism to reduce the interbank settlement risk. The Settlement Risk Management Task Force, sponsored by the National Automated Clearing House Association (NACHA) and the National Organization of Clearing Houses, and NACHA's Vision 2000 report called for finality of settlement at opening of business on the settlement day for ACH credit transactions. In addition, the January 1998 report of the Committee on the Federal Reserve in the Payments Mechanism stated that the Federal Reserve would explore changes, including changes to ACH finality, that could more effectively support the needs of existing and emerging retail payments methods.¹

The credit risks associated with ACH debit transactions and ACH credit transactions are different and, thus, the Board believes that each must be addressed separately. In the case of ACH debit transactions, the ODFI is exposed to two kinds of credit risk when it makes funds available to the originator. First, the ODFI is exposed to the risk that the RDFI may fail and that the settlement for the entries would be reversed. Second, the ODFI is exposed to credit risk if the RDFI returns the item within its return deadline, or as long as sixty days later in the case of an unauthorized transaction. Because the RDFI's ability to return items would remain unchanged under any proposal to improve settlement finality for debit transactions, speeding the settlement finality would not materially reduce the ODFI's credit risk. As a result, the Board is not seeking comment on any change to the finality for settlement of ACH debit transactions.

The Board, however, is considering whether there is merit in providing settlement finality on the morning of the settlement day for ACH credit transactions processed by the Federal Reserve. Specifically, the Board is considering making the settlement for ACH credit transactions final when posted, which is currently 8:30 a.m. eastern time on the day of settlement. In the case of ACH credit transactions, NACHA rules require that the RDFI make funds available to its customers on

the settlement day.² As a result, the RDFI is at risk if (1) the ODFI fails, (2) its customers withdraw funds that have been made available before the settlement was final, (3) the Reserve Banks later reverse the settlement, and (4) the RDFI is unable to recover the funds from its customers.

The Board believes that if the Federal Reserve were to provide settlement-day finality for ACH credit transactions, it should adopt risk control measures commensurate with those used in connection with other Federal Reserve services with similar finality characteristics. Current risk control measures for the ACH service include ex post monitoring of daylight overdraft trends, requiring an ODFI at imminent risk of failure to prefund the value of the ACH transactions it originates, and reversing ACH credit transactions if an ODFI is unable to settle for those transactions. Under these risk control measures, the Reserve Banks have never reversed a settled ACH credit file due to the failure of an ODFI, which has contributed to the public's confidence in the ACH system. Because of this success, some commenters on the previous proposals have concluded that the current risk control measures are sufficient to allow the Reserve Banks to provide finality at the opening of business on the settlement day without the adoption of more stringent risk controls. The Board, however, does not believe that these measures provide Reserve Banks with adequate protection from settlement risk if settlement were to become final before the Reserve Banks knew whether depository institutions could fund the payments. Moreover, if the industry were confident that the Federal Reserve's current risk controls were sufficient, it likely would not be advocating the adoption of settlement-day finality to reduce RDFI risk.

The Board believes that the risk control measures needed to provide settlement-day finality for ACH credit payments processed through the Federal Reserve Banks should be commensurate with those provided in the Fedwire funds transfer service and the enhanced settlement service, as these services provide final and irrevocable settlement at the time a transaction is credited to the depository institution's account. The funds transfer and the enhanced

settlement services use real-time account balance monitoring for depository institutions that fall within established risk parameters as a prerequisite for making payments final. For institutions monitored in real time, a funds transfer or a settlement entry initiated through the enhanced settlement service will not be processed unless the institution's available account balance is sufficient to cover the debit entry.³ Most depository institutions, however, are not monitored in real time. The account activity of an institution that is not monitored in real time is monitored for compliance with the daylight overdraft transaction posting rules on an ex post basis. As a result, Reserve Banks are able to control their credit risk exposure by monitoring the account balances of a selected group of depository institutions in real time, thereby restricting those institutions' access to Federal Reserve intraday credit. Providing settlement-day finality for ACH credit transactions without applying risk control measures similar to those used for Fedwire funds transfers and enhanced settlement entries may create incentives for monitored institutions to move payments from Fedwire to the ACH to avoid risk management controls.

The Board also believes that if the Federal Reserve were to provide settlement-day finality for the ACH credit transactions it processes, it should use risk control measures similar to those used to provide settlement-day finality for ACH transactions processed by private-sector operators. It is anticipated that most private-sector service providers will use the enhanced settlement service to provide settlement-day finality for ACH transactions. As a result, the Board believes that risk control measures used in the Federal Reserve's ACH service should be commensurate with those used in the enhanced settlement service.

II. Improving Settlement Finality for ACH Credit Transactions Processed by the Federal Reserve

The Board believes that if it were to improve the settlement finality for ACH credit transactions processed by the Federal Reserve by making settlement final when it is posted, which is currently 8:30 a.m. eastern time on the day of settlement, it should adopt appropriate risk control measures. The Board has considered other alternatives to improve settlement finality for ACH

¹ Committee on the Federal Reserve in the Payments Mechanism, *The Federal Reserve in the Payments Mechanism* (Board of Governors of the Federal Reserve System, January 1998), p. 33. The report can be found on the Board's website at <http://www.federalreserve.gov/boarddocs/press/General/1998/19980105>.

² NACHA Rules Section 4.4.1 requires an RDFI to make funds from credit entries available to its customers on the settlement day. Further, for credit entries to a consumer's account that are made available to the RDFI by 5:00 p.m. local time on the day before the settlement day, the RDFI must make the funds available by opening of business on the settlement day.

³ The available account balance includes the depository institution's Federal Reserve account balance plus any available intraday credit.

credit transactions.⁴ Providing settlement-day finality for ACH credit transactions using real-time risk control measures, however, is complicated by the use of value-dating in the ACH mechanism. Because of value-dating, an ACH credit transaction may be processed up to two days prior to the settlement day. The funds to pay for the ACH credit transactions, however, are not deducted from the ODFI's account until the settlement day. As a result, absent any action to debit funds, a balance check of the ODFI's account at the time that a transaction is processed would be ineffective in managing risk. In contrast, in the funds transfer and enhanced settlement services, a balance check at the time that a transaction is processed is an effective risk management tool because the actions taken to process and settle for the transaction are almost simultaneous. As a result, the Board believes that the expanded use of prefunding at the time that transactions are processed would be an appropriate risk control mechanism to achieve improvements in the finality for the settlement of ACH credit transactions. Under prefunding, the Federal Reserve eliminates the settlement risk by substituting itself for the ODFI as obligor to settle for the ACH credit transactions.

The Board believes that any ODFI that is being monitored in real time, or that would be monitored in real time if it participated in a service that uses real-time monitoring, should be required to prefund all of the ACH credit transactions it originates. If the ODFI's available account balance were sufficient, the transactions would be processed and released to the RDFIs and the ODFI's account would be debited for the amount of the transactions. On the settlement day, the ODFI may receive an as-of adjustment to compensate it for the float caused by the prefunding

⁴The Board has considered eliminating value-dating in its ACH service, which would allow the Reserve Banks to monitor balances and settle transactions on the same day. The Board, however, does not believe that this alternative is practical because it would fundamentally change the nature of the ACH service and disrupt established and effective business practices of ODFIs and their customers. The Board has also considered processing ACH transactions as they are received, monitoring balances on the settlement day, and reversing transactions originated by institutions monitored in real time early on the settlement day if sufficient funds were unavailable to settle the transactions. The Board believes that if this alternative were adopted, the risk to an RDFI would not be reduced measurably because it might be unable to reverse credits to its customers' accounts in a timely fashion after receipt of a reversal file. Further, under this alternative, an ODFI would be unable to re-initiate transactions for the intended settlement date, which may undermine the perceived reliability of the ACH.

requirement. If the ODFI's available account balance were not sufficient, the transactions would not be processed until the ODFI funded the account.

If an ODFI were not being monitored in real time, it would not be required to prefund its ACH credit originations and incoming files would be processed as they are today. If the ODFI fails, the Reserve Banks would reserve the right to reverse the ACH credit originations that have not yet settled. Reserve Banks, however, would not reverse transactions that had already settled. For example, a depository institution that is not required to prefund originates \$1,000 worth of credit transactions on Monday with \$300 to settle on Tuesday and \$700 to settle on Wednesday. If the institution fails on Tuesday, the Reserve Banks could bear the loss for the \$300 that settled Tuesday morning but may reverse the transactions that were intended to settle on Wednesday. The reversal entries would be included in the files that RDFIs would receive Wednesday morning.

The Reserve Banks believe that the system changes required to implement the risk controls needed for settlement-day finality could be available in early 2001. The Banks do not believe that these changes would materially increase the cost of the Federal Reserve's ACH service.

III. Comment is Requested on the Effect of Settlement-Day Finality on the Attractiveness of the Federal Reserve's ACH Service and on the ACH System More Generally

The Board is interested in commenters' views on the benefits and drawbacks associated with adopting morning-of settlement-day finality for ACH credit transactions processed by the Federal Reserve. The Board is also interested in whether commenters believe that providing settlement-day finality would, on net, increase or reduce the attractiveness of the Federal Reserve's ACH service and of the ACH system more generally.

The Board requests comment on the extent to which morning-of-settlement-day finality would promote ACH volume growth, whether certain types of transactions would be more likely to be made by ACH credit transactions if the Federal Reserve moved to settlement-day finality, and which payment methods are currently used to make these payments. The impetus for the industry's recommendation that the Federal Reserve adopt morning-of-settlement-day finality is the desire to eliminate RDFIs' current risk exposure associated with having to make funds from ACH credit transactions available

to their customers prior to the time that settlement of those funds becomes final. This risk, however, has not translated into a loss to any RDFI to date as the Federal Reserve has never reversed a settled ACH file due to the failure of an ODFI to fund its settlement. Further, it does not appear that this risk exposure has discouraged depository institutions' participation in the ACH system. The Board also requests comment on whether settlement-day finality would facilitate product innovation in the ACH service and if so, how.

The Board is interested in commenters' views on the extent to which the differences in finality provided by ACH operators influence depository institutions' choice of operator. Currently, one private-sector ACH operator (Visa) provides settlement-day finality for its ACH transactions, but the Federal Reserve and the other private-sector ACH operators (the New York Automated Clearing House and the American Clearing House) provide next-day settlement finality.

The Board requests comment on the extent to which the public's confidence in the ACH system might be adversely affected if credit transactions are not settled on the intended settlement day and whether, as a result, the attractiveness of the ACH system might be reduced. As discussed above, if the Board were to approve morning-of-settlement-day finality for ACH credit transactions, the Reserve Banks would implement risk control measures commensurate with those used in the Fedwire funds transfer service and in the enhanced settlement service by requiring all institutions monitored in real time to prefund the amount of their ACH credit originations. While these risk control measures would reduce the settlement risk to RDFIs, the measures would increase the likelihood that the transactions of institutions monitored in real time might no longer settle on their intended settlement day even though they would likely settle in today's environment. Currently, the Federal Reserve settles for ACH credit transactions for these ODFIs on the settlement day and has until the next morning, which is when the settlement would become final, to ensure that the ODFI has funded the transactions. Under the risk control measures discussed above, if the ODFI is being monitored in real time and its available account balance is not sufficient to fund the payments prior to processing, the transactions may not settle on the intended settlement day. Settlement may also be delayed if the ODFI were able to arrange for funding later. As a

result, payroll and other direct deposit files could be rejected or delayed, which might increase concerns regarding the reliability of the ACH mechanism and retard the growth of electronically initiated payments.

In addition, the Board requests comment on the extent to which the ACH system would become less attractive to institutions required to prefund their credit transactions if those institutions were required to modify their internal procedures. The expanded prefunding requirement would require ODFIs that are monitored in real time to fund ACH transactions earlier than is currently the case and might require processing changes at the ODFI or its designated sending point(s). The earlier funding would increase the cost of processing ACH transactions to those institutions. Further, the ODFI may be required to submit separate batches for credit transactions and debit transactions to avoid the possibility that debit transactions included in mixed batches might be held.

In the case of an ODFI that settles through the account of a correspondent settlement agent, the Board is interested in commenters' views on whether the Federal Reserve should base the prefunding requirements on the condition of the correspondent or the ODFI. Currently, Reserve Banks require prefunding based on the financial condition of the ODFI and not that of the correspondent. In either case, if transactions could not be processed because the correspondent's account had an insufficient account balance to prefund ACH credit transactions originated by the ODFI, both the ODFI and the correspondent would be notified. Further, if the Reserve Banks based their prefunding requirement on the risk profile of the correspondent settlement agent, the correspondent would not be permitted to terminate a settlement designation for transactions that have been accepted by the Federal Reserve for processing.

Finally, the Board is interested in commenters' suggestions regarding alternative risk control approaches, different from that described in this notice, that would establish risk controls equivalent to those used in the Fedwire funds transfer service and in the enhanced settlement service and that may be better suited to the ACH environment.

IV. Competitive Impact Analysis

In assessing the competitive impact of improving the finality for the settlement of ACH credit transactions, the Board considers whether there will be a direct and material adverse effect on the

ability of other service providers to compete with the Federal Reserve due to differing legal powers or due to the Federal Reserve's dominant market position deriving from such legal differences.⁵

Although the Federal Reserve's ACH does not derive its dominant market position from legal differences, the fact that the Federal Reserve maintains accounts directly or indirectly for all depository institutions to settle may make it easier from some institutions' perspective to use the Federal Reserve's services. The enhanced settlement service was designed, in part, to offset that potential advantage by making it easier for a private-sector entity to function settlement entries to depository institutions nationwide. As was mentioned earlier, the enhanced settlement service will check the available account balance of all depository institutions that are being monitored in real time. If the Reserve Banks were to improve the settlement finality for the ACH transactions they process without implementing similar risk controls, competitive questions might be raised. The Board, however, believes that the expanded use of prefunding provides risk controls commensurate with those of the enhanced settlement service.

While private-sector operators that use the Fedwire-based or enhanced settlement service will be able to offer settlement-day finality for the ACH credit transactions they process, differences would remain between the characteristics of their settlement finality and those of the Federal Reserve's ACH service, assuming the Board adopts settlement-day finality as described in this notice. In particular, the need to reverse ACH credit transactions that cannot be funded would largely be eliminated in the Federal Reserve's ACH service because of the prefunding of those transactions by ODFIs with higher risk profiles. In contrast, private operators, to the extent that they accept participants with higher risk profiles, would need to reverse ACH credit transactions that had been previously processed and delivered to RDFIs if the ODFI could not fund its net debit position on the settlement day. (Private ACH operators, however, generally do not provide services to institutions that do not meet their criteria for admission and participation. These criteria are based, in part, on the financial condition of the institutions.) From the perspective of the RDFIs, avoiding the risk of reversing

transactions that had already been posted to receivers' accounts may make the risk management associated with the Federal Reserve's ACH service more attractive than that of the private operators. From the perspective of some ODFIs, however, the Federal Reserve's risk management would likely be considered more burdensome and therefore less attractive than that of the private operators. The Federal Reserve's ACH service would require some ODFIs to fund their gross ACH credit originations before transactions are processed while private-sector operators require ODFIs to fund their net positions at the time of settlement. The provision of as-of adjustments for prefunding, however, could mitigate this burden somewhat. In general, the Board does not believe that settlement-day finality for ACH credit transactions processed by the Federal Reserve and conditioned on the expanded use of prefunding would adversely affect competition in the provision of interbank ACH services.

By order of the Board of Governors of the Federal Reserve System, December 14, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98-33575 Filed 12-17-98; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Bioethics Advisory Commission; Proposed Information Collection; Comment Request; American Investigators' Attitudes Regarding U.S. Human Subjects Regulations

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Bioethics Advisory Commission will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

BACKGROUND: The National Bioethics Advisory Commission (NBAC), appointed by President Clinton, is examining international research ethics as one of its focus areas. NBAC has commissioned this study to analyze how American investigators view current regulatory requirements. The results of this study will contribute to NBAC's examination of whether U.S. policies regarding human subjects research in developing countries should

⁵ The Federal Reserve in the Payments System, FRRS 7-145.2

be changed and, if so, to develop recommendations for such change.

Proposed Collection: Title: American Investigators' Attitudes Regarding U.S. Human Subjects Regulations. *Type of Information Collection Request:* New.

Need and Use of Information Collection:

This is an effort by the National Bioethics Advisory Commission to provide information that is currently not available to assist the Commission in its upcoming deliberations on international bioethics issues. The respondents are individual U.S. researchers who have conducted or are currently conducting research in developing countries, funded by the U.S. government and therefore subject to U.S. human subject protection regulations. The following research questions will be addressed:

What are the attitudes and experiences of US-based health researchers working in developing countries regarding US-generated ethical guidelines and human subjects regulations? What recommendations do such researchers make for revising the U.S. guidelines for research conducted in developing world settings? This study will employ two phases: Phase 1 will consist of focus groups with American investigators; and Phase 2 will entail mailing a self-administered survey to a randomly selected sample of researchers funded by the Federal government or private entities to conduct health research in developing countries. *Frequency of Response:* One time. *Affected Public:* Individuals. *Type of Respondents:* Researchers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 245; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hour per Respondent:* .776; and *Estimated Total Annual Burden Hours Requested:* 190. The annualized cost to respondents is estimated at \$4,750. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from public individuals or organizations should be sent to 6100 Executive Boulevard, Suite 5B01, Rockville, MD 20892-7508, or to the Commission's website at www.bioethics.gov. Responses can also be faxed to 301-480-6900. Responses should address ways that enhance the quality, utility, and clarity of the information sought.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact in writing Ms. Patricia Norris at the address shown above or via the NBAC website.

Comments Due Date: Comments regarding this information collection are best assured of having a full effect if received within 60 days of the date of this publication.

Dated: December 14, 1998.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98-33488 Filed 12-17-98; 8:45 am]

BILLING CODE 4160-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Request for Nominations for Members of the Chronic Fatigue Syndrome Coordinating Committee

The Office of Public Health and Science (OPHS) requests nominations for representatives to serve on the Chronic Fatigue Syndrome Coordinating Committee (CFSCC). Nominations are solicited for representatives in the following categories: (1) Individuals who are biomedical research scientists with demonstrated achievements in biomedical research relating to chronic fatigue syndrome (CFS); and, (2) individuals with expertise in health care services, disability issues, or who are representatives of private health care insurers.

INFORMATION REQUIRED: Each nomination shall consist of a package that at a minimum includes:

A. A letter of nomination that clearly states the name and affiliation of the nominee, the nominator's basis for the nomination, and the category for which the person is nominated;

B. The name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to contact information.

C. A copy of the nominee's curriculum vitae.

All nomination information for a nominee must be provided in complete single package. Incomplete nominations cannot be considered. Nomination materials must bear original signatures and facsimile transmissions or copies are not acceptable.

DATES: All nominations must be received at the address below by no later than 4 p.m. EDT on January 15, 1999.

ADDRESSES: All nomination packages shall be submitted to Lillian Abbey, Executive Secretary, National Institutes

of Health, National Institute of Allergy and Infectious Diseases, Division of Microbiology and Infectious Diseases, Solar Building, Room 3A26, 6003 Executive Boulevard, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT:

Lillian Abbey at the above address or at (301) 496-1884 between 9 a.m. and 3 p.m. EDST.

Dated: December 10, 1998.

David Satcher,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 98-33567 Filed 12-17-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Mine Safety and Health Research Advisory Committee (MSHRAC): Notice of Recharter

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Mine Safety and Health Research Advisory Committee (formerly known as the Mine Health Research Advisory Committee), National Institute for Occupational Safety and Health, of the Department of Health and Human Services, has been rechartered for a 2-year period, through November 30, 2000.

For further information, contact Larry Grayson, Ph.D., Executive Secretary, MSHRAC, CDC, 200 Independence Avenue, SW, Room 715-H, Humphrey Building, Washington, D.C. 20201. Telephone 202/401-2192, fax 202/260-4464, e-mail lhg9@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 11, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-33542 Filed 12-17-98; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 8:30 a.m.-5 p.m., January 21, 1999. 8:30 a.m.-3 p.m., January 22, 1999.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items include issues pertaining to syphilis elimination; perinatal HIV elimination; behavioral surveillance; and HIV prevention research activities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Beth Wolfe, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, Mailstop E-07, Atlanta, Georgia 30333. Telephone 404/639-8008, fax 404/639-8600, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 11, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-33543 Filed 12-17-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Nursing Home Industry

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties into the OIG's development of a compliance program guidance for the nursing home industry and its providers and suppliers, especially those serving Medicare and Medicaid beneficiaries. Many providers and provider organizations have expressed an interest in better protecting their operations from fraud and abuse. The OIG has developed guidances for hospitals, clinical laboratories, home health agencies and third-party medical billing companies. Currently, the OIG has under development compliance program guidance for the durable medical equipment, prosthetic and orthotic supply industry and Medicare+Choice organizations with coordinated care plans. In order to provide a clear and meaningful guidance to those segments of the health care industry involved in the ownership and operation of nursing care facilities, the OIG is soliciting comments, recommendations and suggestions from concerned parties and organizations on how best to develop a compliance program guidance and reduce fraud and abuse within the nursing home industry.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on February 16, 1999.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-5-CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW, Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG-5-CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW, Washington, DC 20201 on Monday

through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stephen Davis, Office of Counsel to the Inspector General, (202) 619-2078.

SUPPLEMENTARY INFORMATION: The development of compliance program guidances continues as a major OIG initiative as a vehicle for engaging the private health care community in an effort to reduce fraud and abuse. This nursing home guidance represents another step in the OIG's plan to encourage the implementation of compliance programs in specific segments of the health care industry.¹ As in the past, this guidance is designed to provide clear direction and assistance to Medicare and Medicaid nursing home providers, their owners and suppliers, who are interested in reducing and eliminating fraud and abuse within their organizations.

The guidance represents the culmination of the best suggestions and recommendations from the OIG and from representatives of the private health care community on how providers can most effectively establish internal controls and implement monitoring procedures to identify, correct and prevent fraudulent and wasteful activities. As stated in previous guidances, these guidelines are not mandatory for providers, nor do they represent an exclusive document of advisable elements of a compliance program.

In an effort to formalize the process by which the OIG receives public comments in connection with compliance program guidances, the OIG is seeking, through this **Federal Register** notice, formal input from interested parties as the OIG begins developing the compliance program guidance for Medicare and Medicaid covered nursing home facilities, their providers and suppliers. The OIG considers all comments, recommendations and suggestions submitted and received by the time frame indicated above.

The OIG anticipates that the nursing home guidance will contain seven elements that the OIG considers necessary for a comprehensive compliance program. These seven elements have been discussed in our previous guidances and include:

- The development of written policies and procedures;

¹ See 62 FR 9435 (March 3, 1997) for clinical laboratories, as amended in 63 FR 45076 (August 24, 1998); 63 FR 8987 (February 23, 1998) for hospitals; 63 FR 42410 (August 7, 1998) for home health agencies, and for third party medical billing companies appearing elsewhere in this **Federal Register**. The guidance can also be found on the OIG web site at <http://www.dhhs.gov/progorg/oig>.

- The designation of a compliance officer and other appropriate bodies;
- The development and implementation of effective training and education programs;
- The development and maintenance of effective lines of communication;
- The enforcement of standards through well-publicized disciplinary guidelines;
- The use of audits and other evaluation techniques to monitor compliance; and
- The development of procedures to respond to detected offenses and to initiate corrective action.

The OIG would appreciate specific comments, recommendation and suggestions on (1) risk areas for the nursing home industry, and (2) aspects of the seven elements contained in previous guidances that may need to be modified to reflect the unique characteristics of the nursing home industry. Detailed justifications and empirical data supporting suggestions would be appreciated. The OIG is also hopeful that any comments, recommendations and input be submitted in a format that addresses the above topics in a concise manner, rather than in the form of comprehensive draft guidance that mirrors previous guidances.

Dated: December 14, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98-33566 Filed 12-17-98; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG Compliance Program Guidance for Third-Party Medical Billing Companies

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued Compliance Program Guidance for Third-Party Medical Billing Companies developed by the Office of Inspector General (OIG) in cooperation with, and with input from, the Health Care Financing Administration, the Department of Justice and representatives of various trade associations and health care practice groups. The OIG has previously developed and published compliance program guidance focused on the clinical laboratory and hospital

industries and on home health agencies. We believe that the development and issuance of this compliance program guidance for third-party medical billing companies will serve as a positive step towards promoting a higher level of ethical and lawful conduct throughout the entire health care industry.

FOR FURTHER INFORMATION CONTACT: Susan Lemanski, Office of Counsel to the Inspector General, (202) 619-2078

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidance remains a major effort by the OIG in its effort to engage the health care community in combating fraud and abuse. In formulating compliance guidance, the OIG has worked closely with the Health Care Financing Administration (HCFA), the Department of Justice (DOJ) and various sectors of the health care industry to provide clear guidance to those segments of the industry that are interested in reducing fraud and abuse within their organizations. The 3 previously-issued compliance program guidances were focused on the hospital industry, home health agencies clinical laboratories, and were published in the **Federal Register** on February 23, 1998 (63 FR 8987), August 7, 1998 (63 FR 42410) and August 24, 1998 (63 FR 45076), respectively. The development of these types of compliance program guidance is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

Elements for an Effective Compliance Program

Through experience, the OIG has identified 7 fundamental elements to an effective compliance program. They are:

- Implementing written policies, procedures and standards of conduct;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Enforcing standards through well-publicized disciplinary guidelines;
- Conducting internal monitoring and auditing; and
- Responding promptly to detected offenses and developing corrective action.

Third-Party Medical Billing Companies

Increasingly, third-party medical billing companies are providing crucial services that could greatly impact the

solvency and stability of the Medicare Trust Fund. Health care providers are relying on these billing companies to a greater degree in assisting them in processing claims in accordance with applicable statutes and regulations. Additionally, health care professionals are consulting with billing companies to provide timely and accurate advice with regard to reimbursement matters, as well as overall business decision-making. As a result, the OIG considers compliance program guidance to third-party medical billing companies particularly important in efforts to combat health care fraud and abuse. Further, because individual billing companies may support a variety of providers with different specialties, we recommend that billing companies coordinate with their provider-clients in establishing compliance responsibilities. Using these 7 basic elements outlined above, the OIG has identified specific areas of third-party medical billing company operations that may prove to be vulnerable to fraud and abuse.

Like previously-issued OIG compliance guidances, adoption of the Compliance Program Guidance for Third-Party Medical Billing Companies set forth below will be strictly voluntary. A reprint of this compliance program guidance follows:

Office of Inspector General's Compliance Program Guidance for Third-Party Medical Billing Companies

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues in its efforts to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist third-party medical billing companies (hereinafter referred to as "billing companies")¹ and their agents and subcontractors in developing effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State and private health plans.

Billing companies are becoming a vital segment of the national health care industry.² Increasingly, health care

¹ For the purposes of this compliance program guidance, "third-party medical billing companies" include clearinghouses and value-added networks.

² Recent survey results from the Healthcare Billing and Management Association (HBMA) show that its membership processes more than 17.6 million claims per month totaling \$18 billion a year.

providers³ are relying on billing companies to assist them in processing claims in accordance with applicable statutes and regulations. Additionally, health care providers are consulting with billing companies to provide timely and accurate advice regarding reimbursement matters, as well as overall business decision-making. As a result, the OIG considers the compliance guidance for third-party medical billing companies particularly important in the partnership to defeat health care fraud.

At this juncture, it is important to note the tremendous variation among billing companies in terms of the type of services⁴ and the manner in which these services are provided to their respective clients. For example, some billing companies code the bills for their provider clients, while others only process bills that have already been coded by the provider. Some billing companies offer a spectrum of management services, including accounts receivable management and bad debt collections, while others offer only one or none of these services. Clearly, variations in services give rise to different policies to ensure effective compliance. This guidance does not purport to provide instruction on all aspects of regulatory compliance. Rather, we have concentrated our attention on general Federal health care reimbursement principles. For those billing companies that focus their services in a particular sector of the health care industry, the billing company should also consult any compliance program guidance

³ For the purposes of this compliance program guidance, "provider" shall include any individual, company, corporation or organization that submits claims for reimbursement to a Federal health care program. The term "Federal health care programs" is applied in this document as defined in 42 U.S.C. 1320a-7b(f), which includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part by the United States Federal Government (*i.e.*, via programs such as Medicare, Federal Employees' Compensation Act, Black Lung, or Longshore and Harbor Worker's Compensation Act) or any State health plan (*e.g.*, Medicaid, or program receiving funds from block grants for social services or child health services). Also, for purposes of this document, the term "Federal health care program requirements" refers to the statutes, regulations, rules, requirements, directives and instructions governing Medicare, Medicaid and all other Federal health care programs.

⁴ Billing companies provide services for virtually every aspect of the health care industry. Among the areas of greatest concentration for billing companies are: physicians, ambulatory surgery centers (ASCs), durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) industry, home health agencies (HHAs) and hospitals.

previously issued by the OIG for that particular sector.⁵

This guidance is pertinent for all billing companies, large or small, regardless of the type of services provided. The applicability of the recommendations and guidelines provided in this document depend on the circumstances of each particular billing company. However, regardless of the billing company's size and structure, the OIG believes every billing company can and should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures recommended within this guidance.

Within this document, the OIG first provides its general views on the value and fundamental principles of billing company compliance programs, and then provides specific elements that each billing company should consider when developing and implementing an effective compliance program. Although this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines for consideration by a billing company interested in implementing a compliance program.

Fundamentally, compliance efforts are designed to establish a culture within a billing company that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the billing company's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to legal and ethical conduct. Eventually, a compliance program should become part of the fabric of routine billing company operations.

Specifically, compliance programs guide a billing company's governing body (*e.g.*, boards of directors or trustees), chief executive officer (CEO), managers, billing and coding personnel and other employees in the efficient management and operation of the company. They are especially critical as an internal quality assurance control in reimbursement and payment areas, where claims and billing operations are often the source of fraud and abuse and, therefore, historically have been the

⁵ See 63 FR 45076 (8/24/98) for Compliance Program Guidance for Clinical Laboratories; 63 FR 42410 (8/7/98) for Compliance Program Guidance for Home Health Agencies; 63 FR 8987 (2/23/98) for Compliance Program Guidance for Hospitals. These documents are also located on the Internet at <http://www.dhhs.gov/progorg/oig>.

focus of Government regulation, scrutiny and sanctions.

It is incumbent upon a billing company's corporate officers and managers to provide ethical leadership to the organization and to assure adequate systems are in place to facilitate and promote ethical and legal conduct. Employees, managers and the Government will focus on the words and actions of a billing company's leadership as a measure of the organization's commitment to compliance. Indeed, many billing companies have adopted mission statements articulating their commitment to high ethical standards. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations and other payor requirements.

The OIG believes that open and frequent communication⁶ between the billing company and the health care provider is fundamental to the success of any compliance endeavor. Billing companies are in a unique position with regard to establishing compliance programs. An individual billing company may support a variety of providers with different specialties and, consequently, different risk areas. It is with this in mind that the OIG strongly recommends the billing company coordinate with its provider clients to establish compliance responsibilities.⁷ Once the responsibilities have been clearly delineated, they should be formalized in the written contract between the provider and the billing company. The OIG recommends the contract enumerate those functions that are shared responsibilities and those that are the sole responsibility of either the billing company or the provider. Implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the billing company's governing body. Superficial programs that simply purport to comply with the elements discussed and described in this guidance or programs hastily constructed and implemented without appropriate ongoing monitoring will

⁶ *E.g.*, the billing company should communicate the results of audits, determinations of inappropriate claim submissions and notifications of overpayments.

⁷ At a minimum, the billing company should send a copy of its compliance program to all of its provider clients. The billing company should also coordinate with its provider clients in the development of a training program, an audit plan and policies for investigating misconduct.

likely be ineffective and could expose the billing company to greater liability than no program at all. Additionally, an ineffective compliance program may expose the billing company's provider clients to liability where those providers rely on the billing company's expertise and its assurances of an effective compliance program. Although it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the long term benefits of implementing the program significantly outweigh the costs. Undertaking a voluntary compliance program is a beneficial investment that advances both the billing company's organization and the stability and solvency of the Medicare program.

A. Benefits of a Compliance Program

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, improving operational quality, improving the quality of health care and reducing the costs of health care. Attaining these goals provides positive results to business, Government and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payors, a billing company may gain numerous additional benefits by implementing an effective compliance program. These benefits may include:

- The formulation of effective internal controls to assure compliance with Federal regulations, private payor policies and internal guidelines;
- Improved medical record documentation;⁸
- Improved collaboration, communication and cooperation among health care providers and those processing and using health information;
- The ability to more quickly and accurately react to employees' operational compliance concerns and the capability to effectively target resources to address those concerns;
- A more efficient communications system that establishes a clear process and structure for addressing compliance concerns quickly and effectively;
- A concrete demonstration to employees and the community at large of the billing company's strong commitment to honest and responsible corporate conduct;

⁸Billing and coding personnel can provide critical advice to physicians and other health care providers that may greatly improve the quality of medical record documentation.

- The ability to obtain an accurate assessment of employee and contractor behavior relating to fraud and abuse;
- Increased likelihood of identification and prevention of criminal and unethical conduct;
- A centralized source for distributing information on health care statutes, regulations and other program directives related to fraud and abuse and related issues;
- A methodology that encourages employees to report potential problems;
- Procedures that allow the prompt, thorough investigation of possible misconduct by corporate officers, managers, employees and independent contractors, who can impact billing decisions;
- An improved relationship with the applicable Medicare contractor;
- Early detection and reporting, minimizing the loss to the Government from false claims, and thereby reducing the billing company's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion;⁹ and
- Enhancement of the structure of the billing company's operations and the consistency between separate business units.

Overall, the OIG believes that an effective compliance program is a sound business investment on the part of a billing company.

The OIG recognizes the implementation of an effective compliance program may not entirely eliminate fraud, abuse and waste from an organization. However, a sincere effort by billing companies to comply with applicable Federal and State standards, as well as the requirements of private health care programs, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Given the diversity in size and services offered by billing companies

⁹The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the billing company to demonstrate the operational effectiveness of a compliance program. Further, the False Claims Act, 31 U.S.C. 3729-3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within thirty days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. See 31 U.S.C. 3729(a). Thus, the ability to react quickly when violations of the law are discovered may materially help reduce the billing company's liability.

within the industry, there is no single "best" compliance program. The OIG understands the variances and complexities within the industry and is sensitive to the differences between large and small billing companies. Similarly, the OIG understands the availability of resources for any one billing company can differ vastly, given that billing companies vary greatly in the type of services offered and the manner that they are provided. Nonetheless, elements of this guidance can be used by all billing companies, regardless of size, location or corporate structure, to establish an effective compliance program. The OIG recognizes some billing companies may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a billing company can best establish internal controls and monitor company conduct to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages billing companies to develop and implement compliance elements that uniquely address the individual billing company's risk areas.

The OIG appreciates that the success of the compliance program guidance hinges on thoughtful and practical comments from those individuals and organizations that will utilize the tools set forth in this document. In a continuing effort to collaborate closely with the private sector, the OIG solicited input and support from representatives of the major trade associations in the development of this compliance program guidance. Further, we took into consideration previous OIG publications, such as Special Fraud Alerts,¹⁰ the recent findings and recommendations in reports issued by OIG's Office of Audit Services, comments from the HCFA, as well as the experience of past and recent fraud investigations related to billing companies conducted by OIG's Office of Investigations and the DOJ.

As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, and in the rules, policies and procedures of the Federal, State and private health plans occur. The OIG understands billing companies will need adequate time to react to these

¹⁰Special Fraud Alerts are available on the OIG website at <http://www.dhhs.gov/progorg/oig>.

modifications and expansions and to make any necessary changes to their voluntary compliance programs. New compliance practices may eventually be incorporated into this guidance if the OIG discovers significant enhancements to better ensure an effective compliance program. We recognize the development and implementation of compliance programs in billing companies often raise sensitive and complex legal and managerial issues.¹¹ However, the OIG wishes to offer what it believes is critical guidance for those who are sincerely attempting to comply with the relevant health care statutes and regulations.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of the clinical laboratory model compliance program guidance published by the OIG in February 1997 (updated in August 1998), the hospital compliance program guidance published in February 1998, the home health compliance program guidance published in August 1998¹² and our corporate integrity agreements.¹³ The elements represent a guide that can be tailored to fit the needs and financial realities of a particular billing company, large or small, regardless of the type of services offered. The OIG is cognizant that with regard to compliance programs, one model is not suitable to every organization. Nonetheless, the OIG believes every billing company, regardless of size, structure or services offered can benefit from the principles espoused in this guidance.

The OIG believes every effective compliance program must begin with a formal commitment¹⁴ by the billing company's governing body to include all of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.¹⁵ We believe every billing

company can implement all of the recommended elements, expanding upon the seven steps of the Federal Sentencing Guidelines. The OIG recognizes full implementation of all elements may not be immediately feasible for all billing companies. However, as a first step, a good faith and meaningful commitment on the part of the billing company administration, especially the governing body and the CEO, will substantially contribute to the program's successful implementation. As the compliance program is implemented, that commitment should cascade down through the management to every employee in the organization. At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures that promote the billing company's commitment to compliance (e.g., by including adherence to the compliance program as an element in evaluating managers and employees) and that address specific areas of potential fraud, such as the claims submission process, code gaming and financial relationships with its providers;

(2) The designation of a chief compliance officer and other appropriate bodies, e.g., a corporate compliance committee, charged with the responsibility of operating and monitoring the compliance program and who report directly to the CEO and the governing body;¹⁶

(3) The development and implementation of regular, effective education and training programs for all affected employees;¹⁷

(4) The creation and maintenance of a process, such as a hotline, to receive complaints and the adoption of procedures to protect the anonymity of complainants and to protect callers from retaliation;

detailed policies and practices for the Federal criminal justice system that prescribe appropriate sanctions for offenders convicted of Federal crimes.

¹⁶The integral functions of a compliance officer and a corporate compliance committee in implementing an effective compliance program are discussed throughout this compliance guidance. However, the OIG recognizes that the differences in the sizes and structures of billing companies will result in differences in the ways in which compliance programs are set up. The important thing is that the billing company structures its compliance program in such a way that the program is able to accomplish the key functions of a corporate compliance officer and a corporate compliance committee discussed within this document.

¹⁷Training and education programs for billing companies should be detailed and comprehensive. They should cover specific billing and coding procedures, as well as the general areas of compliance.

(5) The development of a system to respond to allegations of improper/illegal activities and the enforcement of appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes, regulations or Federal, State or private payor health care program requirements;

(6) The use of audits and/or other risk evaluation techniques to monitor compliance and assist in the reduction of identified problem areas;¹⁸ and

(7) The investigation and correction of identified systemic problems and the development of policies addressing the non-employment of sanctioned individuals.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards and practices that identify specific areas of risk and vulnerability to the billing company. These policies should be developed under the direction and supervision of the chief compliance officer and the compliance committee (if such a committee is practicable for the billing company) and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the billing company's agents and independent contractors¹⁹ who may affect billing decisions.

1. Standards of Conduct

Billing companies should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the billing company's senior management²⁰ and its divisions. The standards should function in the same fashion as a constitution, i.e., as a foundational document that details the

¹⁸For example, spot-checking the work of coding and billing personnel periodically should be an element of an effective compliance program. Identification of risk areas, discussed in further detail in section II.A.2, is the first step in correcting aberrant billing patterns.

¹⁹According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order to receive sentencing credit for an "effective" compliance program. The Federal Sentencing Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

²⁰The OIG strongly encourages high-level involvement by the billing company's governing body, chief executive officer, chief operating officer, general counsel and chief financial officer, in the development of standards of conduct. Such involvement should help communicate a strong and explicit organizational commitment to compliance goals and standards.

¹¹Nothing stated herein should be substituted for, or used in lieu of, competent legal advice from counsel.

¹²See note 5.

¹³Corporate integrity agreements are executed as part of a civil settlement agreement between the health care provider or entity responsible for billing for the provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance guidance.

¹⁴Formal commitment may include a resolution by the board of directors, where applicable. A formal commitment does include the allocation of adequate resources to ensure that each of the elements is addressed.

¹⁵See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, comment. (n.3(k)). The Federal Sentencing Guidelines are

fundamental principles, values and framework for action within an organization. Standards should articulate the billing company's commitment to comply with all Federal and State standards, with an emphasis on preventing fraud and abuse. They should state the organization's mission, goals and ethical principles relating to compliance and clearly define the organization's commitment to compliance and its expectations for all billing company governing body members, officers, managers, employees, and, where appropriate, contractors and other agents. The standards should promote integrity, support objectivity and foster trust. Standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly. Furthermore, a billing company's standards of conduct should reflect a commitment to the highest quality health data submission, as evidenced by its accuracy, reliability, timeliness and validity.

2. Written Policies for Risk Areas

As part of its commitment to compliance, billing companies should establish a comprehensive set of policies that delineate billing and coding procedures for the company. In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures personnel should follow when submitting initial or follow-up claims to Federal health care programs.

Among the issues to be addressed in the policies are the education and training requirements for billing and coding personnel; the risk areas for fraud, waste and abuse; the integrity of the billing company's information system; the methodology for resolving ambiguities in the provider's paperwork;²¹ the procedure for identifying and reporting credit balances; and the procedure to ensure duplicate bills are not submitted in an attempt to gain duplicate payment.

Billing companies that provide coding services should provide additional policies for risk areas that apply specifically to coding.²² The policies and procedures should describe the

²¹ Billing company personnel should maintain an open dialogue with their providers regarding documentation issues. If the documentation received from a provider is ambiguous or conflicting, the billing company should contact the provider for clarification or resolution.

²² See section II.A.2.b.

necessary steps to take in reviewing a billing document. Specific attention should be placed on the proper steps the coder should take if unable to locate a code for a documented diagnosis or procedure or if the medical record documentation is not sufficient to determine a diagnosis or procedure.²³ Billing companies that provide additional services should consider consulting an attorney for guidance on other regulatory issues.²⁴

a. Risk Assessment—All Billing Companies

The OIG believes a billing company's written policies and procedures, its educational program and its audit and investigation plans should take into consideration the particular statutes, rules and program instructions that apply to each function or department of the billing company. Consequently, we recommend coordination between these functions with an emphasis on areas of special concern that have been identified by the OIG through its investigative and audit functions.²⁵

²³ If the coding staff finds the physician's documentation to be unclear or conflicting, then they should ask the physician for clarification. This will frequently allow the coder to choose a more appropriate code. If the coder does not know how to code a particular type of bill for Medicare payment, he or she should first consult with a supervisor. If the question persists, the supervisor should contact the provider's carrier/intermediary. The billing company could also contact an authoritative coding organization. For example, the American Hospital Association maintains a central office on ICD-9-CM. All such correspondence should be maintained in a log. In the rare instance that the documentation appears to be for a new type of disease or syndrome, the supervisor can send an inquiry to the National Center for Health Statistics, 6525 Belcrest Road, Room 1100, Hyattsville, MD 20782.

²⁴ For example, billing companies that provide marketing services should develop policies to ensure compliance with the anti-kickback statute, 42 U.S.C. 1320a-7b(b). In addition, such policies should provide that the billing company shall not submit or cause to be submitted to health care programs claims for patients by virtue of a compensation agreement that was designed to induce such referrals in violation of the anti-kickback statute, or similar Federal or State statute or regulation. Further, the policies and procedures should reference the OIG's safe harbor regulations, clarifying those payment practices that would be immune from prosecution under the anti-kickback statute. See 42 CFR 1001.952.

²⁵ The OIG periodically issues Special Fraud Alerts setting forth activities believed to raise legal and enforcement issues. Billing company compliance programs should require the legal staff, chief compliance officer or other appropriate personnel to carefully consider any and all Special Fraud Alerts issued by the OIG that relate to health care providers to which they offer services. Moreover, the compliance programs should address the ramifications of failing to cease and correct any conduct criticized in such a Special Fraud Alert, if applicable to billing companies, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, billing companies should take the steps described in

Furthermore, the OIG recommends that billing companies conduct a comprehensive self-administered risk analysis or contract for an independent risk analysis by experienced health care consulting professionals. This risk analysis should identify and rank the various compliance and business risks the company may experience in its daily operations.

Once completed, the risk analysis should serve as the basis for the written policies the billing company should develop. The OIG has provided the following specific list of particular risk areas that should be addressed by billing companies. It should be noted that this list is not all-encompassing and the risk analysis completed as a result of the company's audit may provide a more individualized road map. Nonetheless, this list is a compilation of several years of OIG audits, investigations and evaluations and should provide a solid starting point for a company's initial effort.

Among the risk areas the OIG has identified as particularly problematic are:²⁶

- Billing for items or services not actually documented;²⁷
- Unbundling;²⁸
- Upcoding,²⁹ such as, for example, DRG creep;³⁰
- Inappropriate balance billing;³¹
- Inadequate resolution of overpayments;³²

Section G regarding investigations, reporting and correction of identified problems.

²⁶ The OIG's work plan is currently available on the Internet at <http://www.dhhs.gov/progorg/oig>. The OIG Work Plan details the various projects the OIG intends to address in the fiscal year. The Work Plan contains the projects of the Office of Audit Services, Office of Evaluation and Inspections, Office of Investigations and the Office of Counsel to the Inspector General.

²⁷ Billing for items or services not actually documented involves submitting a claim that cannot be substantiated in the documentation.

²⁸ Unbundling occurs when a billing entity uses separate billing codes for services that have an aggregate billing code.

²⁹ Upcoding reflects the practice of using a billing code that provides a higher reimbursement rate than the billing code that actually reflects the service furnished to the patient. Upcoding has been a major focus of the OIG's law enforcement efforts. In fact, the Health Insurance Portability and Accountability Act of 1996 added another civil monetary penalty to the OIG's sanction authorities for upcoding violations. See 42 U.S.C. 1320a-7a(a)(1)(A).

³⁰ DRG creep is a variety of upcoding that involves the practice of billing using a Diagnosis Related Group (DRG) code that provides a higher reimbursement rate than the DRG code that accurately reflects patient's diagnosis.

³¹ Inappropriate balance billing refers to the practice of billing Medicare beneficiaries for the difference between the total provider charges and the Medicare Part B allowable payment.

³² An overpayment is an improper or excessive payment made to a health care provider as a result

- Lack of integrity in computer systems;³³
- Computer software programs that encourage billing personnel to enter data in fields indicating services were rendered though not actually performed or documented;
- Failure to maintain the confidentiality of information/records;³⁴
- Knowing misuse of provider identification numbers, which results in improper billing;³⁵
- Outpatient services rendered in connection with inpatient stays;³⁶
- Duplicate billing in an attempt to gain duplicate payment;³⁷
- Billing for discharge in lieu of transfer;³⁸
- Failure to properly use modifiers;³⁹

of patient billing or claims processing errors for which a refund is owed by the provider. Examples of Medicare overpayments include instances where a provider is: (1) Paid twice for the same service either by Medicare or by Medicare and another insurer or beneficiary; or (2) paid for services planned but not performed or for non-covered services. Billing companies should institute procedures to provide for timely and accurate reporting to both the provider and the health care program of overpayments.

³³ Because billing companies are in the business of processing health care information, it is essential they develop policies and procedures to ensure the integrity of the information they process and to ensure that records can be easily located and accessed within a well-organized filing or alternative retrieval system. All billing companies should have a back-up system (whether by disk, tape or system) to ensure the integrity of data. Policies should provide for a regular system back-up to ensure that no information is lost.

³⁴ All billing companies should develop, implement, audit and enforce policies and procedures to ensure the confidentiality and privacy of financial, medical, personnel and other sensitive information in their possession. These policies should address both electronic and hard copy documents.

³⁵ Of particular concern, billing companies should be aware of the provisions of reassignment of benefits. These provisions govern who may receive payment due to a provider or supplier of services or a beneficiary. See 42 CFR §§ 424.70–424.80. See also Medicare Carrier Manual § 3060.10.

³⁶ Billing companies that submit claims for non-physician outpatient services that were already included in the hospital's inpatient payment under the Prospective Payment System (PPS) are in effect submitting duplicate claims.

³⁷ Duplicate billing occurs when the billing company submits more than one claim for the same service or the bill is submitted to more than one primary payor at the same time. Although duplicate billing can occur due to simple error, knowing duplicate billing—which is sometimes evidenced by systematic or repeated double billing—can create liability under criminal, civil or administrative law, particularly if any overpayment is not promptly refunded.

³⁸ Under the Medicare regulations, when a PPS hospital transfers a patient to another PPS hospital, only the hospital to which the patient was transferred may charge the full DRG; the transferring hospital should charge Medicare only a per diem amount. See 42 CFR 412.4.

³⁹ A modifier, as defined by the CPT-4 manual, provides the means by which the reporting position (or provider) can indicate a service or procedure that has been performed has been altered by some

- Billing company incentives that violate the anti-kickback statute or other similar Federal or State statute or regulation;⁴⁰
- Joint ventures;⁴¹
- Routine waiver of copayments and billing third-party insurance only;⁴² and
- Discounts and professional courtesy.⁴³

A billing company's prior history of noncompliance with applicable statutes, regulations and Federal health care program requirements may indicate additional types of risk areas where the billing company may be vulnerable and may require necessary policy measures to prevent avoidable recurrence.⁴⁴ Additional risk areas should be assessed by billing companies as well as

specific circumstance, but not changed in its definition or code. Assuming the modifier is used correctly and appropriately, this specificity provides the justification for payment for these services. For correct use of modifiers, the billing company should reference the appropriate sections of the Medicare carrier manual. For general information on the correct use of modifiers, the billing personnel should also reference the Correct Coding Initiative. See Medicare Carrier Manual § 4630.

⁴⁰ For billing companies that provide marketing services, percentage arrangements may implicate the anti-kickback statute. See 42 U.S.C. 1320a-7b(b) and 59 FR 65372 (12/19/94). Cf. OIG Ad. Op. 98-10 (1998). The OIG has a longstanding concern that percentage billing arrangements may increase the risk of upcoding and similar abusive billing practices. See, e.g., OIG Ad. Op. 98-1 (1998) and OIG Ad. Op. 98-4 (1998).

⁴¹ The OIG is troubled by the proliferation of business arrangements that may violate the anti-kickback statute. Such arrangements are generally established between those in a position to refer business, such as physicians, and those providing items or services for which a Federal health care program pays. Sometimes established as "joint ventures," these arrangements may take a variety of forms. The OIG currently has a number of investigations and audits underway that focus on such areas of concern. Similarly, the billing company should not confer gifts/entertainment upon the client-provider as this could also implicate the anti-kickback statute.

⁴² Billing companies should encourage providers to make a good faith effort to collect copayments, deductibles and non-covered services from federally and privately-insured patients. Billing "insurance only" may violate the False Claims Act, the anti-kickback statute, the Civil Monetary Penalties Law, 42 U.S.C. 1320a-7a(a)5, as amended by Pub. L. 104-91 section 231(h), and State laws. For additional information on this problem, the OIG has published a Special Fraud Alert on the routine waiver of copayments or deductibles under Medicare Part B. See 59 FR 65,373 (12/19/94).

⁴³ Discounts and professional courtesy may not be appropriate unless the total fee is discounted or reduced. In such situations, the payor (e.g., Medicare, Medicaid or any other private payor) should receive its proportional share of the discount or reduction.

⁴⁴ "Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct" and is a significant factor in the assessment of whether a compliance program is effective. See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(7)(ii).

incorporated into the written policies and procedures and training elements developed as part of their compliance programs.

Billing companies that do not code bills should implement policies that require notification to the provider who is coding to implement and follow compliance safeguards with respect to documentation of services rendered. Moreover, the OIG recommends that billing companies who do not code for their provider clients incorporate in their contractual agreements the provider's acknowledgment and agreement to address the following coding compliance safeguards.⁴⁵

b. Risk Assessment—Billing Companies That Provide Coding Services

The written policies and procedures concerning proper coding should reflect the current reimbursement principles set forth in applicable statutes, regulations⁴⁶ and Federal, State or private payor health care program requirements and should be developed in tandem with organizational standards. Furthermore, written policies and procedures should ensure that coding and billing are based on medical record documentation. Particular attention should be paid to issues of appropriate diagnosis codes, DRG coding, individual Medicare Part B claims (including documentation guidelines for evaluation and management services) and the use of patient discharge codes.⁴⁷ The billing company should also institute a policy that all rejected claims pertaining to diagnosis and procedure codes be reviewed by the coder or the coding department. This should facilitate a

⁴⁵ The following risk areas are in no way a comprehensive list of risk areas for health care providers. They are merely a suggested list of documentation risks. They do not address the additional risk areas that apply to health care providers (e.g., medical necessity issues).

⁴⁶ The official coding guidelines are promulgated by the HCFA, the National Center for Health Statistics, the American Medical Association and the American Health Information Management Association. See International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9 CM) (and its successors); 1998 HCFA Common Procedure Coding System (HCPCS) (and its successors); and Physicians' Current Procedural Terminology (CPT)TM. In addition, there are specialized coding systems for specific segments of the health care industry. Among these are ADA (for dental procedures), DSM IV (psychiatric health benefits) and DMERCs (for durable medical equipment, prosthetics, orthotics and supplies).

⁴⁷ The failure of a provider to: (i) Document items and services rendered; and (ii) properly submit them for reimbursement is a major area of potential fraud and abuse in Federal health care programs. The OIG has undertaken numerous audits, investigations, inspections and national enforcement initiatives aimed at reducing potential and actual fraud, abuse and waste in these areas.

reduction in similar errors. Among the risk areas that billing companies who provide coding services should address are:

- Internal coding practices;⁴⁸
- "Assumption" coding;⁴⁹
- Alteration of the documentation;
- Coding without proper

documentation⁵⁰ of all physician and other professional services;

- Billing for services provided by unqualified or unlicensed clinical personnel;

- Availability of all necessary documentation at the time of coding; and

- Employment of sanctioned individuals.⁵¹

Billing companies that provide coding services should maintain an up-to-date,

⁴⁸ Internal coding practices, including software edits, should be reviewed periodically to determine consistency with all applicable Federal, State and private payor health care program requirements.

⁴⁹ This refers to the coding of a diagnosis or procedure without supporting clinical documentation. Coding personnel must be aware of the need for documented verification of services from the attending physician.

⁵⁰ While proper documentation is the responsibility of the health care provider, the coder should be aware of proper documentation requirements and should encourage providers to document their services appropriately. Depending on the circumstances, proper documentation can include:

- (1) The reason for the patient encounter;
- (2) An appropriate history and evaluation;
- (3) Documentation of all services;
- (4) Documentation of reasons for the services;
- (5) An ongoing assessment of the patient's condition;
- (6) Information on the patient's progress and treatment outcome;
- (7) A documented treatment plan;
- (8) A plan of care, including treatments, medications (including dosage and frequency), referrals and consultations, patient and family education, and follow-up care;
- (9) Changes in treatment plan;
- (10) Documentation of medical rationale for the services rendered;
- (11) Documentation that supports the standards of medical necessity, e.g., certificates of medical necessity for DMEPOS and home health services;
- (12) Abnormal test results addressed in the physician's documentation;
- (13) Identification of relevant health risk factors;
- (14) Documentation that meets the E & M codes billed;
- (15) Medical records that are dated and authenticated; and/or
- (16) Prescriptions.

Billing companies should also reference the *Documentation Guidelines for Evaluation and Management (E/M) Services*, published by the HCFA. These guidelines are available on the Internet at <http://www.hcfa.gov/medicare/mcarptii.htm>.

⁵¹ Billing companies should ensure that they do not employ or contract with individuals that have been sanctioned by the OIG or barred from Federal procurement programs. The Cumulative Sanction Report is available on the Internet at <http://www.dhhs.gov/progorg/oig>. In addition, the General Services Administration maintains a monthly listing of debarred contractors on the Internet at <http://www.arnet.gov/epl>.

user-friendly index for coding policies and procedures to ensure that specific information can be readily located. Similarly, for billing companies that provide coding services, the billing company should assure that essential coding materials are readily accessible to all coding staff.⁵²

Finally, billing companies should emphasize in their standards the importance of safeguarding the confidentiality of medical, financial and other personal information in their possession.

3. Claim Submission Process

A number of the risk areas identified above, pertaining to the claim development and submission process, have been the subject of administrative proceedings, as well as investigations and prosecutions under the civil False Claims Act and criminal statutes. Settlement of these cases often has required the defendants to execute corporate integrity agreements, in addition to paying significant civil damages and/or criminal fines and penalties. These corporate integrity agreements have provided the OIG with a mechanism to advise billing companies concerning acceptable practices to ensure compliance with applicable Federal and State statutes, regulations and program requirements. The following recommendations include a number of provisions from various corporate integrity agreements. Although these recommendations include examples of effective policies, each billing company should develop its own specific policies tailored to fit its individual needs.

With respect to claims, a billing company's written policies and procedures should reflect and reinforce current Federal and State statutes. The policies must create a mechanism for the billing or reimbursement staff to communicate effectively and accurately with the health care provider. Policies and procedures should:

- Ensure that proper and timely documentation of all physician and other professional services is obtained prior to billing to ensure that only accurate and properly documented services are billed;
- Emphasize that claims should be submitted only when appropriate

⁵² Examples of reference resources necessary for proper coding include: a medical dictionary; an anatomy/physiology textbook; up-to-date ICD, HCPCS and CPT™ code books; Physician's Desk Reference; Merck Manual; the applicable contractor's provider manual; and subscriptions to the American Hospital Association's *Coding Clinic for ICD-9-CM* (and its successors) and the American Medical Association's *CPT Assistant*.

documentation supports the claims and only when such documentation is maintained, appropriately organized in legible form and available for audit and review. The documentation, which may include patient records, should record the time spent in conducting the activity leading to the record entry and the identity of the individual providing the service;

- Indicate that the diagnosis and procedures reported on the reimbursement claim should be based on the medical record and other documentation, and that the documentation necessary for accurate code assignment should be available to coding staff at the time of coding. The HCFA Common Procedure Coding System (HCPCS), International Classification of Disease (ICD), Current Procedural Terminology (CPT™), any other applicable code or revenue code (or successor code(s)) used by the coding staff should accurately describe the service that was ordered by the physician;

- Provide that the compensation for billing department coders and billing consultants should not provide any financial incentive to improperly upcode claims;⁵³

- Establish and maintain a process for pre- and post-submission review of claims⁵⁴ to ensure claims submitted for reimbursement accurately represent services provided, are supported by sufficient documentation and are in conformity with any applicable coverage criteria for reimbursement; and
- Obtain clarification from the provider when documentation is confusing or lacking adequate justification.

Because coding for providers often involves the interpretation of medical diagnosis and other clinical data and documentation, a billing company may wish to contract with/assign a qualified physician to provide guidance to the coding staff regarding clinical issues. Procedures should be in place to access medical experts when necessary. Such procedures should allow for medical personnel to be available for guidance without interrupting or interfering with the quality of patient care.

4. Credit Balances

Credit balances occur when payments, allowances or charge reversals posted to an account exceed

⁵³ See OIG Ad. Op. 98-1 (1998) and OIG Ad. Op. 98-4 (1998). See also 42 CFR 424.73.

⁵⁴ The OIG recommends that, at a minimum, a valid statistical sample of claims be reviewed annually both before and after billing is submitted. This review should be done by a qualified expert in the applicable coding process.

the charges to the account. Providers and their billers should establish policies and procedures, as well as responsibility, for timely and appropriate identification and resolution of these overpayments.⁵⁵ For example, a billing company may redesignate segments of its information system to allow for the segregation of patient accounts reflecting credit balances. The billing company could remove these accounts from the active accounts and place them in a holding account pending the processing of a reimbursement claim to the appropriate payor. A billing company's information system should have the ability to print out the individual patient accounts that reflect a credit balance in order to permit simplified tracking of credit balances. The billing company should maintain a complete audit trail of all credit balances.

In addition, a billing company should designate at least one person (e.g., in the patient accounts department or reasonable equivalent thereof) as having the responsibility for the tracking, recording and reporting of credit balances. Further, a comptroller or an accountant in the billing company's accounting department (or reasonable equivalent thereof) may review reports of credit balances and adjustments on a monthly basis as an additional safeguard.

5. Integrity of Data Systems

Increasingly, the health care industry is using electronic data interchange (EDI) to conduct business more quickly and efficiently. As a result, the industry is relying on the capabilities of computers. Billing companies should establish procedures for maintaining the integrity of its data collection systems. This should include procedures for regularly backing-up data (either by diskette, restricted system or tape) to ensure the accuracy of all data collected in connection with submission of claims and reporting of credit balances. At all times, the billing company should have a complete and accurate audit trail. Additionally, billing companies should develop a system to prevent the contamination of data by outside parties. This system should include regularly scheduled virus checks. Finally, billing companies should ensure that electronic data are protected against unauthorized access or disclosure.

⁵⁵The billing company should also refer to State escheat laws for the specific requirements relating to notifications, time periods and payment of any unclaimed funds.

6. Retention of Records

Billing company compliance programs should provide for the implementation of a records system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents. The three types of documents developed under this system should include: (1) All records and documentation required by either Federal or State law and the program requirements of Federal, State and private health plans (for billing companies, this should include all documents related to the billing and coding process); (2) records listing the persons responsible for implementing each part of the compliance plan; and (3) all records necessary to protect the integrity of the billing company's compliance process and confirm the effectiveness of the program. The documentation necessary to satisfy the third requirement includes: evidence of adequate employee training; reports from the billing company's hotline; results of any investigation conducted as a consequence of a hotline call; modifications to the compliance program; self-disclosure; all written notifications to providers;⁵⁶ and the results of the billing company's auditing and monitoring efforts.

7. Compliance as an Element of a Performance Plan

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees. Employees should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors involved in the coding and claims submission processes should:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the billing company will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, the compliance officer or company

⁵⁶This should include notifications regarding: inappropriate claims; overpayments; and termination of the contract.

management should include a policy that managers and supervisors will be sanctioned for failure to instruct adequately their subordinates or for failure to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor should have led to the discovery of any problems or violations.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every billing company should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the billing company and the complexity of the task. For those billing companies that have limited resources, the compliance function could be outsourced to an expert in compliance.⁵⁷

Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the billing company with direct access to the company's governing body, the CEO, all other senior management and legal counsel.⁵⁸ The officer should have sufficient funding and staff to perform his or her responsibilities fully. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing and monitoring the compliance program. With this in mind, the OIG recommends the billing company's compliance officer closely coordinate compliance functions with the provider's compliance officer.

The compliance officer's primary responsibilities should include:

⁵⁷If the billing company chooses to outsource the compliance function, the OIG recommends the billing company engage an individual with significant experience in the billing and coding industries. Multiple small billing and coding facilities may contract with an individual to job-share the individual's time and expertise in the area of compliance.

⁵⁸The OIG believes that it is not advisable for the compliance function to be subordinate to the billing company's general counsel, or comptroller or similar billing company financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the billing company make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

- Overseeing and monitoring the implementation of the compliance program;⁵⁹
 - Reporting on a regular basis to the billing company's governing body, CEO and compliance committee (if applicable) on the progress of implementation and assisting these components in establishing methods to improve the billing company's efficiency and quality of services and to reduce the billing company's vulnerability to fraud, abuse and waste;
 - Periodically revising the program in light of changes in the organization's needs and in the law and policies and procedures of Government and private payor health plans;
 - Reviewing employees' certifications that they have received, read and understood the standards of conduct;
 - Developing, coordinating and participating in a multifaceted educational and training program that focuses on the elements of the compliance program and seeks to ensure that all appropriate employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
 - Coordinating personnel issues with the billing company's human resources/personnel office (or its equivalent) to ensure that providers and employees do not appear in the Cumulative Sanction Report;⁶⁰
 - Assisting the billing company's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
 - Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action with all billing departments, providers and sub-providers, agents and, if appropriate, independent contractors;
 - Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation; and
 - Continuing the momentum of the compliance program and the accomplishment of its objectives long after the initial years of implementation.⁶¹

⁵⁹ For multi-site billing companies, the OIG encourages coordination with each billing facility owned by the billing company through the use of a corporate compliance officer.

⁶⁰ See note 51.

⁶¹ Periodic on-site visits of the billing company's operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient records (where appropriate), billing records and records concerning the marketing efforts of the facility and the billing company's arrangements with other parties, including employees, professionals on staff, relevant independent contractors, suppliers, agents, supplemental staffing entities and physicians. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate statutory or regulatory requirements.

In addition, the compliance officer should be copied on the results of all internal audit reports and work closely with key managers to identify aberrant trends in the coding and billing areas. The compliance officer should ascertain patterns that require a change in policy and forward these issues to the compliance committee to remedy the problem. A compliance officer should have full authority to stop the processing of claims that he or she believes are problematic until such time as the issue in question has been resolved.

2. Compliance Committee

The OIG recommends, where feasible,⁶² that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.⁶³ When assembling a team of people to serve as the billing company's compliance committee, the company should include individuals with a variety of skills.⁶⁴

on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the billing company's commitment to its principles and policies.

⁶² The OIG recognizes that smaller billing companies may not be able to establish a compliance committee. In those situations, the compliance officer should fulfill the responsibilities of the compliance committee.

⁶³ The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, utilization review, medicine, coding and legal, as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes in the company's policies and procedures.

⁶⁴ A billing company should expect its compliance committee members and compliance

Appropriate members of the compliance committee include the director of billing and the director of coding. The OIG strongly recommends that the compliance officer manage the compliance committee. Once a billing company chooses the people that will accept the responsibilities vested in members of the compliance committee, the billing company must train these individuals on the policies and procedures of the compliance program.

The committee's responsibilities should include:

- Analyzing the organization's regulatory environment, the legal requirements with which it must comply⁶⁵ and specific risk areas;
- Assessing existing policies and procedures that address these areas for possible incorporation into the compliance program;
- Working with appropriate departments to develop standards of conduct and policies and procedures that promote allegiance to the company's compliance program;⁶⁶
- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies and procedures as part of its daily operations;
- Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- Developing a system to solicit, evaluate and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the billing company and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall operating structure and daily routine.

officer to demonstrate high integrity, good judgment, assertiveness and an approachable demeanor, while eliciting the respect and trust of employees of the billing company. The compliance committee members should also have significant professional experience in working with billing, coding, clinical records and auditing principles.

⁶⁵ This includes, but is not limited to, the civil False Claims Act, 31 U.S.C. 3729-3733, the criminal false claims statutes, 18 U.S.C. 287, 1001, the fraud and abuse provisions of the Balanced Budget Act of 1997, Pub. L. 105-33 and the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191.

⁶⁶ For billing companies, this includes developing and fostering excellent coordination and communication with its provider clients.

C. Conducting Effective Training and Education

1. Initial Training in Compliance

The proper education and training of corporate officers, managers, employees and the continual retraining of current personnel at all levels are significant elements of an effective compliance program. In order to ensure the appropriate information is being disseminated to the correct individuals, the training should be separated into two sessions, depending on the employees' involvement in the submission of claims for reimbursement. All employees should attend the general session on compliance, while employees whose job primarily focuses on submission of claims for reimbursement should be the participants in the detailed sessions.

In the development of a training program, the billing company should consult with its provider clients to ensure that a consistent message is being delivered and avoid any potential conflicts in the implementation of policies and procedures.

a. General Sessions

As part of their compliance programs, billing companies should require all affected personnel to attend training on an annual basis, including appropriate training in Federal and State statutes, regulations and guidelines, the policies of private payors and training in corporate ethics. The general training sessions should emphasize the organization's commitment to compliance with these legal requirements and policies.

These training programs should include sessions highlighting the organization's compliance program, summarizing fraud and abuse statutes and regulations, Federal, State and private payor health care program requirements, coding requirements, the claim submission process and marketing practices that reflect current legal and program standards. The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors and other significant agents, *e.g.*, by requiring participation in training programs and disseminating publications that explain specific requirements in a practical manner.⁶⁷ Managers of specific departments or groups can assist in

⁶⁷ Some publications, such as Special Fraud Alerts, audit and inspection reports, and advisory opinions, as well as the annual OIG work plan, are readily available from the OIG and could be the basis for standards, educational courses and programs for appropriate billing employees.

identifying areas that require training and in carrying out such training.⁶⁸ Training instructors may come from outside or inside the organization. New employees should be targeted for training early in their employment.⁶⁹

As part of the initial training, the standards of conduct should be distributed to all employees.⁷⁰ At the end of this training session, every employee, as well as contracted consultants, should be required to sign and date a statement that reflects the employee's knowledge of and commitment to the standards of conduct.

This attestation should be retained in the employee's personnel file. For contracted consultants, the attestation should become part of the contract and remain in the file that contains such documentation. Further, to assist in ensuring employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified.⁷¹ Billing companies should provide an additional attestation in the modified standards that stipulates the employee's knowledge of and commitment to the modifications.

b. Coding and Billing Training

In addition to specific training in the risk areas identified in section II.A.2, above, primary training to appropriate corporate officers, managers and other billing company staff should include such topics as:

- Specific Government and private payor reimbursement principles;⁷²

⁶⁸ Significant variations in functions and responsibilities of different departments or groups may create the need for training materials that are tailored to the compliance concerns associated with particular operations and duties.

⁶⁹ Certain positions, such as those involving the coding of medical services, create a greater organizational legal exposure, and therefore require specialized training. Billing companies should fill such positions with individuals who have the appropriate educational background, training and credentials.

⁷⁰ Where the billing company has a culturally diverse employee base, the standards of conduct should be translated into other languages and written at appropriate reading levels.

⁷¹ The OIG recognizes that not all standards, policies and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all employees' training. The billing company should determine what additional training to provide categories of employees based upon their job responsibilities.

⁷² Government, in this context, includes the appropriate Medicare carrier or intermediary.

- General prohibitions on paying or receiving remuneration to induce referrals;
- Proper selection and sequencing of diagnoses;
- Improper alterations to documentation;
- Submitting a claim for physician services when rendered by a non-physician (*i.e.*, the "incident to" rule and the physician physical presence requirement);
- Proper documentation of services rendered, including the correct application of official coding rules and guidelines;
- Signing a form for a physician without the physician's authorization; and
- Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a billing company's marketing and financial personnel, in that the pressure to meet business goals may render these employees particularly vulnerable to engaging in prohibited practices.

2. Format of the Training Program

The OIG suggests all relevant levels of personnel be made part of various educational and training programs of the billing company.⁷³ Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.⁷⁴ For example, as discussed above, certain employees involved in billing functions should be required to attend periodic training in applicable reimbursement coverage and documentation of records.⁷⁵ A variety of teaching methods, such as interactive training and training in several different

⁷³ In addition, where feasible, the OIG recommends that a billing company afford outside contractors and its provider clients the opportunity to participate in the billing company's compliance training and educational programs or develop their own programs that complement the billing company's standards of conduct, compliance requirements and other rules and practices.

⁷⁴ Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specialty fields such as billing, coding and marketing.

⁷⁵ Appropriate coding and billing depends upon the quality and completeness of documentation. Therefore, the OIG believes that the billing company must foster an environment where interactive communication is encouraged. Health care providers should be reminded that thorough, precise and timely documentation of services provided serves the interests of the patient, the interest of the provider, as well as the interests of the billing company.

languages, particularly where a billing company has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable about the institution's standards of conduct and procedures for alerting senior management to problems and concerns.⁷⁶ Targeted training should be provided to corporate officers, managers and other employees whose actions affect the accuracy of the claims submitted to the Government, such as employees involved in the coding, billing and marketing processes. All training materials should be designed to take into account the skills, knowledge and experience of the individual trainees. Given the complexity and interdependent relationships of many departments, it is important for the compliance officer to supervise and coordinate the training program.

The OIG recommends attendance and participation at training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee. The billing company should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

3. Continuing Education on Compliance Issues

It is essential that compliance issues remain at the forefront of the billing company's priorities. The OIG recommends billing company compliance programs address the need for periodic professional education courses for billing company personnel. In particular, the billing company should ensure that coding personnel receive annual professional training on the updated codes for the current year.

In order to maintain a sense of seriousness about compliance in the billing company's operations, the billing company must continue to disseminate the compliance message. One effective mechanism for maintaining a consistent presence of the compliance message is to publish a monthly newsletter to address compliance concerns. This would allow the billing company to address specific examples of problems the company encountered during its

⁷⁶ Post-training tests can be used to assess the success of training provided and employee comprehension of the billing company's policies and procedures.

ongoing audits and risk analysis, while reinforcing the company's firm commitment to the general principles of compliance and ethical conduct. The newsletter could also include the risk areas published by the OIG in its Special Fraud Alerts. Finally, the billing company could use the newsletter as a mechanism to address areas of ambiguity in the coding and billing process. The billing company should maintain its newsletters in a central location to document the guidance offered and provide new employees with access to guidance previously provided.

D. Developing Effective Lines of Communication

1. Access to the Compliance Officer

An open line of communication between the compliance officer and the billing company personnel is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud.⁷⁷ The compliance committee should also develop several independent reporting paths for an employee to report fraud, waste or abuse so that such reports cannot be diverted by supervisors or other personnel.

The OIG encourages the establishment of procedures for personnel to seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question regarding a company policy, practice or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies, practices and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

⁷⁷ The OIG believes that whistle blowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. See 31 U.S.C. 3730(h). In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent or abusive situation was brought to the attention of senior corporate officials.

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines⁷⁸ (including anonymous hotlines), e-mails, written memoranda, newsletters and other forms of information exchange to maintain these open lines of communication.⁷⁹ If the billing company establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.⁸⁰ Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, Federal, State or private payor health care program requirements, regulations or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results.⁸¹ Such information should be included in reports to the governing body, the CEO and compliance committee.⁸² Further, while the billing company should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may

⁷⁸ The OIG recognizes that it may not be financially feasible for a small billing company to maintain a telephone hotline dedicated to receiving calls solely on compliance issues. These companies may explore alternative methods, e.g., contracting with an independent source to provide hotline services or establishing a written method of confidential disclosure.

⁷⁹ In addition to methods of communication used by current employees, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of the billing company's policy and procedures.

⁸⁰ Billing companies should also post in a prominent, available area the HHS-OIG Hotline telephone number, 1-800-447-8477 (HHS-TIPS), in addition to any company hotline number that may be posted.

⁸¹ To efficiently and accurately fulfill such an obligation, the billing company should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date the potential problem was reported, the internal investigative methods utilized, the results of any investigation, any corrective action implemented, any disciplinary measures imposed and any overpayments and monies returned.

⁸² Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

become known or may have to be revealed.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

E. Enforcing Standards Through Well-publicized Disciplinary Guidelines

1. Discipline Policy and Actions

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers and employees who have failed to comply with the billing company's standards of conduct, policies and procedures, Federal, State or private payor health care program requirements, or Federal and State laws, or those who have otherwise engaged in wrongdoing, which has the potential to impair the billing company's status as a reliable, honest and trustworthy organization.

The OIG believes the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers and employees for failing to comply with the billing company's standards and policies and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination or financial penalties, as appropriate. Each situation must be considered on a case-by-case basis to determine the appropriate sanction. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and identify who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department managers, while others may have to be resolved by a senior manager. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the billing company that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of possible disciplinary actions for improper conduct and to educate officers and other staff regarding these standards. The consequences of noncompliance should be consistently applied and enforced for the disciplinary policy to have the required deterrent effect. All levels of employees should be subject to the same disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a billing company. The OIG believes that corporate officers, managers and supervisors should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, rules, program instructions and procedures.

2. New Employee Policy

For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, billing companies should conduct a reasonable and prudent background investigation, including a reference check, as part of every such employment application. The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a-7(i), or exclusion action. Pursuant to the compliance program, billing company policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs.⁸³ In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that such individuals should be removed from direct responsibility for, or involvement, in any Federal health care program.⁸⁴ Similarly, with regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, then the billing company should remove the individual from

⁸³ See note 51. Likewise, billing company compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded or otherwise ineligible for participation in Federal health care programs.

⁸⁴ Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

direct responsibility for or involvement with all Federal health care programs.

F. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior company officers.⁸⁵ Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and reviewed with the billing company's senior management and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size of the company, the resources available to the company, the company's prior history of noncompliance and the risk factors that are prevalent in a particular billing company.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations, and Federal, State and private payor health care program requirements. The audits should focus on the billing company's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to Government enforcement actions. At a minimum, these audits should be designed to address the billing company's compliance with laws governing kickback arrangements, coding practices, claim submission, reimbursement and marketing. In addition, the audits and reviews should examine the billing company's compliance with specific rules and policies that have been the focus of particular attention on the part of the Medicare fiscal intermediaries or carriers, and law enforcement, as evidenced by OIG Special Fraud Alerts, OIG audits and evaluations and law enforcement's initiatives.⁸⁶ In addition, the billing company should focus on any areas of specific concern identified within that billing company and those

⁸⁵ Even when a facility is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual facility must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent-organization's senior staff and officers.

⁸⁶ See section II.A.2.

that may have been identified by any outside agency, whether Federal or State.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.⁸⁷ Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer or manager may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the billing company should take prompt steps to correct the problem.⁸⁸ Any overpayments discovered as a result of such deviations should be reported promptly to the appropriate provider, with appropriate documentation and a thorough explanation of the reason for the overpayment.⁸⁹

An effective compliance program should also incorporate periodic (at a minimum, annual) reviews of whether the program's compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs and disciplinary actions, among others.⁹⁰ This process will verify actual conformance by all departments with the compliance program. Such reviews could support a determination that

⁸⁷ The OIG recommends that when a compliance program is established in a billing company, the compliance officer, with the assistance of department managers, take a "snapshot" of the company's operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of benchmarking analysis, becomes a baseline for the compliance officer and other managers to judge the billing company's progress in reducing or eliminating potential areas of vulnerability. For example, it has been suggested that a baseline level include the frequency and percentile levels of CPT™ and HCPCS codes. Similarly, billing companies should track statistical data on claim rejection by code. This will facilitate identification of problem areas and elimination of potential areas of abusive or fraudulent conduct.

⁸⁸ Prompt steps to correct the problem include contacting the appropriate provider in situations where the provider's actions contributed to the problem.

⁸⁹ In addition, when appropriate, as referenced in section G.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

⁹⁰ One way to assess the knowledge, awareness and perceptions of the billing company staff is through the use of a validated survey instrument (e.g., employee questionnaires, interviews or focus groups).

appropriate records have been created and maintained to document the implementation of an effective program. However, when monitoring discloses deviations were not detected in a timely manner due to program deficiencies, appropriate modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the billing company's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- On-site visits;
- Testing billing and coding staff on their knowledge of reimbursement and coverage criteria (e.g., presenting hypothetical scenarios of situations experienced in daily practice and assess responses);
- Unannounced mock surveys, audits and investigations;
- Examination of the billing company's complaint logs;
- Checking personnel records to determine whether any individuals who have been reprimanded for compliance issues in the past are among those currently engaged in improper conduct;
- Interviews with personnel involved in management, operations, coding, claim development and submission and other related activities;
- Questionnaires developed to solicit impressions of a broad cross-section of the billing company's employees and staff;
- Reviews of written materials and documentation prepared by the different divisions of a billing company; and
- Trend analyses, or longitudinal studies, that seek deviations, positive or negative, in specific areas over a given period.

The reviewers should:

- Possess the qualifications and experience necessary to adequately identify potential issues with the subject matter to be reviewed;
- Be objective and independent of line management;⁹¹
- Have access to existing audit and health care resources, relevant personnel and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the CEO, governing body members of the compliance committee and its provider clients on a regular basis, but not less than annually;⁹² and

⁹¹ The OIG recognizes that billing companies that are small in size and have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

⁹² These evaluative reports should include a valid statistical sample of claims submitted to Federal health care programs.

- Specifically identify areas where corrective actions are needed.

With these reports, management can take whatever steps are necessary to correct past problems and prevent them from recurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

The billing company should document its efforts to comply with applicable statutes, regulations and Federal health care program requirements. For example, where a billing company, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the billing company should document and retain a record of the request and any written or oral response. This step is extremely important if the billing company intends to rely on that response to guide it in future decisions, actions or claim reimbursement requests or appeals. A log of oral inquiries between the billing company and third parties will help the organization document its attempts at compliance. In addition, the billing company should maintain records relevant to the issue of whether its reliance was "reasonable," and whether it exercised due diligence in developing procedures to implement the advice.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. Violations and Investigations

Violations of the billing company's compliance program, failures to comply with applicable Federal or State law, rules and program instructions and other types of misconduct threaten a billing company's status as a reliable, honest and trustworthy company. Detected but uncorrected misconduct can seriously endanger the mission, reputation and legal status of the billing company. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the chief compliance officer or other management officials promptly investigate the conduct in question to determine whether a material violation of applicable law, rule or program instruction or the requirements of the compliance program has occurred, and if so, take steps to correct the problem.⁹³

⁹³ Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a monetary loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported

As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan,⁹⁴ a report to the Government,⁹⁵ and the notification to the provider of any discrepancies or overpayments, if applicable.

Even if the overpayment detection and return process is working and is being monitored by the billing company's audit or coding divisions, the OIG still believes that the compliance officer needs to be made aware of these significant overpayments, violations or deviations that may reveal trends or patterns indicative of a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Some billing companies should consider engaging outside counsel, auditors or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, *e.g.*, any disciplinary action taken and any corrective action implemented. Although any action taken as the result of an investigation will necessarily vary depending upon the billing company and the situation, billing companies should strive for some consistency by utilizing sound practices and disciplinary protocols.⁹⁶ Further, after a reasonable period, the compliance officer should review the

to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries.

⁹⁴ Advice from the billing company's in-house counsel or an outside law firm may be sought to determine the extent of the billing company's liability and to plan the appropriate course of action.

⁹⁵ The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected fraud. The concept of self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's website at <http://www.dhhs.gov/progorg/oig>.

⁹⁶ The parameters of a claim review subject to an internal investigation will depend on the circumstances surrounding the issue(s) identified. By limiting the scope of the internal audit to current billing, a billing company may fail to identify major problems and deficiencies in operations, as well as be subject to certain liability.

circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the billing company is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the billing company determines disciplinary action is warranted, it should be prompt and imposed in accordance with the billing company's written standards of disciplinary action.

2. Reporting

a. Obligations Based on Billing Company Misconduct

If the compliance officer, compliance committee or a management official discovers credible evidence of misconduct by the billing company from any source and, after reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law,⁹⁷ then the billing company should report the existence of misconduct promptly to the appropriate Government authority⁹⁸ within a

⁹⁷ When making the determination of credible misconduct, the billing company should consider 18 U.S.C. 669 [holding an individual(s) criminally liable for knowingly and willfully embezzling, stealing or otherwise converting to the use of any person other than the rightful owner or intentionally misapplying any of the monies, funds . . . premiums, credits, property or assets of a health care benefit program] and 18 U.S.C. 2 (establishing criminal liability for an individual(s) who commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission as punishable as the principle).

⁹⁸ Appropriate Federal and/or State authorities include the Office of Inspector General of the Department of Health and Human Services, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorneys in the relevant districts, and the other investigative arms for agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, the Office of Inspector General, U.S. Department of Labor (which has primary criminal jurisdiction over FECA, Black Lung and Longshore programs) and the Office of Inspector General, U.S. Office of Personnel Management (which has primary jurisdiction over the Federal Employees Health Benefit Program).

reasonable period, but not more than sixty (60) days after determining that there is credible evidence of a violation. Prompt reporting will demonstrate the billing company's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (*e.g.*, penalties, assessments and exclusion), if the reporting company becomes the target of an OIG investigation.⁹⁹

b. Obligations Based on Provider Misconduct

Billing companies are in a unique position to discover various types of fraud, waste, abuse and mistakes on the part of the provider for which they furnish services. This unique access to information may place the billing company in a precarious position. On the one hand, the billing company's allegiance is to the provider client. On the other, the billing company maintains a commitment to compliance with the applicable Federal and State laws, and the program requirements of Federal, State and private health plans. The OIG recognizes the importance of maintaining a positive and interactive communication between billing companies and the providers they service. It is with this understanding that the OIG has addressed the issue of obligations on the part of third-party medical billing companies with regard to provider misconduct.

If the billing company finds evidence of misconduct¹⁰⁰ (*e.g.*, inaccurate claim submission) on the part of the provider that they service, the billing company should refrain from the submission of questionable claims and notify the provider in writing within thirty (30) days of such a determination. This notification should include all claim specific information and the rationale for such a determination.

If the billing company discovers credible evidence of the provider's continued misconduct or flagrant fraudulent or abusive conduct,¹⁰¹ the

⁹⁹ The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a-7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67,392 (12/24/97).

¹⁰⁰ Misconduct does not include inadvertent errors or mistakes. Such errors should be reported through the normal channels with the applicable carrier, intermediary or other HCFA-designated payor.

¹⁰¹ Such conduct may include patterns of misconduct, particularly with regard to conduct

billing company should: (1) Refrain from submitting any false or inappropriate claims; (2) terminate the contract; and/or (3) report the misconduct to the appropriate Federal and State authorities within a reasonable time, but not more than sixty (60) days after determining that there is credible evidence of a violation.

c. Reporting Procedure

When reporting misconduct to the Government, a billing company should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and the potential cost impact. The compliance officer, with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals criminal, civil or administrative violations have occurred, the appropriate Federal and State officials¹⁰² should be notified immediately.

3. Corrective Actions

Billing companies play a critical role in the restitution of overpayments to appropriate payors.¹⁰³ As previously stated, billing companies should take appropriate corrective action, including prompt identification of any overpayment to the provider and the affected payor and the imposition of proper disciplinary action, if applicable. Failure to notify authorities of an overpayment within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the billing company, as well as any individuals who may have been involved.¹⁰⁴ For this reason, billing company compliance programs should

that had previously been identified by the billing company or carrier as suspect.

¹⁰² See note 98.

¹⁰³ As a result of the limitations on reassignment, billing companies rarely engage in receiving payment on behalf of their provider clients or negotiating checks on behalf of their provider clients. Because of these provisions, the OIG recognizes that billing companies are rarely in the position to make restitution on behalf of their clients and it is generally viewed as the provider's responsibility to make restitution to the appropriate payor. See 42 CFR 424.73.

¹⁰⁴ See 42 U.S.C. 1320a-7b(a)(3).

ensure that overpayments are identified quickly and encourage their providers to promptly return overpayments obtained from Medicare or other Federal health care programs.¹⁰⁵

III. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient third-party medical billing compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual billing company, depending upon its particular corporate structure, mission and employee composition. The statutes, regulations and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every billing company's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. In particular, the billing process has changed dramatically in recent years. As a result, the time is right for billing companies to implement strong, voluntary compliance programs. As stated throughout this guidance, compliance is a dynamic process that helps to ensure billing companies are better able to fulfill their commitment to ethical behavior and to meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is OIG's hope that voluntarily created compliance programs will enable billing companies to meet their goals and substantially reduce fraud, waste and abuse, as well as the cost of health care to Federal, State and private health insurers.

Dated: December 14, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98-33565 Filed 12-17-98; 8:45 am]

BILLING CODE 4150-04-P

¹⁰⁵ If a billing company needs further guidance to inform its provider clients of normal repayment channels, the company should consult with the applicable Medicare intermediary/carrier. The applicable Medicare intermediary/carrier may require certain information (e.g., alleged violation or issue causing overpayment, description of overpayment, description of the internal investigative process with methodologies used to determine any overpayments, disciplinary actions taken and corrective actions taken) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual in the carrier or intermediary's organization. Interest will be assessed, when appropriate. See 42 CFR 405.376.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: January 15, 1999.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Rudy O POZZATTI, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402-0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-33617 Filed 12-17-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 7, 1999.

Time: 4:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street N.W., Washington, DC 20037.

Contact Person: Nancy Pearson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435-1047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-33618 Filed 12-17-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 7, 1999.

Open: 9:00 AM to 12:00 PM.

Agenda: To review and evaluate program documents.

Place: St. James Hotel, 950 24th Street NW, Washington, DC 20037.

Closed: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street NW, Washington, DC 20037.

Contact Person: Jerry Roberts, PHD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402-0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-33619 Filed 12-17-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions would disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel.

Date: January 13, 1999.

Time: 9:00 AM to 4:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10-42, Rockville, MD 20857, (301) 443-1644.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 11, 1998.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-33616 Filed 12-17-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4375-N-05]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* February 16, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing and Urban Development, 451—7th Street, SW, Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708-2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information.

Title of Proposal: Ginnie Mae Multiclass Securities Guide.

OMB Control Number, if applicable: 2503-0030.

Description of the need for the information and proposed use: The Multiclass Securities Guide (Guide) is used by program participants to obtain guidance and information on the Ginnie Mae Multiclass Securities Program. The Guide contains participation requirements for the REMICs, callable trust and platinum securities transactions.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit businesses (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Participants	Number of participants	Est. average response time	Est. annual burden hours
Sponsor	20	.5	10
Co-Sponsor	10	.5	5
Trust Counsel	8	.5	4
Co-Trust Counsel	8	.5	4
Accountant	3	.5	1.5
Trustee	8	.5	4
Total	57	.5	28.5

Status of the proposed information collection: This is a reinstatement, with change of a previously approved collection information for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 1, 1998.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 98-33547 Filed 12-17-98; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4384-FA-04]

Funding Awards for the Native American Rural Housing and Economic Development Initiative Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Native American Rural Housing and Economic Development Initiative Grants for Fiscal Year 1998.

FOR FURTHER INFORMATION CONTACT: Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 401-7914 (this is not a toll-free

number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. The FY 1998 Native American Rural Housing and Economic Development Initiative

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105-65, 111 Stat. 1344, 1357; approved October 27, 1997) (the FY 1998 HUD Appropriations Act) provided \$25 million for grants (not to exceed \$4,000,000 each) to rural and tribal areas, including at least one Native American area in Alaska and one rural area in each of the States in Iowa and Missouri. The purpose of these grants is to test comprehensive approaches to developing a job base through economic development, developing affordable low and moderate-income rental and homeownership housing, and increasing the investment of both private and nonprofit capital.

Of these \$25 million made available by the FY 1998 HUD Appropriations Act, HUD has awarded \$9 million for economic development and affordable housing activities in Native American areas (the "FY 1998 Native American Rural Housing and Economic Development Initiative"). The FY 1998 Native American Rural Housing and Economic Development Initiative consists of four funding awards:

One title VI capacity-building grant (\$3 million);

Two rural housing and economic development grants (\$2 million each); and

One rural housing and economic development mortgage funding grant (\$4 million).

II. Title VI Loan Guarantee Capacity Building Grants

On July 23, 1998 (63 FR 39686), HUD published a notice announcing the availability of up to \$4 million from the \$25 million authorized under the FY 1998 HUD Appropriations Act for rural housing activities. Under the July 23, 1998 notice of funding availability (NOFA), HUD awarded a single competitive grant of \$3 million to a technical assistance provider who will use the grant funds to provide capacity-building technical assistance to Indian tribes or Tribally Designated Housing Entities (TDHEs) that have been granted a loan guarantee under title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA).

This notice publishes the name and address of the highest scoring applicant under the July 23, 1998 NOFA who was selected to act as the technical assistance provider to Indian Tribes and TDHEs (see Section V. of this notice). The purposes of the grant awarded under the July 23, 1998 NOFA are to:

1. Strengthen the economic feasibility of projects guaranteed under Title VI of NAHASDA;
2. Directly enhance the security of Title VI guaranteed loans;
3. Finance affordable housing activities and related projects that will provide near-term results;
4. Demonstrate economic benefits such as homeownership opportunities, increased housing availability, housing

accessibility and visitability and job creation related to the approved Title VI demonstration project; and

5. Attainment of Indian Housing Plan goals and objectives.

III. Rural Housing and Economic Development Grants

As noted above, the FY 1998 HUD Appropriations Act specifically directs HUD to make a grant, not to exceed \$4 million, to at least one Native American area in Alaska. In accordance with this statutory language, HUD has made two grants (of \$2 million each) to two organizations located in Alaska Native areas. The purpose of these grants is to test comprehensive approaches to economic development and affordable housing in these areas. This notice publishes the names and addresses of these award recipients (see Section V. of this notice).

IV. Rural Housing and Economic Development Mortgage Funding Grant

In addition to the three grants describe above, HUD has awarded a \$2 million grant to Pine Ridge, South Dakota for the provision of homeownership counseling and other related services. The grantee shall use these funds to establish a Federal Housing Administration Loan Correspondent Corporation which shall provide for home mortgage loans, direct lending for home improvement loans, non-conforming loans, construction contingency reserves and interest rate reduction services. This action also enhances economic development through job creation to staff the organization for a period of two years.

V. Funding Award Recipients

Section 102(a)(4)(C) of the Department of Housing and Urban Development Act of 1989 (42 U.S.C. 3545) (the HUD Reform Act) requires that HUD notify the public of all funding decisions made by HUD. In accordance with section 102(a)(4)(C) of the HUD Reform Act, this notice provides details regarding the recipients of funding awards under the FY 1998 Native American Rural Housing and Economic Development Initiative, as follows:

Title VI Loan Guarantee Capacity Building Grant

IHA Management Systems, Inc.;
15414 N. 7th Street, Suite 8-145;
Phoenix, AZ 85022 (\$3 million).

Rural Housing and Economic Development Grant

1. Alaska Native Heritage Center, Inc.,
2525 C Street, Suite 301, Anchorage, AK
99503 (\$2 million).

2. Bristol Bay Housing Authority, P.O.
Box 50, Dillingham, AK 99576 (\$2
million).

Rural Housing and Economic Development Mortgage Funding Grant

Oglala Sioux Lakota Tribe, P.O. Box
C, Pine Ridge, SD 57770 (\$2 million).

VI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.867.

Dated: December 14, 1998.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98-33491 Filed 12-17-98; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4341-N-40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-1226; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 10, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98-33242 Filed 12-17-98; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Supplemental Draft Environmental Impact Statement on a Proposed Modification of Plum Creek Timber Company's Incidental Take Permit for Threatened and Endangered Species on Portions of its Lands in the Central Cascades, King and Kittitas Counties, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice

SUMMARY: This notice advises the public that Plum Creek Timber Company (Permittee) has requested modification of their incidental take permit (PRT-808398) to accommodate the new land base expected as a result of a potential land exchange with the U.S. Forest Service. The Fish and Wildlife Service and the National Marine Fisheries Service (together Services) prepared a Draft Supplemental Environmental Impact Statement (Supplement). The Final Environmental Impact Statement (Statement) associated with the original Habitat Conservation Plan (Plan) is not being re-opened or re-analyzed, and the decisions based on the original Statement are not being reconsidered. The Services herein announce the availability of the Supplemental Draft Environmental Impact Statement for the proposed modification pursuant to the National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the Supplement should be received on or before February 8, 1999. This comment period was established for a longer period of time than required by regulation and policy to compensate for days lost for public review during the December holidays.

ADDRESSES: Comments regarding the Supplement, or requests for that document, should be addressed to William Vogel, Fish and Wildlife Service, Pacific Northwest Plan Program, 510 Desmond Drive S.E., Suite 102, Lacey, Washington 98503-1273; (360) 753-9440; or Bob Turner, Plan Program Manager, National Marine Fisheries Service, 510 Desmond Drive S.E., Suite 103, Lacey, Washington 98503-1273; (360) 753-6054.

Individuals wishing copies of the Supplement for review should immediately contact the above office at (360) 753-9440 or contact Michael Collins, Project Leader, Plum Creek Timber Company, 999 Third Avenue, Suite 2300, Seattle, Washington 98104; or call (206) 467-3639. Copies of the Supplement and supporting documents are also available at the following libraries:

Wenatchee Public Library, *Attention:* Sandy Purcell, 310 Douglas Street, Wenatchee, Washington 98801

University of Washington Library, *Attention:* Carolyn Aamot, Government Publications Department, 170 Suzzallo Library, Seattle, Washington 98195-2900

Seattle Public Library, *Attention:* Ms. Jeanette Voiland, Government Publications Department, 1000 Fourth Avenue, Seattle, Washington 98104

Evergreen State College, *Attention:* Lee Lyttle, Library Campus Parkway—L23100H, Olympia, Washington 98505

Central Washington University, *Attention:* Dr. Patrick McLaughlin, Library Collection Development, Ellensburg, Washington 98926

King County Library System, *Attention:* Cheryl Standley, Documents Department, 1111 110th Avenue Northeast, Bellevue, Washington 98004

Questions concerning this proposed action and comments regarding the Supplement should be forwarded to the Fish and Wildlife Service or National Marine Fisheries Service at the address or telephone number provided above. Formal public scoping was not conducted, consistent with 40 CFR 1502.9(c)(4). However, Service staff held public meetings in conjunction with the Forest Service on May 13, 14, 20, and 21, 1998, to answer questions and receive comments and concerns.

FOR FURTHER INFORMATION CONTACT: William Vogel, Fish and Wildlife Service, or Dennis Carlson, National Marine Fisheries Service. Both are located at the Pacific Northwest Plan Program, at the addresses and telephone numbers listed above.

SUPPLEMENTARY INFORMATION: The Plum Creek Plan for the Cascade region was accepted and the Incidental Take Permit was originally issued on June 27, 1996, for a 170,600-acre Project Area located within a 418,700-acre Planning Area. The Planning Area is located within east King County and west Kittitas County, Washington, and is bisected by Interstate-90. The Planning Area includes not only Plum Creek lands, but National Forest lands and lands of other ownerships.

The Permit allows Plum Creek to incidentally take threatened and endangered fish and wildlife while requiring implementation of a

conservation plan with a habitat-based, prescriptive-management strategy designed to minimize and mitigate such incidental take. The Plan approved in 1996 contemplated that Plum Creek lands managed under the Plan and Permit would likely change as a result of future land exchanges with the federal government. Consequently, the Plan and associated Implementation Agreement provide procedures and criteria for modification of the Plan to accommodate the exchange of lands. The Plan describes two scenarios for such land exchanges whereby "the biological integrity of the Plan would be either maintained or improved."

In October of 1998, H.R. 4328 authorized and directed the Interstate-90 land exchange. The potential land exchange would result in a transfer to the U.S. Forest Service of up to 53,400 acres of the 170,600-acre Project Area previously covered by Plum Creek's Permit and Plan, and the transfer of up to 10,800 acres of National Forest lands within the 418,700-acre Planning Area to Plum Creek. The authorized land exchange is a combination of the two scenarios determined to be "beneficial" in the original Plan.

The Supplemental Environmental Impact Statement analyzes Plum Creek's proposal in order to determine the environmental impact (beneficial or adverse) that would result from implementation of the Plan modification, as compared to the original Federal Action (approval and implementation of the original Plan and issuance of an Incidental Take Permit).

The Environmental Impact Statement considers three alternatives, including the Proposed Action and the No-action Alternatives. Under the No-action Alternative, the Permittee would continue to implement the existing Plan on the current land base. This alternative includes specific mitigation for wildlife whether or not those species are listed under the Endangered Species Act (Act). The Proposed Action would allow the modification of the Plan to accommodate the new land base and would therefore apply the Plan standards to the newly acquired Plum Creek lands. The Northwest Forest Plan would apply to newly acquired National Forest lands. The Partial-Modification Alternative would allow the transfer of lands from Plum Creek to the U.S. Forest Service, but would not add the newly acquired Plum Creek lands to the Plan. Instead, take prohibitions under section 9 of the Endangered Species Act would apply with respect to listed species, but no conservation would be required for other wildlife and special habitats.

Authority: 16 USC 1361-1407, 1531-1544, and 4201-4245.

Dated: December 8, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98-33034 Filed 12-17-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for calendar year 1999 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco and at Point Reyes Station, California:

Tuesday, January 19, San Francisco, CA

Saturday, January 23, Point Reyes, CA

Tuesday, February 16, San Francisco, CA

Tuesday, March 16, San Francisco, CA

Tuesday, April 20, San Francisco, CA

Saturday, May 15, Point Reyes, CA

Tuesday, May 18, San Francisco, CA

Tuesday, June 15, San Francisco, CA

Tuesday, July 20, San Francisco, CA

Tuesday, August 17, San Francisco, CA

Tuesday, September 21, San Francisco, CA

Tuesday, October 19, San Francisco, CA

Saturday, October 23, Point Reyes, CA

Tuesday, November 16, San Francisco, CA

Tuesday, December 21, San Francisco, CA

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco or at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California, except the Saturday, May 15 meeting, which will start at 9:30 a.m. Information confirming the time and location of all Advisory Commission meetings or cancellations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561-4633.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
 Ms. Amy Meyer, Vice Chair
 Ms. Naomi T. Gray
 Dr. Howard Cogswell
 Mr. Michael Alexander
 Mr. Jerry Friedman
 Ms. Lennie Roberts
 Ms. Yvonne Lee
 Ms. Carlota del Portillo
 Mr. Trent Orr
 Mr. Redmond Kernan
 Ms. Jacqueline Young
 Mr. Merritt Robinson
 Mr. R. H. Sciaroni
 Mr. John J. Spring
 Dr. Edgar Wayburn
 Mr. Joseph Williams
 Mr. Mel Lane

These meetings will also contain Superintendent's and Presidio General Manager's Reports.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561-4633.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 11, 1998.

Len McKenzie,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 98-33507 Filed 12-17-98; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-416]

Certain Compact Multipurpose Tools; Notice of Commission Decision Not To Review an Initial Determination Adding a Respondent

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting a motion to amend the complaint and notice of investigation to include Charles Amash Imports, Inc., d/b/a Grip On Tools (Grip On), as a respondent.

FOR FURTHER INFORMATION CONTACT: P. N. Smithy, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. General information concerning the Commission also may be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION: On August 28, 1998, Leatherman Tool Group, Inc., filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact multipurpose tools that infringe claims of three U.S. design patents.

The Commission instituted the investigation on September 30, 1998. Five firms were named as respondents. See 63 FR 52287 (Sept. 30, 1998); 19 U.S.C. 1337(b)(1); and 19 CFR 210.10(b).

On November 2, 1998, complainant Leatherman moved to add Grip On as a respondent, owing to that firm's importation and sale of tools that are the subject of the investigation. (Motion No. 416-2.)

On November 10, 1998, the Commission investigative attorney filed a response supporting the motion. No other party responded to the motion.

On November 19, 1998, the ALJ issued the ID (Order No. 5) granting the motion pursuant to 19 CFR 210.14(b)(1). No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became

the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

All nonconfidential documents filed in the investigation—including the ID, the motion to add Grip On, and the Commission investigative attorney's response—are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-1802.

By order of the Commission.

Issued: December 14, 1998.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-33583 Filed 12-17-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921-167 (Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on pressure sensitive plastic tape from Italy.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202-205-3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-

205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1998, the Commission determined to expedite the subject five-year review because respondent interested party responses to its notice of institution (63 FR 46475, September 1, 1998) were inadequate. One U.S. producer, Minnesota Mining & Manufacturing Co. (3M), responded to the notice of institution. 3M is also an importer of pressure sensitive tape from Italy and owns an Italian producer of such tape. In its response, 3M submitted some information regarding its U.S. importation and its foreign subsidiary's production of plastic tape. However, 3M submitted its response in its capacity as a domestic producer and the Commission considered that response only for purposes of its domestic group adequacy determination. Since no other respondent interested party submitted a response, the Commission concluded that respondent interested party responses were inadequate.

Vice Chairman Miller and Commissioners Hillman and Koplan, after considering relevant information about the domestic industry, including the share of domestic plastic tape production represented by 3M, concluded that 3M's response constituted an adequate domestic interested party group response. Chairman Bragg and Commissioners Crawford and Askey concluded that 3M's response does not constitute an adequate domestic interested party group response given the relevant information about this domestic industry. As will be explained in the Commission's opinion in this review, the domestic interested party response was not the basis for the Commission's determination to expedite the review.

The Commission did not find any other circumstances that would warrant conducting a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act. A record of the Commissioners' votes are available from the Office of the Secretary and at the Commission's web site.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on January 8, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided adequate responses to the notice of institution,¹ and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 13, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 13, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to extend the period of time for making its expedited determination in this review by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

¹ The Commission has found the response submitted by Minnesota Mining & Manufacturing Co. to be adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Issued December 14, 1998.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-33584 Filed 12-17-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921-188 (Review)]

Prestressed Concrete Steel Wire Strand From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on prestressed concrete steel wire strand from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1998, the Commission determined that the

domestic interested party response to its notice of institution (63 FR 46477, September 1, 1998) of the subject five-year review was adequate. The Commission also determined that, because there was no respondent interested party response, such response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act. A record of the Commissioners' votes and statements by Commissioners, if any, are available from the Office of the Secretary and at the Commission's web site.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 31, 1998, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided adequate responses to the notice of institution,¹ and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 6, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 6, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI

service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 15, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-33582 Filed 12-17-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 158-98]

Privacy Act; Notice of Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to modify a system of records. Specifically:

The "Bond Accounting and Control System (BACS), Justice/INS-008"—last published October 5, 1993 (58 FR 51854)—has been retitled:

"Bond Management Information System (BMIS), Justice/INS-008."

In addition, the system description has been revised to reflect a change in equipment configuration. An outdated and failing system had provided limited direct access to personnel at the Immigration and Naturalization (INS) offices located in Burlington, Vermont and Twin Cities, Minnesota. The revised and updated system will no longer provide direct access to Twin Cities; but will permit direct access to authorized personnel at INS Headquarters and at other INS offices—when such personnel have been identified as those who need direct access in order to perform INS operations more effectively. Also, two routine uses (routine uses A. and B.) have been added; one has been removed; and a change has been made in the System Manager. Finally, as also indicated in the system description, a new retention and disposal schedule for these records is pending approval of the National Archives and Records Administration.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires a 40-day period in which to conclude its review of the proposed modifications.

Therefore, please submit any comments by January 19, 1999. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: December 2, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS-008

SYSTEM NAME:

Bond Management Information System (BMIS).

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), Headquarters and certain other regional, district, and/or other field offices as needed. (Currently, the only field office maintaining this system is Burlington, Vermont.) Addresses of offices are listed in JUSTICE/INS-999 as published in the **Federal Register**, or in the telephone directories of the respective cities listed above under the heading "United States Government, Immigration and Naturalization Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have posted a bond with INS and the beneficiaries of posted bonds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information which allows identification of active bonds posted with INS such as: Bond number, obligor's name and address, alien beneficiary's name and alien file number, type of bond, location and date bond was posted, and other data related to the bond.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 103, 213, 236, 240B, and 293 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1183, 1226, 1229c, and 1363, respectively).

PURPOSE(S):

Information in this system of records will be used by employees of INS to control and account for collateral received to support an immigration bond, and may be used to prepare timely responses to inquiries about these records.

¹ The Commission has found responses submitted by American Spring Wire, Florida Wire and Cable, Insteel Wire Products, and Sumiden Wire Products, to be adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. Where the record, either on its face or in conjunction with other information, indicates a violation or potential violation of law (whether civil, criminal, or regulatory in nature) to the appropriate agency (whether Federal, State, local, or foreign) charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the related statute, rule, regulation, or order pursuant thereto.

B. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: The DOJ, or any DOJ component or subdivision thereof; any DOJ employee in his/her official capacity; any DOJ employee in his/her individual capacity where the DOJ has agreed to represent the employee; or the United States where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

C. To a member of Congress, or staff acting upon the member's behalf, when the member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

D. To the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on magnetic disks.

RETRIEVABILITY:

Records may be retrieved by any of the following: Alien's name, alien's file number, obligor's name, bond-receipt control number, breach control number, or location and date bond was posted.

SAFEGUARDS:

Access can be obtained only through remote terminals which are located in secured areas of secured buildings and through the use of restricted passwords assigned to authorized personnel.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA. Six years after the bond is disbursed, breached, or closed, all records will be archived and stored at the DOJ Archives Center for seven years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Commissioner, Office of Financial Management, 425 I Street, NW, Washington, DC 20536.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record shall be in writing. Written requests may be submitted by mail or in person at any INS system location where bond activity records are located. (See "System Location.") If a request for access is made by mail, the envelope and letter should be clearly marked "Privacy Access Request." To enable INS to identify an individual's record, he or she must provide his or her full name, alien file number, location and date bond was posted, and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information must direct his or her request to *Headquarters* or other appropriate system location (see "System Locations") and state clearly what information is being contested; the reason for contesting it; and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Individuals covered by the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98-33498 Filed 12-17-98; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act: Telecommunications Services Other Than Local Exchange Services, Cellular, and Broadband PCS

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Notice of inquiry.

SUMMARY: The purpose of this Notice of Inquiry (NOI) is to present certain

telecommunications carriers and all other interested parties with an opportunity to provide input to the Federal Bureau of Investigation (FBI) as it develops law enforcement's capacity requirements for services other than local exchange, cellular, and broadband personal communications services (PCS). The Communications Assistance for Law Enforcement Act (CALEA) mandate that the Attorney General, on behalf of all law enforcement, provide capacity requirements for the actual and maximum number of interceptions (of call content and/or call-identifying information) that telecommunications carriers may be required to effect in support of law enforcement's electronic surveillance needs. This NOI is soliciting information on and suggestions for developing reasonable methodologies for characterizing capacity requirements for telecommunications services other than local exchange services, cellular, and broadband PCS. Such services include, but are not limited to: traditional paging, two-way paging, narrowband PCS, mobile satellite services (MSS), specialized mobile radio (SMR) and enhanced specialized mobile radio (ESMR), national and multi-rate services, asynchronous transfer mode (ATM), X.25, frame relay, airplane telephony, and railroad telephony.

DATES: Comments must be received on or before February 16, 1999.

ADDRESSES: Comments should be submitted to the Federal Bureau of Investigation, CALEA Implementation Section, Attention: Notice of Inquiry, 14800 Conference Center Drive, Suite 300, Chantilly, VA 20151. All comments will be available for review at the FBI's Freedom of Information and Privacy Act (FOIPA) Reading Room located at FBI Headquarters, 935 Pennsylvania Avenue, NW, Washington, DC 20535. To review the comments, interested parties should contact the FBI's FOIPA Reading Room staff, telephone number (202) 324-7510, to schedule an appointment (48 hours advance notice required). While printed comments are welcome, commenters are encouraged to submit their responses on electronic media. Electronic documents must be in WordPerfect 6.1 (or earlier) or Rich Text Format (RTF) format. Comments must be the only file on the 3.5 inch disk. In addition, all electronic submissions must be accompanied by a printed sheet listing the name, company or organization name address, and telephone number of an individual who can replace the disk should it be damaged in transit.

SUPPLEMENTARY INFORMATION:

I. Background**A. Purpose of CALEA**

On October 25, 1994, President Clinton signed into law the Communications Assistance for Law Enforcement Act (CALEA).¹ Its objective is to make clear a telecommunications carrier's duty to cooperate with law enforcement with regard to electronic surveillance-related interceptions for law enforcement purposes.² CALEA was enacted to preserve law enforcement's ability (pursuant to court order or other lawful authorization) to access call content and call-identifying information in an ever-changing telecommunications environment. On March 3, 1995, the Attorney General delegated to the Director of the FBI, or his designee(s) the authority to carry out the responsibilities conferred upon the Attorney General in Title I of CALEA.³ The FBI is implementing CALEA on behalf of all Federal, state, and local law enforcement agencies.

In 1968, when Congress statutorily authorized court-ordered electronic surveillance, there were no technological limitations on the number of call content or call-identifying interceptions that could be conducted.⁴ However, the onset of new and advanced services has begun to erode the telecommunications industry's ability to support law enforcement's court-authorized interception needs. In an effort to preserve the ability to conduct interceptions, Congress determined that technological solutions must be employed to meet the needs of law enforcement through the provision of new and advanced services.

The intent of CALEA is to define and clarify the level of assistance required from the telecommunications industry. CALEA does not alter or expand law enforcement's fundamental statutory authority to intercept communications. It simply seeks to ensure that, after law enforcement obtains legal authority, telecommunications carriers will have the necessary technical ability to fulfill their statutory obligation to provide law enforcement with the technical assistance necessary to carry out the court-authorized intercepts.

B. Capacity Notice Mandate

Because many future interceptions will be effected through equipment controlled by telecommunications carriers, section 104 of CALEA requires the Attorney General to provide carriers with information they will need (a) to be capable of accommodating the actual number of simultaneous interceptions at specific geographic locations that law enforcement may need to conduct, and (b) to size and design their networks to accommodate the maximum number of simultaneous interceptions at specific geographic locations that law enforcement may need to conduct at some future date. These two information elements are referred to in CALEA as "actual" and "maximum" capacity requirements. In accordance with section 104 of CALEA, the Attorney General must provide notice of estimated future actual and maximum capacity requirements. The statute defines these requirements as follows:

For actual capacity: The actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity, that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment of CALEA.⁵

For maximum capacity: The maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of CALEA.⁶

Under section 104 of CALEA, telecommunications carriers must be in *compliance* with capacity requirements 3 years after the effective date of a Final Notice of Capacity for a specific telecommunications service. Although the Attorney General must estimate the actual number of call content interceptions, pen registers, and trap and traces that a carrier may be required to accommodate simultaneously at specific geographic locations by that date, the estimates should not be interpreted to mean the number of interceptions that law enforcement intends to, or is planning to, conduct.⁷ The number of interceptions that will actually be needed will be determined by active law enforcement investigations requiring authorized electronic surveillance.

Maximum capacity, on the other hand, is a capacity level that

telecommunications carriers must be able to accommodate "expeditiously" if law enforcement requires an increase in the future. The term "expeditiously" specifically refers to Section 104 capacity requirements regarding incremental expansion up to the maximum capacity.⁸ It should not be confused with "expeditious access" to call content and call-identifying information as used in section 103 of CALEA, which pertains to the assistance capability requirements. Because CALEA does not define the term "expeditiously," this NOI solicits from interested parties suggestions for the appropriate length of time to be designated for incremental expansion to the maximum capacity.

Law enforcement has interpreted maximum capacity chiefly as a requirement that telecommunications carriers will follow to determine a capacity ceiling. This ceiling is intended to provide telecommunications carriers with a stable framework for cost-effectively designing future capacity into their networks. It also provides for accommodating future interception-related "worst-case scenarios." Establishing the maximum capacity will allow telecommunications carriers to assist law enforcement during serious, unpredictable emergencies requiring an unusual level of interception activity.

C. Final Notice of Capacity for Local Exchange, Cellular and Broadband PCS Services

On March 12, 1998, the FBI published in the **Federal Register**⁹ a Final Notice of Capacity. While CALEA applies to all telecommunications carriers,¹⁰ the March 12, 1998 Final Notice of Capacity covered only those telecommunications carriers offering local exchange services and certain commercial mobile radio services, specifically cellular service and broadband PCS.¹¹ Exclusion from the March 12, 1998 Final Notice of Capacity of other telecommunications carriers that have services currently deployed or anticipate deploying services in the near term, does not exempt them from the statutory obligations of CALEA. Thus, the purpose of this NOI is to give telecommunications carriers providing other telecommunications services covered by CALEA an opportunity to provide input to the FBI as it develops

⁸ 47 U.S.C. 1003(b)(2).

⁹ 63 FR 12218 (March 12, 1998).

¹⁰ Telecommunications carrier as defined by 47 U.S.C. 1001(8).

¹¹ Specifically, it refers to those services operating in the licensed portion of the 2 GHz band of the electromagnetic spectrum, from 1850 MHz to 1990 MHz.

¹ Pub. L. 103-414, 47 U.S.C. 1001-1010.

² For purposes of this NOI, the word "interception" is used to refer to either the interception of call content or call-identifying information.

³ See 28 CFR 0.85(o).

⁴ See Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. 2510-2522.

⁵ See 47 U.S.C. 1003(a)(1)(A).

⁶ See 47 U.S.C. 1003(a)(1)(B).

⁷ 47 U.S.C. 1003(b)(1).

law enforcement's capacity requirements.

II. Capacity Requirements for Telecommunications Services Other Than Local Exchange Services, Cellular, and Broadband PCS

Given the dynamic nature of the telecommunications industry and the diverse nature of telecommunications services, the FBI has determined that it is in the best interest of all parties concerned that it solicit input from the telecommunications industry and other interested parties regarding the development of reasonable methodologies for characterizing capacity requirements for telecommunications services other than local exchange, cellular, and broadband PCS, prior to instituting a rulemaking proceeding.¹² The FBI is committed to the consultative process and to maintaining an on-going dialogue with the telecommunications industry. The FBI seeks to draw upon the expertise of industry to gain an understanding of the range of options available for expressing capacity requirements for various telecommunications services. Those services yet to be address by a notice of capacity include, but are not limited to:

- Traditional paging,
- Two-way paging,
- Narrowband PCS,
- MSS,
- SMR and ESMR,
- National and multi-rate services,
- Asynchronous transfer mode (ATM),
- X.25,
- Frame relay,
- Airplane telephony, and
- Railroad telephony.

Any telecommunications carriers whose services were not covered in the March 12, 1998 Final Notice of Capacity but are subject to CALEA, are strongly encouraged to comment on this NOI.

Commenters are asked to address the requirements regarding the basis for capacity notices set forth in CALEA section 104(a)(2):

The notices issued. * * *

(A) may be based upon the type of equipment, type of service, number of subscribers, type or size of carrier, nature of service area, or any other measure; and

(B) shall identify, to the maximum extent practicable, the capacity required at specific geographic locations.

Commenters should address approaches that are best suited to their specific services, with emphasis upon the capacity needed on a geographic basis. However, the FBI recognizes that

certain services may not lend themselves to geographic expression, and therefore also encourages comments on alternative means of characterizing capacity. Commenters are also asked to address any other service-specific capacity issues that the FBI should take into consideration when developing capacity methodologies. While different services will require different methods for characterizing capacity, commenters should review the methodology for determining capacity requirements set forth in the March 12, 1998 Final Notice of Capacity before preparing comments in this proceeding.¹³ Also, because CALEA does not define the term "expeditiously," this NOI solicits from interested parties suggestions for the appropriate length of time to be designated for incremental expansion to the maximum capacity.

The FBI is committed to giving all interested parties the opportunity for meaningful participation in CALEA and will continue to work with the telecommunications industry to develop capacity methodologies and notices of capacity for all telecommunications services subject to CALEA.¹⁴

This is a Notice of Inquiry proceeding where ex parte communications are permitted pursuant to 28 CFR 50.17.

[47 U.S.C. §§ 1001-1010]

Dated: December 15, 1998.

Louis J. Freeh,

*Director, Federal Bureau of Investigation,
Department of Justice.*

[FR Doc. 98-33634 Filed 12-17-98; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on

¹³ See 63 FR 12218, and 12224-12227 (March 12, 1998).

¹⁴ The FBI is acting in accordance with the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is

¹² This action is considered a rulemaking under the Administrative Procedure Act, 5 U.S.C. § 553.

encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

New General Wage Determination Decisions

Ohio
OH980038 (Dec. 18, 1998)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT980001 (Feb. 13, 1998)
CT980003 (Feb. 13, 1998)
CT980004 (Feb. 13, 1998)

New York
NY980003 (Feb. 13, 1998)
NY980008 (Feb. 13, 1998)
NY980020 (Feb. 13, 1998)

Volume II

Maryland
MD980002 (Feb. 13, 1998)
MD980010 (Feb. 13, 1998)
MD980015 (Feb. 13, 1998)
MD980019 (Feb. 13, 1998)
MD980023 (Feb. 13, 1998)
MD980024 (Feb. 13, 1998)
MD980026 (Feb. 13, 1998)
MD980031 (Feb. 13, 1998)
MD980043 (Feb. 13, 1998)
MD980055 (Feb. 13, 1998)

Virginia
VA980101 (Feb. 13, 1998)

Maryland
INDEX (Feb. 13, 1998)

Volume III

Florida
FL980016 (Feb. 13, 1998)
FL980017 (Feb. 13, 1998)
FL980032 (Feb. 13, 1998)
FL980076 (Feb. 13, 1998)

Volume IV

Illinois
IL980051 (Feb. 13, 1998)

Indiana
IN980002 (Feb. 13, 1998)

Ohio
OH980001 (Feb. 13, 1998)
OH980002 (Feb. 13, 1998)
OH980003 (Feb. 13, 1998)
OH980026 (Feb. 13, 1998)

OH980029 (Feb. 13, 1998)
OH980034 (Feb. 13, 1998)
OH980038 (Feb. 13, 1998)
INDEX (Feb. 13, 1998)

Volume V

Iowa
IA980005 (Feb. 13, 1998)

Kansas
KS980007 (Feb. 13, 1998)
KS980009 (Feb. 13, 1998)
KS980013 (Feb. 13, 1998)
KS980015 (Feb. 13, 1998)
KS980016 (Feb. 13, 1998)
KS980019 (Feb. 13, 1998)
KS980021 (Feb. 13, 1998)
KS980023 (Feb. 13, 1998)
KS980025 (Feb. 13, 1998)

Texas
TX980001 (Feb. 13, 1998)
TX980002 (Feb. 13, 1998)
TX980003 (Feb. 13, 1998)
TX980007 (Feb. 13, 1998)
TX980008 (Feb. 13, 1998)
TX980009 (Feb. 13, 1998)
TX980016 (Feb. 13, 1998)
TX980019 (Feb. 13, 1998)
TX980033 (Feb. 13, 1998)
TX980034 (Feb. 13, 1998)
TX980037 (Feb. 13, 1998)
TX980064 (Feb. 13, 1998)
TX980069 (Feb. 13, 1998)
TX980081 (Feb. 13, 1998)

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual

edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 11th day of December 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98-33314 Filed 12-17-98; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises our [MSHA Approval and Certification Center (A&CC)] user fees. Fees compensate us for the costs that we incur for testing, evaluating, and approving certain products for use in underground mines. We based the 1999 fees on our actual expenses for fiscal year 1998. The fees reflect changes both in our approval processing operations and in our costs to process approval actions.

DATES: These fee schedules are effective from January 1, 1999 through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center (A&CC), 304-547-2029 or 304-547-0400.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987 (52 FR 17506), we published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products. The rule established specific procedures for calculating, administering, and revising user fees. We have revised our fee schedule for 1999 in accordance with the procedures of that rule and include this new fee schedule below. For approval applications postmarked before January 1, 1999, we will continue to calculate fees under the previous (1998) fee schedule, published on December 24, 1997.

Fee Computation

In general, we computed the 1999 fees based on fiscal year 1998 data. We calculated a weighted-average, direct

cost for all the services that we provided during fiscal year 1998 in the processing of requests for testing, evaluation, and approval of certain products for use in underground mines. From this cost, we calculated a single hourly rate to apply uniformly across all of the product approval categories during 1999.

Elimination of SNAP and SRA Programs

Effective September 1998, we eliminated the Stamped Notification Acceptance Program (SNAP) and Stamped Revision Acceptance (SRA) programs. Under these programs, we charged only a nominal fee for the

acceptance of certain changes to approvals. All requests for acceptance of proposed changes to approved products now require only:

- (1) A letter of application describing the proposed changes, and
- (2) The new or revised drawings and specifications that document the proposed changes.

As with original requests for approval, we will charge a single hourly rate for processing all future requests for acceptance of proposed changes to approved products.

In addition, we require you (applicant) to pre-authorize the expenditure of at least \$500 for fees. If the complexity of the proposed change

requires more time to evaluate than you pre-authorized, we will prepare an estimate of the total cost and send it to you. If you agree to the additional cost, we will complete the approval process. We will bill you for the actual cost of processing your application at the conclusion of the investigation.

We will continue to administer and bill certain tests and services at a flat rate. We have listed our hourly and flat-rate fees for 1999 in the following fee schedule.

Dated: December 14, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1999

[Based on FY 1998 data]

Action title	Hourly rate	Flat rate
Fees for Testing, Evaluation, and Approval of all Mining Products ¹	\$59	
Retesting for Approval as a Result of Post-Approval Product Audit ²		
Statement of Test and Evaluation (ST&E)		\$105
Statement of Test and Evaluation (ST&E) Extension		83
Mine Wide Monitoring System (MWMS) Barrier Classification		89
30 CFR PART 15—EXPLOSIVES TESTING		
Permissibility Tests for Explosives:		
Weigh-in		\$462
Physical Exam: First size		325
Chemical Analysis		1,977
Air Gap—Minimum Product Firing Temperature		460
Air Gap—Room Temperature		352
Pendulum Friction Test		163
Detonation Rate		352
Gallery Test 7		7,436
Gallery Test 8		5,533
Toxic Gases (Large Chamber)		805
Permissibility Tests for Sheathed Explosives:		
Physical Examination		128
Chemical Analysis		1,044
Gallery Test 9		1,944
Gallery Test 10		1,944
Gallery Test 11		1,944
Gallery Test 12		1,944
Drop Test		648
Temperature Effects/Detonation		672
Toxic Gases		580

¹ Full approval fee consists of evaluation cost plus applicable test costs.

² Fee based upon the approval schedule in effect at the time of retest.

Note: When the nature of the product requires that we test and evaluate it at a location other than our premises, you must reimburse us for the traveling, subsistence, and incidental expenses of our representative in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 98-33553 Filed 12-17-98; 8:45 am]
BILLING CODE 4510-43-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request reinstatement without change of a previously approved information collection which has expired. This information collection is used in applying for grants from the National Historical Publications and Records Commission (NHPRC). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 16, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740-6001; or faxed to 301-713-6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301-713-6730, or fax number 301-713-6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: NHPRC Budget Form and Instructions.

OMB number: 3095-0004.

Agency form number: NA Form 17001.

Type of review: Reinstatement without change of a previously approved information collection which has expired.

Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 174.

Estimated time per response: 3 hours.

Frequency of response: On occasion (when respondent wishes to apply for an NHPRC grant). Respondents generally submit no more than 1 application per year.

Estimated total annual burden hours: 552 hours.

Abstract: The information collection is prescribed by 36 CFR 1207.58. The collection is prepared by prospective grantees. The budget form is used by the NHPRC staff, reviewers, and the Commission to determine whether the

proposed project is methodologically sound and suitable for support and as a basis for determining the amount of support to be provided.

Dated: December 11, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98-33572 Filed 12-17-98; 8:45 am]

BILLING CODE 7515-01-P

THE NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

Establishment of the Medicare Commission include in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report. The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the **Federal Register**.

The National Bipartisan Commission on the Future of Medicare will hold a public meeting on Tuesday, January 5, 1999 at the Dirksen Senate Office Building, Room 106, Washington, DC. Please check the Commission's web site for additional information: <http://Medicare.Commission.Gov>

Tuesday, January 5, 1999
1:30PM

Tentative Agenda: Members of the Commission to discuss pending issues.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202-252-3380

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register**.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 98-33623 Filed 12-17-98; 8:45 am]

BILLING CODE 1132-00-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: Tuesday, January 5, 1999, 8:30 AM to 5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson

Blvd., Arlington, VA 22230. 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 proposals submitted to the Division of Ocean Sciences Education 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: December 4, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-33509 Filed 12-17-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Workshop on Vision for Nanotechnology R&D

The National Science Foundation announces that it will hold a workshop. The workshop is open to the public. Specifics are:

Name: Workshop: Vision for Nanotechnology R&D in the Next Decade.

Date and time: Jan. 27, 1999/8:30 a.m.-5:00 p.m., Jan. 28, 1999/8:30 a.m.-5:00 p.m., Jan. 29, 1999/8:30 a.m.-4:00 p.m.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. M.C. Roco, Chair of the Interagency Working Group on Nanotechnology, National Science Foundation, Suite 525, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 306-1371. For easier building access, individuals planning to attend should contact Nichelle Graham at 703-306-1371 or at ngraham@nsf.gov so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To identify goals, opportunities and policies pertaining to support for R&D in nanotechnology and related fields at NSF and other U.S. Government agencies.

Agenda: Discussion on issues, opportunities, and future directions for nanotechnology R&D.

Dated: December 9, 1998

Paul J. Herer,

Senior Advisor for Planning and Technology Evaluation, Directorate for Engineering National Science Foundation.

[FR Doc. 98-33510 Filed 12-17-98; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-220 and 50-410]

Niagara Mohawk Power Corporation (Nine Mile Point Nuclear Station Unit Nos. 1 and 2); Order Approving Application Regarding Restructuring of Niagara Mohawk Power Corporation by Establishment of a Holding Company Affecting Licenses Nos. DPR-63 and NPF-69, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

I

Niagara Mohawk Power Corporation (NMPC or the licensee) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to possess, maintain, and operate the Nine Mile Point Nuclear Station, Units 1 and 2 (NMP1 and NMP2, or collectively, the facility), under Facility Operating License No. DPR-63, issued by the Commission on December 26, 1974, and Facility Operating License No. NPF-69, issued by the Commission on July 2, 1987. NMPC fully owns NMP1, is a 41-percent co-owner of NMP2, and acts as agent for the other co-owners of NMP2. The other co-owners of NMP2, who may possess but not operate NMP2, are New York State Electric & Gas Corporation with an 18-percent interest, Long Island Lighting Company with an 18-percent interest, Rochester Gas and Electric Corporation with a 14-percent interest, and Central Hudson Gas & Electric Corporation with a 9-percent interest. The facility is located in the town of Scriba, Oswego County, New York.

II

Under cover of a letter dated July 21, 1998, NMPC submitted an application for consent by the Commission, pursuant to 10 CFR 50.80, regarding a proposed corporate restructuring action that would result in the indirect transfer of the operating licenses for the facility to the extent held by NMPC. The application was supplemented October 23, 1998. Under the proposed restructuring, NMPC would become a subsidiary of a new holding company, Niagara Mohawk Holdings, Inc., created by NMPC in accordance with a Settlement Agreement reached with the New York Public Service Commission (PSC Case Nos. 94-E-0098 and 94-E-0099), dated October 10, 1997, and revised March 19, 1998. In addition, certain of NMPC's non-utility subsidiaries would be transferred to the holding company.

According to the application, each share of NMPC's common stock would be exchanged for one share of common

stock of the holding company. NMPC's outstanding preferred stock would not be exchanged. Under this restructuring, NMPC would divest all of its hydro and fossil generation assets by auction, but would retain its nuclear assets, and would continue to be an "electric utility" as defined in 10 CFR 50.2 engaged in the transmission, distribution and, through NMP1 and NMP2, the generation of electricity. NMPC would continue to be the owner of NMP1 and a co-owner of NMP2 and would continue to operate both NMP1 and NMP2. No direct transfer of the operating licenses or ownership interests in the facility would result from the proposed restructuring. The transaction would not involve any change in the responsibility for nuclear operations within NMPC. Officer responsibilities at the holding company level would be primarily administrative and financial in nature and would not involve operational matters related to NMP1 or NMP2. No NMPC nuclear management positions would be changed as a result of the corporate restructuring.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** on September 9, 1998 (63 FR 48254), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 23, 1998 (63 FR 50931).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application of July 21, 1998, as supplemented by letter dated October 23, 1998, the NRC staff has determined that the restructuring of NMPC by establishment of a holding company structure will not affect the qualifications of NMPC as the holder of the license for NMP1, and as a holder of the license for NMP2, and that the transfer of control of the licenses, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated December 11, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *it is hereby*

ordered that the Commission approves the application regarding the proposed restructuring of NMPC by the establishment of a holding company structure, subject to the following: (1) NMPC shall provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from NMPC to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of NMPC's consolidated net utility plant as recorded on NMPC's books of account; and (2) should the restructuring of NMPC as described herein, not be completed by December 10, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

By January 11, 1999, any person whose interest may be affected by this Order may file in accordance with the Commission's rules of practice set forth in Subpart M of 10 CFR Part 2 a request for a hearing and petition for leave to intervene with respect to issuance of the Order. Such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. John H. Mueller, Chief Nuclear Officer, Niagara Mohawk Power Corporation, Nine Mile Point Nuclear Station, Operations Building, Second Floor, P.O. Box 63, Lycoming, New York 13093; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a

hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this Order, see the application for approval filed by NMPC under cover of a letter dated July 21, 1998, from John H. Mueller of NMPC, as supplemented by letter dated October 23, 1998, and the safety evaluation dated December 11, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 11th day of December 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-33587 Filed 12-17-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286]

Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Westchester County, New York.

II

The Code of Federal Regulations, 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsection (a)(1) and (a)(2) of 10 CFR 70.24 specifies detection and sensitivity requirements that these monitors must meet. Subsection a(1) also specifies that all areas subject to criticality accident monitoring must be covered by two

detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for special nuclear material used or to be used in the reactor. Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The special nuclear material that could be assembled into a critical mass at IP3 is in the form of nuclear fuel; the quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass. The Commission technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at IP3 and has determined that such an accident cannot occur if the licensee meets the following seven criteria:

1. Plant procedures permit only one new fuel assembly to be in transit between the associated shipping cask and dry storage rack.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

3. If optimum moderation of fuel in the fresh fuel storage racks occurs when

the fresh fuel storage racks are not flooded, the k-effective corresponding to this optimum moderation does not exceed .98, at a 95 percent probability, 95 percent confidence level.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5 wt%.

By letter dated September 24, 1998, the licensee requested an exemption from 10 CFR 70.24. In this exemption request, the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittal and has determined that IP3 meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that there is no credible way in which an inadvertent criticality could occur in special nuclear materials handling or storage areas at IP3.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material personnel would be alerted to that fact and would take appropriate action. The staff has determined that there is no credible way in which such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion (GDC) 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to GDC 63 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; therefore, the Commission hereby grants the following exemption:

The Power Authority of the State of New York is exempt from the requirements of 10 CFR 70.24 for Indian Point Unit No. 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment [63 FR 68315].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of December 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-33586 Filed 12-17-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation (the licensee) for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont.

The proposed amendment would allow intermittent opening of manual primary containment isolation valves with appropriate administrative controls. Opening these valves is necessary to perform routine evolutions such as surveillances, sampling and venting/drainage of plant systems.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change allows an isolated primary containment penetration to be opened as necessary to meet operational objectives defined in applicable Technical Specifications and/or approved plant procedures. Primary containment isolation is not considered an initiator of any previously analyzed accident. Therefore, this change does not significantly increase the probability of such accidents. Although primary containment isolation is considered in the mitigation of the consequences of an accident, administrative controls provide acceptable compensatory actions to assure the penetration is isolated in the event of an accident. Therefore, the consequences of a previously analyzed event that may occur during the opening of the isolated line are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any previously evaluated?

This change allows temporary breaches of the primary containment boundary under strict administrative controls, for the purposes of conducting normal operational evolutions required by other Technical Specifications and/or approved plant procedures. In the event containment isolation is required while any flow path is open under administrative controls, provisions exist to isolate that flow path with a single active-failure-proof boundary as required by the primary containment Technical Specification Limiting Conditions for Operation. Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed accident.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety considered in determining the required compensatory action is also based on providing the single active-failure-proof boundary. Opening of primary containment penetrations on an intermittent basis is required for performance of routine evolutions as noted previously. Plant procedures administratively control the opening and closing of the affected valves. The administrative controls are defined in the Technical Specifications

Bases. When a manual valve is opened under these conditions, a dedicated operator, with whom Control Room communication is immediately available, is stationed in the immediate vicinity of the valve controls. In the event primary containment must be rapidly reinstated, this individual will close the valve in an expeditious manner. Once closed, this flow path will meet the same single active-failure-proof criteria as other containment penetrations. Since the flow path will be closed promptly on a containment isolation demand, the valve will be open only slightly longer than if it had been closed by an automatic actuator. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville

Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 19, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 11, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 15th day of December, 1998.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-33588 Filed 12-17-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on January 20 and 21, 1999, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Wednesday, January 20, 1999—8:30 a.m. until the conclusion of business
Thursday, January 21, 1999—8:30 a.m. until 12:00 Noon

The Subcommittee will review the insights gained, in the fire protection area, from the review of the licensee submittals of Individual Plant

Examination of External Event reports, results of the Pilot Fire Protection Functional Inspections, electrical circuit analysis, proposed NFPA Fire Protection Standard, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415-6899) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 14, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98-33585 Filed 12-17-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: January 26-27, 1999—Las Vegas, Nevada: Department of Energy's (DOE) Viability Assessment of a Repository at Yucca Mountain, and Other Issues Related to the Disposal of High Level Waste at Yucca Mountain

Pursuant to its authority under section 5051 of Public Law 100-203, Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board (Board) will hold its winter meeting on Tuesday, January 26, and Wednesday, January 27, 1999 in Las Vegas, Nevada. The meeting, which is open to the public, will begin at 1:00 p.m. on January 26, and 8:00 a.m. on January 27. The meeting will be held at the Alexis Park Hotel, 375 East Harmon, Las Vegas, Nevada 89109; (Tel) 702 796-3300, 800 453-8000, (Fax) 702 796-0766.

On January 26, the meeting will focus on progress on alternative repository design, scientific and engineering investigations, and regulatory criteria pertinent to a potential repository at Yucca Mountain, Nevada. The Nuclear Regulatory Commission (NRC) has been invited to send a representative to discuss the NRC's draft rule (10 CFR part 63) for disposal of high-level waste at Yucca Mountain. On January 27, the focus of the meeting will turn to the U.S. Department of Energy's Viability Assessment (VA). Representatives from the DOE will make presentations on different aspects of the VA, including repository design, waste package characteristics, total system performance assessment, the license application plan, and repository life-cycle costs. A detailed agenda will be available approximately one week before the meeting. You can either call for a copy, or visit the Board's web site at www.nwtrb.gov.

The Board is making an added effort at this meeting to accommodate the views of interested parties. Time will be set aside at the end of both days, and will be extended if necessary, to take public comments. Those wishing to speak are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. In addition, time will be set aside for public comment in the late morning on January 27. Interested parties also will have the opportunity to submit questions in writing to the Board. To the extent time permits, these questions will be

answered by one or more Board members during the meeting. Last, the Board members are extending an invitation to the public to come meet them and have a cup of coffee. This informal get together will be held in the meeting room on January 27 from 7:15-7:45 a.m.

Transcripts of this meeting will be available via e-mail, on computer disk, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning on July 20, 1998. For further information, contact the NWTRB, Paula Alford, External Affairs, 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201-3367; (tel) 703-235-4473; (fax) 703-235-4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program for managing the disposal of the nation's commercial spent nuclear fuel and defense high-level waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposing of that waste.

Dated: December 14, 1998.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 98-33487 Filed 12-17-98; 8:45 am]

BILLING CODE 6820-AM-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40785; File No. SR-BSE-98-10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Trading Floor Post and Telecommunications Room Policies

December 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 20, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I and II and below, which items have been prepared by the BSE. The Commission is publishing this notice

¹ 15 U.S.C. 78s(b)(1).

and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt written policies and procedures to address certain issues related to the Exchange's scheduled move to its new trading floor ("Floor")² to control access to secure areas and to give jurisdiction over posts to the Floor Facilities Committee ("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, the BSE 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 V below. The BSE 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 purpose of the proposed rule change is to amend the Exchange's Floor policies with respect to post assignment and telecommunications room ("Comm Room") access in anticipation of the Exchange's scheduled move. These changes are generally intended to address administrative issues regarding space needs for members and equipment, as well as security issues.

The proposed rule gives the Committee jurisdiction over the assignment and appearance of posts, and further provides that (1) any post relocation or alteration of any post requires the prior consent of the Committee; (2) the Committee may relocate a member firm to another area of the Floor to accommodate the space needs of the Exchange; (3) the Committee will determine which posts will be vacated when a firm seeks to relinquish a portion of its existing posts; (4) a member firm is prohibited from utilizing an unassigned post for any purpose without the prior approval of the Exchange; (5) any unauthorized use of a vacant post(s) will result in the

immediate removal of all equipment and materials at the expense of the member; (6) the storage of all member firm tickets, reports and other materials must be within the cabinets provided by the Exchange, at the Exchange's warehouse, or in such other area as designated by the Exchange; (7) the storage of materials in an unauthorized area of the Floor will result in the immediate removal of that material to the warehouse, with all costs paid by the member firm; (8) no member firm shall place or install any personal equipment (*i.e.*, computers, file cabinets, chairs, bulletin boards, tables, shelves, desks) without the prior consent of the Exchange; and (9) any unauthorized equipment will be immediately removed at the expense of the member firm.

In addition, the proposed rule change seeks to define and limit access to the Comm Room and the Floor for security reasons. It requires that (1) member firms must obtain a permit number from the Exchange prior to any installation or servicing of hardware or telecommunications equipment; (2) any service call made by a member firm for repairs to equipment or lines must be reported to the Exchange, and no vendor will be permitted to access the Comm Room or the Floor without prior notification to the Exchange and accompaniment by an authorized Exchange staff member or floor member; and (3) any equipment removal from any Exchange location must be accompanied by a property removal pass issued by an authorized Exchange staff member.

2. Statutory Basis

The Exchange believes the filing is consistent with and furthers the objectives of Section 6(b)(5) of the Act³ and the rules and regulations thereunder applicable to a national securities exchange, in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange did not solicit or receive comments with respect to the proposed rule change.

III. 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 exchange and, in particular, the requirements of Section 6 of the Act⁴ and the rules and regulations thereunder. Section 6(b)(5)⁵ of the Act states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions. These rules also must help to remove impediments to and perfect the mechanism of a free and open market. The Commission believes the proposed Post and Comm Room Rules are consistent with this provision of the Act in that they will facilitate the Exchange's move to its new Floor and minimize disruptions in trading that may result from such move. Specifically, the Commission believes that the proposed Post Rules will enable the Exchange to function in a more orderly fashion by providing the Committee with the authority to assign and relocate members to post locations on the trading floor and by requiring members to obtain the Exchange's prior consent prior to placing equipment at post. The Commission also believes that the proposed Comm Room Rules, which limit access to the Comm Room and the Floor and require a permit from the Exchange prior to the installations or removal of any telecommunications equipment, will adequately provide security to the Exchange's Floor and Comm Room and permit the Exchange to prepare for any disruptions that may occur during installation or removal of equipment.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(2) of the Act,⁶ the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register** because the

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

² The Exchange is scheduled to move to its new Floor on January 4, 1998.

³ 15 U.S.C. 78f(b)(5).

Commission believes that accelerated approval will enable the Exchange to move to its new Floor with minimal disruptions in trading.⁷

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office at the above-mentioned self-regulatory organization. All submissions should refer to File No. BSE-98-10 and should be submitted by January 8, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-BSE-98-10), hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-33557 Filed 12-17-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40782; File No. SR-CSE-98-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Regarding Regulatory Cooperation

December 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 26, 1998, the Cincinnati Stock Exchange, Inc. ("CSE" 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 Exchange hereby proposes to amend its disciplinary jurisdiction rules to provide explicitly for regulatory cooperation by exchange members in connection with certain investigations and proceedings initiated by other self-regulatory organizations. The text of the proposed rule change is available at the Office of the Secretary, CSE 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 CSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Chapter VIII, Rule 8.2 of the Exchange's Rules requires a member and persons associated with a member to appear and testify, and to respond in writing to interrogatories and to furnish documentary materials and other information requested by the Exchange in connection with: (i) an investigation initiated pursuant to paragraph (a) of Rule 8.2, or (ii) a hearing or appeal conducted pursuant to Chapter VIII or preparation by the Exchange in anticipation of such a hearing or appeal. While the Exchange believes that the current rule provides adequate authority to require a member and persons associated with a member to provide information to other regulatory

organizations, the Exchange believes that clarifying this provision to expressly provide for such information is desirable, especially because other self-regulatory organizations have recently amended their rules to clarify their information-sharing authority.³

The proposed rule change would expressly provide that no member or person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding, or refuse to furnish documentary materials or other information, or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange and another self-regulatory organization for the sharing of information and other forms of mutual assistance, including but not limited to members and affiliate members of the Intermarket Surveillance Group.⁴ The proposed rule change would explicitly provide that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement or other regulatory purposes. The requirements of the proposed rule would apply regardless of whether the Exchange has initiated a formal investigation or disciplinary proceeding, so long as the Exchange has been notified of the request and then requests in writing that the person or entity provide the information requested.

The proposed rule change would also provide that any person or entity required to furnish information or testimony pursuant to the new rule shall be afforded the same rights and procedural protections as that person or entity would have if the Exchange had

³ See, e.g., Securities Exchange Act Release Nos. 39557 (Jan. 16, 1998), 63 FR 3940 (Jan. 27, 1998) (notice of filing and immediate effectiveness of SR-CHX-97-33); and 35646 (April 25, 1995), 60 FR 21227 (May 1, 1995) (order approving SR-PSE-95-02).

⁴ The Intermarket Surveillance Group ("ISG") is an organization of securities industry self-regulatory organizations formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. To promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

initiated the request for information or testimony.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5)⁵ in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will foster regulatory cooperation among self-regulatory organizations and thereby promote better regulated and fairer markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE 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 comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principle office of the CSE. All submissions should refer to File No. SR-CSE-98-03 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-33556 Filed 12-17-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40784; File No. SR-NASD-98-44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Enhanced Supervision of Unregistered Persons Performing Limited Marketing Activities

December 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 6, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the NASD Regulation, Inc. ("NASDR") 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 NASDR. On December 2, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Gary L. Goldsholle, Assistant General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 30, 1998 ("Amendment No. 1"). In Amendment No. 1, the NASDR proposes to amend its filing by deleting its reference to the use by member firms of third-party telemarketing firms for limited marketing activities.

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 NASDR is proposing to amend Rule 1060 and create a new Interpretative Material, IM-3010, to codify existing practice by exempting from registration persons whose securities business is limited to certain limited marketing activities and specify supervisory requirements for members concerning such unregistered persons. Below is the text of the proposed rule change. Proposed new language is in italics.

1060. Persons Exempt From Registration

(a) The following persons associated with a member are not required to be registered with the Association:

- (1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;
- (2) persons associated with a member who are not actively engaged in the investment banking or securities business;

(3) persons associated with a member whose functions are related solely and exclusively to the member's needs for nominal corporate officers or for capital participation; and

(4) persons associated with a member whose functions are related solely and exclusively to:

(A) effecting transactions on the floor of a national securities exchange and who are registered as floor members with such exchange;

(B) transactions in municipal securities, except as provided in Rule 1110 hereof, or

(C) transactions in commodities; and
(5) *persons associated with a member whose investment banking or securities business is limited to marketing activities through the telephone or other electronic communications media for the following:*

- (A) *extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel;*
- (B) *inquiring whether the prospective or existing customer wishes to discuss investments with a registered person; and*

(C) *inquiring whether the prospective or existing customer wishes to receive investment literature from the firm.*

In connection with subparagraphs (A), (B) and (C), unregistered persons shall be permitted to mention the products and services generally available from

⁵ 15 U.S.C. 78f(b)(5).

the member, provided, however, that such unregistered persons shall not discuss the attributes or merits of any particular investment products or services or class of products or services, pre-qualify prospective customers as to financial status and investment history and objectives, or solicit new accounts or orders. Nothing in this subparagraph shall affect the ability of administrative personnel to contact customers regarding clerical or ministerial matters affecting a customer's account(s).

IM-3010. Supervision of Solicitation and Marketing Activities by Unregistered Persons

Each member employing or using unregistered associated persons in accordance with Rule 1060(a)(5) (hereinafter referred to as "unregistered marketers") shall ensure that the member's supervisory system includes the following:

(a) *Background Investigation.* Prior to employing or using an unregistered marketer, the member shall conduct a reasonable investigation into the background of such person to determine that he or she is not subject to a disqualification as defined in the Association's By-Laws.

(b) *Instruction and Training.* The member, or a person designated by the member, shall instruct all unregistered marketers acting on behalf of the member concerning the scope of their permissible activities, including: the matters that they may discuss pursuant to Rule 1060(a)(5), the telemarketing time-of-day and disclosure obligations required under Rule 2211, and the requirement to make and maintain a centralized do-not-call list pursuant to IM-3110 and to refrain from soliciting customers whose names are included on the list.

(c) *Designated Principals.* The member shall designate one or more principals who shall be responsible for implementing and overseeing the member's supervisory system concerning the employment or use of unregistered marketers;

(d) *Signed Acknowledgment.* The member shall not permit unregistered marketers to contact customers on behalf of the member until the unregistered marketer acknowledges, in writing or by electronic means, that he or she:

(i) is an associated person of the member;

(ii) as an associated person:
a. is not subject to a disqualification as defined in the Association's By-Laws; and

b. submits to the authority of the jurisdiction of the Association and

(iii) has been instructed by the member, or a person designated by the member, concerning the permissible activities of unregistered marketers, as specified in subparagraph (b).

(e) *Compensation.* Unregistered marketers shall be compensated on an hourly or salary basis only, and shall not receive any bonus or additional compensation or other incentives tied to transactions.

(f) *Monitoring.* Registered persons shall periodically monitor calls made by unregistered marketers to ensure that they comply with the limitations described in Rule 1060(a)(5).

(g) *Recordkeeping.* The member shall prepare written records demonstrating compliance with the provisions of this interpretation, which shall include reports documenting the frequency of periodic monitoring and the results of such monitoring. The member also shall keep copies of all scripts used by unregistered marketers calling on their behalf. The member shall preserve each record for a period of not less than three years from the date the record was created, the first two years in a readily accessible place. In addition, the member shall retain the acknowledgment required in subparagraph (d) for a period of not less than three years from the date an individual ceased marketing on behalf of the member, the first two years in a readily accessible place.

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 NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR 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

Background

The Association's current policy, contained in Notice to Members ("NTM") 88-50, permits unregistered individuals to extend invitations to firm-sponsored events and to inquire whether a prospective customer wishes to discuss investments with a registered person or receive investment literature.

The proposed rule change adds certain specific supervisory requirements concerning the activities of these unregistered persons, while codifying in the NASD's rules the extent to which such persons may act on behalf of a member without registration.

Specifically, under the proposed rule change, members using unregistered persons for the permitted activities will be required to supervise and periodically monitor such persons to ensure that their marketing activities do not exceed the narrowly prescribed limits. In addition, members will be required to conduct a background investigation on unregistered persons, provide instruction and training on the scope of their limited permissible activities, designate one or more principals to be responsible for the marketing activities of unregistered persons, and compensate such unregistered persons on an hourly or salary basis only. Any unregistered person who proposes marketing to customers on behalf of a member also must acknowledge in writing certain matters, including that he or she submits to the authority of the Association.

The Proposal in Notice to Members 97-58

In August 1997, in NTM 97-58, the NASDR proposed a requirement to register all persons associated with or used by a member who communicate with the public for the purpose of soliciting the purchase of securities or related services or identifying prospective customers. The proposal contained an exemption permitting unregistered persons to communicate with existing customers of a member firm for three limited activities: (1) extending invitations to firm-sponsored events; (2) inquiring whether a customer wishes to speak with a registered person; and (3) inquiring whether a customer wishes to receive investment literature from the firm.

The proposed rule change herein, like its predecessor in NTM 97-58, is designed to address the use of high pressure and aggressive cold calls by unregistered persons, often using specially designed scripts. It also addresses the NASDR's concern that members may not be consistently applying the current cold calling requirements and that members may be employing unregistered persons under the guise of performing the limited functions described above, when in fact such persons are engaged in much broader solicitation activities. Finally, it addresses the NASDR's concern that unregistered persons soliciting

customers may provide inaccurate or misleading information to customers.

Based upon the comments received in response to NTM 97-58, and input provided by the various NASD standing committees, the NASDR is recommending an alternative approach. The proposed rule change is no longer as much a general rule on "cold calling" per se as it is a rule addressing the circumstances under which unregistered persons may conduct limited marketing activities, such as extending invitations to firm-sponsored events, inquiring whether a prospective or existing customer wishes to speak with a registered person or receive investment literature.

The proposed rule change represents a significant shift from the position articulated in NTM 97-58. This shift stems from the NASDR's conclusion after considering all of the input received in the rulemaking process, that registration may not be the most appropriate regulatory mechanism to address the NASDR's concerns. This point was raised by many of the commenters and committees that considered the initial proposal. In general, the commenters and committees believe that registration would not address the substance of cold calls, which, they believe, is what really should be of concern to the NASDR. The commenters and committees also believe that registration should not be required of persons who perform the limited functions permitted in NTM 88-50. Registration, they argue, would be a costly and impractical solution to a problem that is more effectively addressed through increased supervision and enforcement.

The New Proposal

The NASDR's proposed rule change codifies generally the current restrictions governing the use of unregistered persons that engage in marketing activities as set forth in NTM 88-50, and establishes more comprehensive supervisory responsibilities of members towards such unregistered persons. The NASDR believes that the proposed rule change would achieve several important regulatory objectives. First, it would educate members about their responsibilities regarding the use of unregistered persons that engage in marketing activities. Second, it would signal to the membership the NASDR's renewed attention to the problem of marketing. Third, and perhaps most importantly, since the new rule would require SEC approval, it would provide a clear, and in some cases, an additional and more easily provable basis on

which to bring enforcement actions against firms and individuals that exceed the narrow boundaries established for the use of unregistered persons to engage in marketing activities.

The proposed rule change also seeks a more careful balance between the burdens and benefits of registration. While avoid the expense of registration, the NASDR believes the proposed rule change retains many of the protections that registration would provide. Under the proposed rule change, line NTM 88-50, members would be required to conduct a reasonable background investigation to determine that no prospective unregistered person who intends marketing to customers on behalf of the member is subject to a disqualification as defined by the By-Laws. In addition, under the proposed rule change, such unregistered persons would continue to be deemed associated persons, and thus, subject to the jurisdiction of the Association. The proposed rule change makes the status of unregistered persons who perform limited marketing activity more clear than NTM 88-50 by requiring all such persons to execute an acknowledgment stating that they are associated persons and subject to the Association's jurisdiction. Persons performing these functions, however, would not be required to complete the series 7 examination—an examination that the staff believes is unnecessary for the limited activities permitted by unregistered persons. NASDR staff considered implementing a specific "cold calling" exam but concluded that there would not be sufficient material to make such an examination meaningful.

While the proposed rule change was originally conceived to address problems resulting from cold calling activity, the current proposal covers activity occurring in electronic communications media generally. In light of the rapid growth of the Internet and other electronic communications media, the proposed rule change ensures that the requirements imposed by these new rules cannot be circumvented by moving marketing activity from the telephone to non-traditional media. If, for example, a member uses an unregistered person to post a message inviting the public to a seminar on an Internet bulletin board or during a conversation in a chat room, such conduct should be subject to the same requirements and supervision as communication over the telephone.

The proposed rule change is based upon the premise, as articulated in NTM 88-50, and set forth in NASD Rule 1031(b), that persons associated with a

member who are engaged in the investment banking or securities business for the member, including the functions of solicitation" are required to register as a "representative." Rule 1060 lists a series of exemptions from registration for certain categories of persons associated with a member. Proposed new rule 1060(a)(5) would add a new category and exempt persons whose investment banking or securities business is limited to marketing to customers through the telephone or other electronic communications media for the following: (1) extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel; (2) inquiring whether the prospective or existing customer wishes to discuss investments with a registered person; and (3) inquiring whether the prospective or existing customer wishes to receive investment literature from the firm. By including marketing towards existing as well as prospective customers, the new rule makes clear that contacts with existing customers should be governed by the same restrictions as contacts with prospective customers.

New rule 1060(a)(5) clarifies what unregistered persons may say in connection with their marketing activities. Specifically, the rule states that "unregistered persons shall be permitted to mention the products and services generally available from the member, provided that they do not discuss the attributes or merits of any particular investment products or services, pre-qualify prospective customers as to financial status and investment history and objectives, or solicit new accounts or orders." In addition, new rule 1060(a)(5) states that it shall not affect the ability of administrative personnel to contact customers regarding clerical or ministerial matters affecting a customer's account.

Supervisory Responsibilities

The comprehensive supervisory responsibilities set forth in the proposed rule change contain many of the supervisory responsibilities set forth in NTM 88-50, with several significant additions. The supervisory responsibilities contained in NTM 88-50 and codified in the proposed IM-3010 are: (1) Instructing unregistered persons who are marketing on behalf of a member concerning the scope of their permissible activities; (2) conducting a reasonable investigation into the background of any potential unregistered person to determine that

such person is not statutorily disqualified from becoming associated with the member; and (3) compensating unregistered persons on an hourly or salary basis only, without any bonuses or other incentives tied to transactions.

The additional supervisory obligations that would be imposed by the proposed rule change include a requirement for members to obtain an acknowledgement from any unregistered person who intends marketing to customers on behalf of the member stating that he or she: (1) Is an associated person of the member; (2) as an associated person (a) is not subject to a disqualification as defined in the By-Laws and (b) submits to the jurisdiction of the Association; and (3) has been instructed by the member, or a person designated by the member, concerning the scope of permissible marketing activities in which such unregistered persons may engage.

The proposed rule change also would require members to periodically monitor the activities of unregistered persons marketing on their behalf to confirm that such persons are complying with the limitations placed upon them. The NASDR proposes allowing members to determine what level and form of monitoring is appropriate, although we would expect members to increase the frequency of monitoring in response to complaints or other indicia that marketing abuses may be taking place. Members may satisfy the monitoring requirements in a variety of methods, including periodically "listening in" on marketing calls, or contacting previously marketed persons to determine the scope of any communication by the unregistered person. Whatever method members choose, they would be required to maintain a written record of the verification procedures used and the results of the periodic monitoring.

The recordkeeping requirements of the proposed rule change are an integral part of the supervisory system. The signed acknowledgements and records of periodic monitoring will help provide assurance that the restrictions placed upon unregistered marketers are being followed. NASDR staff has also included a specific requirement for members to maintain copies of all scripts used by unregistered persons calling on their behalf. Scripts used by marketers frequently contain the issues to be discussed and suggested responses to questions that may arise during a conversation. From a regulatory perspective, scripts are often very probative of the substance of a cold call or marketing effort, and thus would be particularly useful in determining

whether a member's use of unregistered marketers is in compliance with the limitations imposed by the proposed rule.

The proposed rule change also would require members to designate one or more registered principals to be responsible for overseeing the member's supervisory obligations relating to the employment and use of unregistered persons engaged in marketing on behalf of the member. The NASDR believes that firms are likely to be more diligent in supervising unregistered persons if members designate specific individuals with responsibility for overseeing such activity.

Additional Issues

Some banks and bank affiliated firms have argued that the proposed rule change could unduly limit marketing activities by bank employees. Although the NASDR preliminarily believes that the potential customer protections that will be derived from the increased supervision of the activities of unregistered persons outweigh these concerns, we would be interested in receiving further comments on the advisability of applying these rules to bank employees, as well as any possible bases for excluding such employees. In particular, for example, would it be appropriate to exclude entities that are otherwise regulated under federal or state law, such as banks and insurance companies?

We also wish to obtain further public comment on whether the proposed rule change should be modified to reach the activities of unregistered third-party telemarketing firms that independently generate leads and then sell such leads to member firms. Since the Association's jurisdiction would not extend to communications by third-party telemarketing firms that are not made on behalf of a particular member, we are concerned about a potential loophole in our proposed rule change in that members may be able to avoid application of the proposed rule change simply by purchasing leads from third-party telemarketing firms that independently generate leads and/or prequalify customers but do not do so on behalf of any particular member. On the other hand, if a member repeatedly purchases leads from a third-party telemarketing firm, the NASDR would take the position that the third-party telemarketing firm is impliedly acting on behalf of the member and would be subject to the provisions of the proposed rule change.

2. Statutory Basis

The NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest. The NASDR believes that the proposed rule change codifying the Association's marketing and cold calling restrictions, with the addition of specified supervisory requirements, will sharply and effectively limit the marketing activities of unregistered persons while ensuring the member firms closely supervise and monitor the activities of unregistered persons marketing on their behalf.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDR does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NASD's Notice to Members 97-58 was published for comment in August 1997. Forty-three comments were received in response to the Notice. Of the forty-three comment letters received, 14 were in favor of the proposal and 25 were opposed, and 4 expressed no opinion.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In addition to any other issues that the public may wish to address, the

⁴ 15 U.S.C. 78o-3(b)(6).

Commission specifically requests comments on the following questions:

Should NASD member firms be permitted to use third-party telemarketing firms for the limited marketing activities set forth in the proposal (*i.e.*, as unregistered marketers)?

To what extent are third-party telemarketing firms currently used by member firms for cold calling or marketing purposes?

What types of member firms typically rely on third-party telemarketing firms to conduct cold calling on their behalf (*i.e.*, large firms, medium-sized, or small firms)?

The proposal requires member firms to "periodically monitor" the calls made by unregistered persons on their behalf to ensure that the discussions are limited to permissible topics. There is, however, no requirement that such calls be tape recorded. How would member firms monitor calls by unregistered persons working off-site at third-party telemarketing firms or working for member firms off-site?

If a member firm can use third-party telemarketers, how can a member firm be certain that unregistered persons working for third-party telemarketing firms will limit their conversations with existing and prospective members to the permissible topics?

Will the required "reasonable background investigation" be sufficient to ensure that individuals who have been suspended from the industry are not permitted to engage in limited marketing activities?

Would member firms be able to adequately supervise the limited marketing activities of employees of third-party telemarketing firms?

What steps should firms take if a third-party telemarketer fails to comply with these requirements?

What should the NASD do to ensure that such limited marketing activities conducted off-site at third-party telemarketing firms are appropriately supervised by member firms?

If the use of third-party telemarketing firms is permitted, the proposal would require employees of third party telemarketing firms to acknowledge in writing or electronically that they are associated persons. The Commission notes that there is no requirement for an electronic signature or any other heightened restrictions in place. Will an electronic acknowledgment provide the member firm and the NASD with sufficient information as to the true identity of the individual?

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 submissions, 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-44 and should be submitted by January 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. 98-33558 Filed 12-17-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40783; File No. SR-NASD-98-84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

December 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given on November 9, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule to extend, through March 31, 1999, the fees currently charged under NASD Rule 7010(1) for the execution of transactions in SelectNet. Under the proposed extension, SelectNet fees would continue to be assessed in the following manner: (1) \$1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a \$0.25 fee will remain in effect for any member who cancels a SelectNet order. If no further action is taken, SelectNet fees will revert to their original \$2.50 per-side level on April 1, 1998.

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 NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth below in Sections A, B, and C, 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

Nasdaq is proposing to again extend its current reduced SelectNet fees. The reasons for Nasdaq's prevailing SelectNet fee structure were fully explained in its original fee structure proposal filed with the Commission in February of this year.³ Since then, SelectNet usage has continued at significantly elevated levels, averaging over 150,000 daily executions in September of 1998 and 180,000

³ See Securities Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998). Nasdaq's current reduced fee structure was originally approved for a 90-day trial period, commencing the day the proposal was published in the *Federal Register*. The reduced fees were extended in May and September of 1998 and would have expired on November 30, 1998, if not extended by this filing. See Securities Exchange Act Release No. 40427 (September 10, 1998); 63 FR 49724 (September 17, 1998).

executions each day in October of 1998. As such, Nasdaq believes that an extension of these reduced fees, through March 31, 1999, is warranted. Under the proposed extension, SelectNet fees would continue to be assessed in the following manner: (1) \$1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a \$0.25 fee will remain in effect for any member who cancels a SelectNet order. Nasdaq will continue to monitor and review SelectNet activity to determine if further extensions of its reduced SelectNet fee structure are appropriate. If no further action is taken, SelectNet fees will revert to their original \$2.50 per-side level on April 1, 1999.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,⁴ which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and subparagraph (e)(2) of Rule 19b-4 under the Act⁶ because the proposal is establishing or changing a due, fee or other charge. At any time

within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁷

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, N.W., Washington, D.C. 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-84 and should be submitted by January 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,
Secretary.

[FR Doc. 98-33559 Filed 12-17-98; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8-98-076]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its two Subcommittees (Waterways and Navigation) will meet to discuss

⁷ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 17 CFR 200.30-3(a)(12).

waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. All meetings will be open to the public.

DATES: The meeting of HOGANSAC will be held on Thursday, January 28, 1999 from 9 a.m. to approximately 1 p.m. The meeting of the Navigation Subcommittee will be held on Thursday, January 14, 1999 at 9:00 a.m. and immediately following, the Waterways Subcommittee will meet. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots' Office, 8150 South Loop East, Houston, Texas. The subcommittee meetings will be held at West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Wayne Gusman, Executive Director of HOGANSAC, telephone (713) 671-5199, or Commander Paula Carroll, Executive Secretary of HOGANSAC, telephone (713) 671-5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

- (1) Opening remarks by the Committee Sponsor (RADM Pluta), Executive Director (CAPT Gusman) and chairman (Tim Leitzell).
- (2) Approval of the September 10, 1998 minutes.
- (3) Report from the Waterways Subcommittee.
- (4) Report from the Navigation Subcommittee.
- (5) Status reports on Baytown Tunnel removal, Army Corps of Engineers' dredging projects and pipeline safety and comments and discussions from the floor.
- (6) New business—VTS Houston/Galveston's annual "State of the Waterway" address, Year 2000 Partnering, and an electronic navigation demonstration by ARINC.

Subcommittee on Waterways. The tentative agenda includes the following:

- (1) Presentation by each work group of its accomplishments and plans for the future.
- (2) Review and discuss the work completed by each work group.

Subcommittee on Navigation. The tentative agenda includes the following:

⁴ 15 U.S.C. 78o-3(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(e)(2).

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: December 2, 1998.

A.L. Gerfin, Jr.,

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

[FR Doc. 98-33591 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-98-26]

Petitions for Waiver; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for waivers received and of dispositions of prior petitions.

SUMMARY: This notice contains the summary of a petition requesting a waiver for a period of up to eighteen (18) days, that is, until January 18, 1999, from the December 31, 1998 noise compliance requirements of 14 CFR part 91, § 91.867. This request for a waiver is submitted pursuant to § 91.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 4, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. 29423, 800

Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Terry Stubblefield (202) 267-7624 or Brenda Eichelberger (202) 267-7470 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e) and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

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

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 98-33599 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held on January 11-14, 1999, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Palm Beach Airport Hilton, 150 Australian Avenue, West Palm Beach, Florida 33406.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, En Route/Terminal Operations and Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held January 11-14, 1999, at Palm Beach Airport Hilton, 150 Australian Avenue, West Palm Beach, Florida 33406.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 8, 1999. The next quarterly meeting of the FAA ATPAC is planned to be held from April 19-22, 1999, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 11, 1998.

Eric Harrell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 98-33601 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3813; Notice 2]

General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that blackout paint on the rear window of the 1997 GM EV1 (electric vehicle) may cause the center high-mounted stop lamp (CHMSL) to fail to meet the photometric requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108—*Lamps, Reflective Devices and Associated Equipment*. Pursuant to 49

U.S.C. § 30120, GM has petitioned the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential as it relates to motor vehicle safety. GM submitted a noncompliance notification to the agency pursuant to 49 CFR part 573, "Defects and Noncompliance Reports."

A notice of receipt of the application was published in the **Federal Register** (63 FR 33433) on June 18, 1998. Opportunity was afforded for comments until July 20, 1998. No comments were received.

Between August 1996 and June 1997, the petitioner produced 624 model year 1997 EV1 electric cars that have CHMSLs that fail to meet all the requirements mandated by FMVSS No. 108. GM claimed that only 290 of these vehicles are in the field and outside of GM's control. The other vehicles are within GM's control and GM states they will be remedied before delivery to retail customers.

Specifically, Figure 10—Photometric Requirements of Center High-Mounted Stop Lamps, of FMVSS No. 108 lists the photometric requirements for CHMSLs. GM states that the EV1 CHMSL by itself meets these requirements. GM states however that, when the CHMSL is installed on the vehicle, the blackout paint on the rear window may obscure a portion of the CHMSL's photometric output. GM states that if the worst case build condition were present on a vehicle, blackout paint would obscure the portion of the CHMSL corresponding to the 5D (5 degrees below horizontal on the vertical centerline of the lamp) photometric requirement.

The petitioner believed that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The EV1 sits low to the ground, so light provided by the CHMSL is visible to drivers of other vehicles, even with the bottom of the CHMSL obscured. The specified range of photometric output for a CHMSL, from 10U to 5D, was developed from SAE J186a and is presumably intended to allow manufacturers latitude in locating CHMSLs for the myriad of vehicle designs, while assuring sufficient signal light to drivers of following vehicles. Because the EV1 CHMSL is so low to the ground, the 5D angle is far less significant to following drivers than it would be if mounted higher.

2. A perceived benefit of the CHMSL is the ability it provides following drivers to see through intervening vehicles. Because the EV1 and its CHMSL are low to the ground, a

following driver's ability to see the CHMSL through intervening vehicles is not compromised by the lost light at the lower portion of the CHMSL.

3. To reduce aerodynamic drag, the EV1 was designed to be extremely narrow. As a consequence of its narrow profile, the stop lamps are in close proximity to the CHMSL (510 mm from the center of the brake lamp to the center of the CHMSL). This minimizes the effect of the obscured portion of the CHMSL.

4. Except for 5D, the EV1 CHMSL meets all other requirements of FMVSS No. 108, and the photometric output of the stop lamps, which are supplemented by the CHMSL, far exceed the FMVSS No. 108 minimum requirements.

5. GM is not aware of any accidents, injuries, owner complaints or field reports related to this issue.

Additionally GM provided two figures as part of its petition (available in the public docket) that illustrate rear brake light visibility to following vehicle drivers to support its claims for inconsequentiality.

Only 290 EV1 vehicles in the field were affected, with the others being brought into compliance, and only in limited conditions could a CHMSL problem be perceived by a driver of a following vehicle. In addition, the stop lamps on these vehicles far exceed the minimum photometric performance levels for stop lamps the agency does not deem this specific noncompliance to have a consequential effect on safety.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it described above is inconsequential to motor vehicle safety. Accordingly, its application is granted, and the applicant is exempt from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and the remedy that is required by 49 CFR 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued December 14, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-33546 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC-F-20913]

Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving an amendment to a pooling agreement.

SUMMARY: The Board tentatively approves an amendment to the previously approved operations pooling agreement between Peter Pan Bus Lines, Inc. (Peter Pan), of Springfield, MA, and Greyhound Lines, Inc. (Greyhound), of Dallas, TX (collectively, applicants), involving their routes between Albany, NY, and Boston, MA. If no opposing comments are timely filed, this notice will be the final Board action. If opposing comments are timely filed, this tentative approval will be deemed vacated, and the Board will consider the comments and any replies and will issue a further decision on the amendments.

DATES: Comments are due by January 7, 1999, and, if comments are filed, applicants' reply is due by January 19, 1999.

ADDRESSES: Send an original and 10 copies of comments referring to STB No. MC-F-20913 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to applicants' representatives: Jeremy Kahn, Suite 810, 1730 Rhode Island Avenue, N.W., Washington, DC 20036; and Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005-3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: This pooling agreement was approved, as originally proposed, by decision served July 8, 1998, covering motor passenger and express operations between Albany and Boston. Applicants have filed a petition to modify the terms of the agreement with respect to when authorized service pursuant to this agreement will commence and to specify that Greyhound shall operate those schedules operating between Boston and Albany with intermediate service at Newton and Worcester, MA, while Peter Pan shall operate those schedules operating between Springfield and Albany with

intermediate service at Lee, Lenox, and Pittsfield, MA.

We have reviewed the proposed amendment and will approve the requested modifications. While it appears that these modifications will continue to foster improved service and economy of operation, it does not appear that either of the modifications would unreasonably restrain competition in the affected transportation market or within the affected service area to any material extent. Accordingly, we will tentatively approve the amendment pending the filing of comments as discussed above.

Copies of the petition to amend the pooling agreement may be obtained free of charge by contacting applicants' representatives.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed amendment to this pooling agreement is approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.
3. This decision will be effective on January 7, 1999, unless timely opposing comments are filed.
4. A copy of this decision will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: December 9, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98-33461 Filed 12-17-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. MC-F-20904, MC-F-20908, and MC-F-20912]¹

Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving amendments to pooling agreements.

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

SUMMARY: The Board tentatively approves certain minor and conforming amendments to previously approved operations and revenue pooling agreements between Peter Pan Bus Lines, Inc. (Peter Pan), of Springfield, MA, and Greyhound Lines, Inc. (Greyhound), of Dallas, TX (collectively, applicants), involving routes between New York, NY, and Philadelphia, PA, Washington, DC, Boston and Springfield, MA. If no opposing comments are timely filed, this notice will be the final Board action. If opposing comments are timely filed, this tentative approval will be deemed vacated, and the Board will consider the comments and any replies and will issue a further decision on the amendments.

DATES: Comments are due by January 7, 1999, and, if comments are filed, applicants' reply is due by January 19, 1999.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC-F-20904 *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, send one copy of comments to applicants' representatives: Jeremy Kahn, Suite 810, 1730 Rhode Island Avenue, NW, Washington, DC 20036; and Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005-3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. (TDD for the hearing impaired: (202) 565-1695.)

SUPPLEMENTARY INFORMATION: The pooling agreements originally proposed were approved by separate decisions in these proceedings, served June 30, 1997, in STB Docket No. MC-F-20904, April 29, 1998, in STB Docket No. MC-F-20908,² and February 12, 1998, in STB Docket No. MC-F-20912. The agreements cover separate, but connecting, routes, respectively, between New York City and Philadelphia, Washington, DC, and Boston and Springfield.

The terms of these agreements differed somewhat, and in preparation for implementation of the three agreements, applicants have filed a petition to modify the terms of the agreements, both so as to conform the

² Approval of this agreement was conditioned upon applicants' submitting to the Board and serving on the U.S. Department of Justice, Antitrust Division, at 6-month intervals for 3 years, data on the fares charged by Peter Pan and Greyhound for passenger service between New York City and Washington, DC. The action in this decision makes no change in this condition, and it remains in full force and effect, as originally imposed.

language of the earlier agreements to the approved language of the later ones, and to make certain minor modifications, in order to ensure that the three agreements are consistent with one another.

The subject matters of the amendments include: Points of sale of tickets; treatment of shortfalls in operating mileage; processing of baggage and express claims; placement of signs at bus stations and terminals; deductions of fees and charges from the pooled revenues; apportionment of package express revenues; terminal costs; implementation dates; elimination of Greyhound's right of first refusal to acquire the stock of Peter Pan; sharing of advertising expenses; and remedies for default. While it appears that these amendments will continue to foster improved service and economy of operation, it does not appear that any of these subjects will have any significant effect upon competition in the affected transportation markets, and, accordingly, we find nothing to suggest that these amendments would restrain competition within the affected service areas. Accordingly, we will tentatively approve the amendments pending the filing of comments as discussed above.

Copies of the petition to amend the pooling agreements may be obtained free of charge by contacting applicants' representatives.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed amendments to these pooling agreements are approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.
3. This decision will be effective on January 7, 1999, unless timely opposing comments are filed.
4. A copy of this decision will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530.

Decided: December 9, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98-33464 Filed 12-17-98; 8:45 am]

BILLING CODE 4910-00-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Ex Parte No. 290 (Sub No. 5) (99-1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 1999 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 1999 RCAF (Unadjusted) is 0.996. The first quarter 1999 RCAF (Adjusted) is 0.599. The first quarter 1999 RCAF-5 is 0.603.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565-1549. TDD for the hearing impaired: (202) 565-1695.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423-0001, telephone (202) 289-4357. [Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

[FR Doc. 98-33462 Filed 12-17-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Docket No. AB-103 (Sub-No. 14)]

The Kansas City Southern Railway Company—Adverse Discontinuance Application—A Line of Arkansas and Missouri Railroad Company

On November 30, 1998, Arkansas and Missouri Railroad Company (AMR) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) find that

the public convenience and necessity require and permit the discontinuance of trackage rights held by The Kansas City Southern Railroad Company (KCS) over a line of railroad owned by AMR, extending from AMR milepost 417.0 near the crossing of Navy Road in Fort Smith, AR, to AMR milepost 422.5 near the overpass of Arkansas Highway 540 in Fort Smith, AR, a distance of approximately 5.5 miles, in Sebastian County, AR, and LeFlore County, OK. The line includes the station of South Fort Smith, AR, at milepost 422.5 and traverses United States Postal Service Zip Codes 72901 and 74901.

AMR states that it is filing this application because it contends that KCS has breached the terms of their trackage rights agreement by failing to properly maintain the line. It argues, however, that no service will be lost and that there will be no adverse impact on overhead shippers or communities because all bridge traffic formerly handled by KCS can be handled by AMR crews. In a decision served November 24, 1998, AMR was granted a waiver of certain filing requirements in 49 CFR 1152.22, except to the extent the filing requirements concern information about service to overhead shippers. In a separate decision served December 14, 1998, AMR's motion for a protective order covering certain traffic data and contractual terms was granted.

In an application by a third party for a determination that the public convenience and necessity permits the discontinuance of operations over a line, the issue before the Board is whether the public interest requires that the service in question be retained.

The line does not contain federally granted rights-of-way. Any documentation AMR's possession will be made available promptly to those requesting it. AMR's entire case for adverse discontinuance was filed with the application.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by January 14, 1999. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments by January 14, 1999. Parties seeking information concerning the filing of protests should refer to section 1152.25. AMR's reply to any opposing statements is due January

29, 1999. Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use requests are not appropriate. Likewise, the proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(6) and from historic reporting requirements under 49 CFR 1105.8(b)(3).

Written comments and protests must indicate the proceeding designation STB Docket No. AB-103 (Sub-No. 14) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) Mark H. Sidman, 1350 New York Avenue, N.W., Suite 800, Washington, D.C. 20005-4797. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the adverse discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning the adverse discontinuance procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. [TDD for the hearing impaired is available at (202) 565-1695.]

A copy of the application will be available for public inspection at 306 E. Emma, Springdale, AR 72764 and 1301 N. 4th Street, Fort Smith, AR 72901.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 14, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 98-33463 Filed 12-17-98; 8:45 am]

BILLING CODE 4915-00-P

UNITED STATES INFORMATION AGENCY**Proposed Collection; Comment Request**

AGENCY: United States Information Agency.

ACTION: Proposed Collection; Comment Request.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement

concerning the public use form entitled "College and University Affiliations Program," under OMB control number 3116-0179. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)]. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256.

DATES: Comments are due on or before February 16, 1999.

COPIES: Copies of the Request for Clearance (OMB 83-I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: The Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547, internet address: JGiovetUSIA.GOV, telephone: (202) 619-4408; and for OMB review: Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503, Telephone (202) 395-5871.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0179) is estimated to average thirty (30) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents will be required to respond only one time.

Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Title: "College and University Affiliations Program."

Current Action: USIA is requesting approval for a revision to the total annual burden hours and three-year extension of the information collection entitled, "College and University Affiliations Program," under OMB control number 3116-0179 which expires March 31, 1999.

Form Numbers: None.

Abstract: Under the College and University Affiliations Program, USIA offers grants-in-aid to support the development or enhancement of institutional partnerships between U.S. and foreign colleges and universities. The program promotes mutual understanding, strengthens research and teaching capabilities, and improves the academic curricula.

Proposed Frequency of Responses:
No. of Respondents: 86.
Recordkeeping Hours: 30.
Total Annual Burden Hours: 2,580.

Dated: December 15, 1998.

Rose Royal,

Federal Register Liaison.

[FR Doc. 98-33570 Filed 12-17-98; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0501]

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 reinstatement, without change, 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 for information needed to properly maintain Veterans Mortgage Life Insurance accounts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 16, 1999.

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. 2900-0501" 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 (Public Law 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: Veterans Mortgage Life Insurance Inquiry, VA Form 29-0543.

OMB Control Number: 2900-0501.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collected from the veteran is used by VBA in the maintenance of Veterans Mortgage Life Insurance accounts.

Affected Public: Individuals or households.

Estimated Annual Burden: 45 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 540.

Dated: November 5, 1998.
By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33531 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0503]

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 reinstatement, without change, 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 for information needed to determine continuing eligibility for Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 16, 1999.

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. 2900-0503" 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: Veterans Mortgage Life Insurance Change of Address Statement, VA Form 29-0563.

OMB Control Number: 2900-0503.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to inquire about a veteran's continued ownership of the property issued under Veterans Mortgage Life Insurance when an address change for the veteran is received. The information collected is used in determining whether continued Veterans Mortgage Life Insurance coverage is applicable since the law granting this insurance provides that coverage terminates if the veteran no longer owns the property.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden Per

Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 240.

Dated: November 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33532 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0076]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 19, 1999.

For further information or a copy of the submission contact: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0076."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Request to Creditor Regarding Applicant's Indebtedness, VA Form Letter 26-250.

OMB Control Number: 2900-0076.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form letter is used to obtain credit information from landlords and creditors of veterans-applicants for guaranteed loans, prospective purchasers of VA-acquired properties and potential assumers of guaranteed loans in release of liability and substitution of entitlement cases.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 13, 1998 at page 37625.

Affected Public: Individuals or households.

Affected Public: Business or other for-profit—Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 45,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-4650. Please refer to "OMB

Control No. 2900-0076" in any correspondence.

Dated: November 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33525 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0130]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 19, 1999.

For further information or a copy of the submission contact: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0130."

SUPPLEMENTARY INFORMATION:

Title: Status of Loan Account—Foreclosure or Other Liquidation, Form Letter 26-567.

OMB Control Number: 2900-0130.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 26-567 is used by VBA to obtain information from holders regarding a loan to be foreclosed. The information is used to specify the amount, if any, to be bid at the foreclosure sale.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 13, 1998 at page 37626.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 40,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0130" in any correspondence.

Dated: November 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33526 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0138]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 19, 1999.

For Further Information or a Copy of the Submission Contact: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0138."

SUPPLEMENTARY INFORMATION:

Title: Request for Details of Expenses, VA Form 21-8049.

OMB Control Number: 2900-0138.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21-8049 is used to obtain the necessary information to determine the amount of any deductible expenses paid by the claimant and/or commercial life insurance received to calculate the appropriate rate of pension benefits. The information is used by VBA to administer the pension program.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 13, 1998 at page 37626.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 22,800.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0138" in any correspondence.

Dated: November 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33527 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0149]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted

below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0149."

SUPPLEMENTARY INFORMATION:

Title: Application for Conversion, VA Form 29-0152.

OMB Control Number: 2900-0149.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 29-0152 is used by the insured to convert to a permanent plan of insurance. The information collected is used to initiate the processing of the insured's request to convert his/her term insurance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 3, 1998 at pages 47085-47086.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 4500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0149" in any correspondence.

Dated: November 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33528 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0162]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1999.

For further information or a copy of the submission contact: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0162."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Monthly Certification of Flight Training, VA Form 22-6553c.

OMB Control Number: 2900-0162.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 22-6553c is used by veterans and individuals on active duty training under 38 U.S.C. chapter 30 and 32 (including section 903 of Public Law 96-342), and reservists training under 10 U.S.C., chapter 1606, may receive benefits for enrolling in or pursuing approved vocational flight training. Benefits are not payable if the veterans and individuals on active duty or reservists terminates the training.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 13, 1998 at page 37627.

Affected Public: Individuals or households—Business or other for-profit—Not-for-profit institutions.

Estimated Annual Burden: 6,600 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0162" in any correspondence.

Dated: November 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33529 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0179]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 19, 1999.

For further information or a copy of the submission contact: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0179."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Application for Change of Permanent Plan (Medical), VA Form 29-1549.

OMB Control Number: 2900-0179.

Type of Review: Reinstatement, without change, of a previously

approved collection for which approval has expired.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value. The information on the form is used by VA to establish eligibility of the applicant for the purpose of the change.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 24, 1998, at page 34502-34503.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden Per

Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 28.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0179" in any correspondence.

Dated: November 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98-33530 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463), dated October 6, 1972, that the Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning December 4, 1998, through December 4, 2000.

Dated: December 7, 1998.

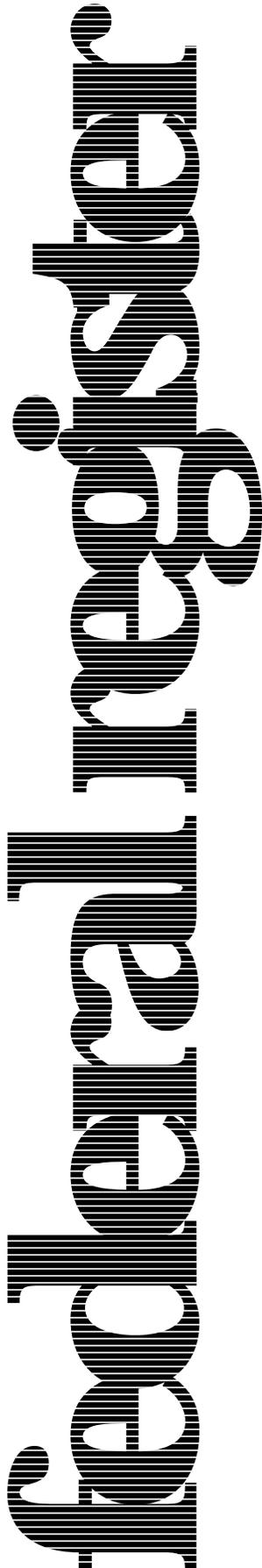
By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98-33533 Filed 12-17-98; 8:45 am]

BILLING CODE 8320-01-M



Friday
December 18, 1998

Part II

**Environmental
Protection Agency**

**Management and Disposal of Lead-Based
Paint Debris; Proposed Rule**

**Temporary Suspension of Toxicity
Characteristic Rule for Specified Lead-
Based Paint Debris; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62160; FRL-5784-3]

RIN 2070-AC72

Lead; Management and Disposal of Lead-Based Paint Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule under the Toxic Substances Control Act (TSCA) to provide new standards for the management and disposal of lead-based paint (LBP) debris generated by individuals or firms. In another document in today's **Federal Register**, the Agency is also separately proposing to suspend temporarily the applicability of regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) which currently apply to LBP debris. The companion RCRA proposal, issued elsewhere in today's **Federal Register**, is necessary to avoid inconsistent or duplicative Federal requirements under RCRA and TSCA. In addition, this proposal finds LBP debris which is disposed of improperly to be a lead-based paint hazard under TSCA. Today's proposed TSCA standards do not address LBP debris generated by homeowners in their own homes. The Agency is concerned that current RCRA requirements for the identification, management, and disposal LBP debris may be reducing the number of residential LBP abatements by imposing significant disposal costs for LBP debris that is determined to be a hazardous waste under RCRA. Today's proposed rule would provide new management and disposal standards for generators of LBP debris under TSCA. These standards would be generally less burdensome than current RCRA hazardous waste requirements, yet the standards are reliable, effective, safe, and protective of human health and the environment. By reducing costs associated with management and disposal of LBP debris, the Agency believes that the number of abatements will increase thus resulting in a reduction of children exposed to LBP. The Agency is also applying today's proposed standards to LBP debris from renovation, remodeling, public and commercial buildings in order to simplify requirements to generators and transporters of LBP debris.

DATES: Written comments in response to this proposed rule must be received on or before February 16, 1999. The Agency is having two public meetings, where oral comments will be heard, one in Washington DC on Thursday, January 14, 1999, from 9 a.m. to 4 p.m. and one in San Francisco, CA on Thursday, January 21, 1999, from 9 a.m. to 4 p.m.

ADDRESSES: Comments may be submitted by regular mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the SUPPLEMENTARY INFORMATION section of this proposal.

The Washington DC meeting will be held at the Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC 20008, telephone: (202) 234-0700.

The San Francisco meeting will be held at the Holiday Inn Civic Center, 50 Eight St., San Francisco, CA 94103, telephone: (415) 626-6103.

FOR FURTHER INFORMATION CONTACT: For general information contact: National Lead Information Center at: 1-800-424-LEAD(5323). For technical questions relating to TSCA: Tova Spector, (202) 260-3467; for RCRA-related questions: Rajani Joglekar, (703) 308-8806.

SUPPLEMENTARY INFORMATION: The following outline is provided to assist the reader in locating specific topics in the preamble.

Table of Contents

- I. General Information
 - A. Does this Notice Apply to Me?
 - B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?
 - C. How and to Whom Do I Submit Comments?
 - D. How Should I Handle CBI Information that I Want to Submit to the Agency?
- II. Introduction
 - A. Purpose of this Proposed Rule
 - B. Background: The Hazards of LBP and Federal Efforts to Reduce Exposure
- III. Statutory Framework and Authority
 - A. TSCA Title IV
 - B. RCRA Subtitle C and the Toxicity Characteristic Rule
- IV. Overview of Proposed Rule
 - A. Summary of Management and Disposal Standards
 - B. State and Tribal Programs
- V. Policy Basis for Today's Proposal
 - A. Stakeholder Consultation
 - B. RCRA Coverage of LBP Debris
 - C. LBP Debris Exclusions/Exemptions from RCRA Subtitle C
 - D. Difficulties in Conducting the TCLP on LBP Debris
 - E. Economic Impacts of RCRA Subtitle C Regulation on LBP Abatements

- F. TSCA Coverage of LBP Debris
- VI. Analytic Basis for Landfill Disposal Options in Today's Proposed Rule
 - A. Leaching and Mobility of Lead from LBP Debris
 - B. Ground Water Risks from C&D Landfills
 - C. Preliminary Conclusions on Disposal of LBP Debris in C&D Landfills
 - D. Other Non-hazardous Waste Disposal Options
- VII. Proposed Rule Provisions: §§ 745.301 - 745.319
 - A. General
 - B. What Types of Materials Are Covered?
 - C. What Activities Are Covered?
 - D. Who Must Comply With This Proposal?
 - E. When Does LBP Debris Become Subject to This Proposal?
 - F. What Structure Types Are Covered?
 - G. What Are the Proposed Disposal and Reclamation Options for LBP Debris?
 - H. What Controls on the Management of LBP Debris are Included in the Proposal?
 - I. What Are the Notification and Recordkeeping Requirements? § 745.313
- VIII. State and Tribal Programs
 - A. General
 - B. Submission of an Application
 - C. State Program Certification
 - D. EPA Approval
 - E. Withdrawal of Authorization: § 745.356
 - F. Model State and Tribal Program
 - G. Tribal LBP Debris Management and Disposal Programs
 - H. Enforcement and Compliance Provisions
- IX. Rulemaking Record
- X. References
- XI. Regulatory Assessment Requirements
 - A. Executive Order 12866
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 12875
 - F. Executive Order 13084
 - G. Executive Order 12898
 - H. National Technology Transfer and Advancement Act
 - I. Executive Order 13045

I. General Information

A. Does this Notice Apply to Me?

You may be potentially affected by this proposed rule if you generate, store, transport, reuse, offer for reuse, reclaim (defined in today's proposal at § 745.303 in the regulatory text) or dispose of LBP debris from abatements, renovations, and demolitions of target housing, and from deleading and demolition of public buildings and commercial buildings (definitions of structure types and activities appear at § 745.303 of the regulatory text).

Regulated categories and entities would include:

Category	Examples of Regulated Entities
Individuals and firms who generate and/or store LBP debris	Contractors who generate and/or store LBP debris from abatements, renovations, and demolitions of target housing, and deleading or demolition of public buildings, and commercial buildings
Waste transporters	Firms providing transportation services for LBP debris
Reusers of LBP debris	Firms or individuals who reuse LBP debris
Reclamation facility owner/operators	Owners or operators of facilities which accept LBP debris for reclamation
Disposal facility owner/operators	Owners or operators of facilities which accept LBP debris for disposal

This table is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business may be regulated by this action, you should carefully examine the provisions of §§ 745.301 through 745.319 of the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" unit above.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/homepage/fedrgstr/>.

2. *In person or by phone.* If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the

official record for this notice, including the public version, has been established under docket control number OPPTS-62160, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202-260-7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OPPTS-62160") in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC, telephone: 202-260-7093.

3. *Electronically.* Submit your comments and/or data electronically by E-mail to: "oppt.ncic@epamail.epa.gov." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS-62160. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public

record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

II. Introduction

Unit II. of this preamble provides an overview of today's proposed rule and background information; the succeeding units cover the proposal and rationale in more detail.

A. Purpose of this Proposed Rule

This document proposes new management and disposal standards for LBP debris, which is defined at § 745.303 of today's proposed rule to be (1) Debris resulting from demolitions where LBP is present and/or (2) LBP architectural component debris (such as windows, doors, molding, etc) from abatement, renovation, and deleading activities. These proposed standards have been developed under TSCA sections 402 and 404 and in coordination with the RCRA Temporary Suspension of the Toxicity Characteristic Proposed Rule for LBP Debris. (For a detailed discussion of the regulatory authority refer to Unit III. of this preamble). The primary objective of this proposed rule is to address obstacles to the removal of LBP hazards in target housing and other child-occupied facilities, such as schools and day-care centers. The Agency has concluded for this proposal that disposal of LBP debris resulting from abatements, deleading, renovations, remodeling and demolitions of target housing, child-occupied facilities, and public and commercial buildings in certain non-hazardous solid waste disposal facilities (discussed in Unit III. of this preamble) is safe, reliable, effective, and protective of human health and the environment.

Accordingly, the coverage of today's RCRA and TSCA proposals would include LBP debris generated during deleading, demolitions, and renovation and remodeling activities in all target housing, public buildings, and commercial buildings. EPA believes it is important to provide a clear and consistent regulatory scheme for those who conduct these activities and to avoid the imposition of unnecessary costs on the regulated community.

The Agency believes the LBP debris management and disposal standards contained in this proposal would provide increased protection of human health by: (1) Reducing the cost of LBP abatements and deleading so as to

facilitate the removal of LBP from areas that children and others frequent; and (2) addressing gaps in coverage of LBP debris under the current RCRA management and disposal requirements. This proposal is designed to minimize the burdens associated with LBP debris management and disposal through enacting a TSCA program that is less costly than the current RCRA scheme but is nonetheless safe, effective, and reliable.

The standards in today's proposal would apply only to LBP debris. If LBP architectural component debris or LBP demolition debris contain any substance or constituent subject to regulations (in addition to LBP), the generator would still have to comply with those requirements. For example, if LBP debris also contained asbestos, it would have to be disposed of in facilities subject to both today's proposed standards and to the existing asbestos disposal standards found at 40 CFR part 61, subpart M.

The disposal of soil is not addressed under the proposed TSCA standards. For a further discussion of soil and why it was excluded from this proposed rule please see Unit VII.B.4. of this preamble.

B. Background: The Hazards of LBP and Federal Efforts to Reduce Exposure

The Centers for Disease Control and Prevention (CDC) has estimated approximately 900,000 children, or about 4.4% of children under the age of 6, may have unacceptably high levels of lead in their blood (Ref. 1). Lead exposure in young children is of particular concern, because children absorb lead more readily than adults and their nervous systems are particularly vulnerable to the effects of lead. Common sources of lead exposure to children include contaminated dust and paint chips from deteriorating LBP in older homes and renovation activities which disturb LBP. Children with high levels of lead in their body can suffer from learning disabilities, behavioral and learning problems, and mental retardation. The effects of long-term lead exposure or poisoning in children are well-documented: higher school failure rates and reductions in lifetime earnings due to permanent loss of intelligence and increased social pathologies. Fetuses are also at risk, as lead can pass from a pregnant woman's bloodstream to the developing child. There is also some indication that lead exposure contributes to high blood pressure, reproductive and memory problems in adults. Lead has no known use in the body and is difficult to remove from blood and bones in cases

where medical intervention is necessary.

Over the past 2 decades the Federal government has taken a number of steps to address the problems of lead exposure. In 1978, the Consumer Product Safety Commission banned the residential use of paint containing more than 0.06% lead by weight on interior and exterior surfaces, toys, and furniture. EPA placed controls on lead in gasoline in 1978 and lowered the maximum levels of lead permitted in public water systems (40 CFR parts 141 and 142). CDC has set and lowered blood lead levels of concern several times, most recently in 1991. The Department of Housing and Urban Development (HUD) began in 1986 to abate lead hazards in public housing that is being renovated or in structures occupied by a child with elevated blood lead levels. These efforts, and those of State and local agencies and the private sector, have reduced the incidence of lead poisoning.

It is estimated that more than half the housing stock in the U.S. (an estimated 64 million pre-1980 homes) still contain some LBP (Ref. 2). Further, the LBP Hazard Reduction and Financing Task Force established by HUD pursuant to section 1015 of Title X (the LBP Hazard Reduction Act of 1992) estimates that between 5 and 15 million housing units contain hazards associated with the presence of LBP.

In response to this health threat, Congress enacted the Residential LBP Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992 or as Title X) Pub. L. No. 102-550, 106 Stat. 3897. The purposes of Title X include: (1) To develop a national strategy to build the infrastructure necessary to eliminate LBP hazards in all housing as expeditiously as possible; (2) to reorient the national approach to the presence of LBP in housing to implement a broad program to evaluate and reduce LBP hazards in the Nation's housing stock; and (3) to encourage effective action to prevent childhood lead poisoning by establishing a framework for LBP hazard evaluation and reduction and by ending confusion pertaining to reasonable standards of care (Pub. L. 102-550, Title X, Sec. 1003 (codified at 42 U.S.C. 4851a)).

To further these goals, Title X requires that HUD provide public housing authorities and other owners of Federally assisted properties with guidelines for evaluating and reducing lead hazards in their properties. Title X also amended TSCA by adding a new Title IV, which directs EPA to

promulgate standards to govern: (1) The training and certification of individuals engaged in LBP activities; (2) the accreditation of training programs; and (3) the process by which LBP activities are conducted by certified individuals (TSCA section 402(a), 15 U.S.C. 2682(a)). TSCA Title IV also directs EPA to identify by regulation LBP hazards, lead-contaminated dust, and lead-contaminated soil (TSCA section 403, 15 U.S.C. 2683). States and Indian Tribes may seek to administer and enforce these requirements (TSCA section 404, 15 U.S.C. 2684).

As a result of the enactment of Title X, there is an increasing effort to reduce the hazards posed by LBP in residential housing and other buildings. Although there are a number of methods to reduce LBP exposure, abatements (which under TSCA Title IV involve any set of measures designed to eliminate permanently LBP hazards) are typically conducted in situations where LBP exposure has resulted in elevated blood lead levels in children and in other situations where permanent removal of LBP is desired. Abatement efforts frequently result in the production of LBP waste which may currently be subject to regulatory controls under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (discussed in Unit V. of this preamble).

The Agency has spent considerable resources working with health specialists, environmental groups, the lead abatement industry, and State and local governments to develop regulatory options for lead abatement activities. EPA believes that there is an overwhelming consensus that action should be taken as quickly as possible to reduce lead exposure hazards to young children.

The Lead-Based Paint Hazard Reduction and Financing Task Force established by HUD pursuant to section 1015 of Title X (42 U.S.C. 4852a), representing the spectrum of interests affected by LBP issues, released final recommendations on evaluating and reducing LBP hazards in private housing on July 11, 1995. Their report is entitled "Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing" (Ref. 3). In addition, a letter from the Task Force to EPA Administrator Carol Browner dated April 13, 1994, specifically recommended that the Agency "shift regulation of discarded architectural components from the hazardous waste regulatory program to a tailored management program under TSCA §§ 402/404" (Ref. 4). The Task Force recommendations enjoy the support of a broad range of the groups and interests

affected by LBP activities and regulations. The Agency has given substantial weight to the Task Force recommendations in the development of today's proposal. EPA has developed and is proposing a regulatory approach it believes will both work to speed the conduct of lead abatement and deleading activities (by lowering costs) and, at the same time, ensure that LBP debris from all activities is managed and disposed of in safe, reliable, and effective manner.

III. Statutory Framework and Authority

As noted above, today's action consists of two proposed rules: (1) this TSCA proposal introducing new LBP debris management and disposal standards; and (2) a companion RCRA proposal, issued elsewhere in today's **Federal Register**, to temporarily suspend the applicability of the RCRA Toxicity Characteristic (TC) Rule (40 CFR 261.24) to LBP debris. Unit III.A. below discusses TSCA Title IV and Unit III.B. discusses RCRA Subtitle C and the TC Rule.

A. TSCA Title IV

The Agency is issuing today's proposed rule under the authority of sections 402 and 404 of TSCA (15 U.S.C. 2682 and 2684). Section 402 of TSCA, LBP Activities Training and Certification, directs EPA to promulgate regulations governing the training and certification of individuals engaged in LBP activities, the accreditation of training programs, and standards for conducting LBP activities. Section 404 of TSCA, Authorized State Programs, provides authority for EPA to authorize States to administer and enforce the requirements established by the Agency under section 402 of TSCA.

1. *LBP activities*. On August 29, 1996 (61 FR 45778) (FRL-5389-9), EPA promulgated a rule under sections 402 and 404 of TSCA (hereafter, the LBP training and certification rule) addressing the conduct of certain LBP activities in target housing and child-occupied facilities (40 CFR part 745). The LBP training and certification rule requires that individuals and firms conducting specified LBP activities in target housing and child-occupied facilities receive training from accredited training programs and be certified to conduct LBP activities. The rule also contains standards for conducting LBP activities. The LBP training and certification rule did not specifically address the management and disposal of LBP debris. Today's proposal would create standards under TSCA for the management and disposal of LBP debris and clarifies that other

LBP wastes remain subject to RCRA management and disposal requirements.

The term "LBP activities" includes, among other activities, abatements in target housing. 15 U.S.C. 2682(b)(1). TSCA section 401(1) defines "abatement" as "any set of measures designed to permanently eliminate LBP hazards" including, among other things, all "clean-up, disposal, and post-abatement clearance testing activities." 15 U.S.C. 2681(1)(B). Because the term "abatement" includes all clean-up and disposal activities, TSCA Title IV provides the Agency with clear legal authority to promulgate regulations establishing standards for the management and disposal of LBP (including any LBP found on debris) resulting from the abatement of target housing. TSCA Title IV defines "target housing" generally to mean any housing constructed prior to 1978, except for housing for the elderly or those with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. TSCA section 401(17). 15 U.S.C. 2681.

In addition to target housing, the LBP Activities Training and Certification Rule (40 CFR part 745) included in the TSCA section 402 requirements a subcategory of public buildings called "child-occupied facilities." A child-occupied facility is defined as "a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms." Thus, EPA is also covering "child-occupied facilities" in today's proposal consistent with the LBP Training and Certification rule.

TSCA section 402 excludes homeowners who conduct LBP activities (including abatement or renovation and remodeling activities) themselves in target housing that they own, unless the housing is occupied by a person or persons other than the owner or the owners' immediate family while the LBP debris is being generated. See Unit VII.C.1. below for a further discussion of the homeowner exclusion.

In the case of public buildings constructed before 1978 and commercial buildings, TSCA section 402 defines the term "LBP activities" to include

deleading and demolition. "Deleading" is defined to mean "activities conducted by a person who offers to eliminate LBP or LBP hazards or to plan such activities." *Id.* Management and disposal of LBP debris from public and commercial buildings are among the activities a person conducts to eliminate LBP or LBP hazards, and, therefore, are considered to constitute "deleading" activities under TSCA section 402(b)(2). Although section 402(b)(2) uses terms such as "identification" and "deleading" instead of the terms used in 402(a) such as "inspection," "risk assessment," and "abatement," EPA believes that, given the similarity of the population to be protected and the nature of the risk they face, the section 402(b)(2) terms can be understood to include the same types of LBP activities as specified in section 402(b)(1). "Deleading" under section 402(b)(2) is equivalent to "abatement" under section 402(b)(1). As such, management and disposal of LBP debris from deleading and demolition are among the LBP activities EPA has the authority to regulate in public buildings and commercial buildings under TSCA section 402.

2. *LBP hazards*. TSCA section 402 (c) addresses LBP risks associated with renovation and remodeling activities in target housing, public buildings and commercial buildings. EPA was directed under section 402(c)(1) to develop guidelines for conducting such activities. These guidelines, "Reducing Lead Hazards When Remodeling Your Home" (EPA 747-R-94-002), were published in April 1994, (updated September 1997) and are available through the National Lead Information Center (Telephone: 1-800-424-LEAD). EPA was also directed under section 402(c)(2) to conduct a study of the extent to which renovation and remodeling activities create a "LBP hazard" on a regular or occasional basis. EPA has not completed this study, however, the study did not examine management or disposal of LBP debris. EPA is authorized under section 402(c)(3) of TSCA to apply the standards developed under section 402(a) of TSCA for LBP activities to renovation and remodeling activities that create LBP hazards. EPA has determined for this proposal, as described in Unit V.F. of this preamble, that improper management and disposal of LBP debris, including debris from renovation and remodeling activities constitutes a LBP hazard and has included LBP debris from renovation and remodeling activities within the scope of today's proposal. The proposed

rule determination that improper management and disposal of LBP debris constitutes a LBP hazard is included in the regulatory text of this proposal.

Today's proposal also includes certain restrictions on the reuse of LBP debris. The proposed restrictions are designed to prevent the transfer of LBP hazards from one structure to another. For example, today's proposal would prohibit reuse of LBP debris which would be identified as a "LBP hazard." For a more in depth discussion of reuse of LBP debris, see Unit VII.G.1. of this preamble.

3. *Certification.* Section 402(a)(1) of TSCA directs the Agency to promulgate regulations which ensure that individuals engaged in LBP activities are:

. . . properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Such regulations shall contain standards for performing LBP activities, taking into account reliability, effectiveness, and safety.

Today's action proposes standards for the management and disposal of LBP debris which take into account reliability, effectiveness, and safety. It does not, however, create training requirements for individuals engaged in the management and disposal of LBP debris.

The Agency believes that the activities covered by this proposal, and the requirements governing them do not warrant any specialized training. These activities and requirements are similar, if not, identical to the types of waste management activities already being conducted by generators, transporters, and disposal facility owner/operators and parties reusing LBP debris. The proposed requirements are designed to be as simple as possible while continuing to meet the TSCA section 402 standard of "taking into account reliability, effectiveness, and safety." The addition of training requirements would add to the burden of conducting LBP debris management and disposal activities without providing a measurable reduction in risk of exposure to LBP hazards.

The primary reason for requiring the certification of individuals is to ensure that the individual has received proper training. However, because the Agency would not require specialized training for the management and disposal of LBP debris, § 745.315 proposes to certify all individuals who comply with the requirements of the rule. Certification would be extended only to individuals and firms engaged in management and disposal of LBP debris. To perform other LBP activities, individuals and firms

would need to be certified in accordance with TSCA sections 402 and 404 rules (40 CFR part 745). This "certification by rule" for management and disposal of LBP debris allows the Agency to efficiently fulfill the TSCA section 402 mandate noted above to "ensure that. . . contractors engaged in such activities are certified" without sacrificing safety, effectiveness, or reliability.

Today the Agency is proposing under section 402 of TSCA to establish a clear regulatory environment covering the management and disposal of LBP debris from abatements, deleading, demolitions, renovations and remodeling from target housing, public buildings, and commercial buildings. The TSCA standards being proposed today represent a common sense approach to management and disposal of LBP debris which addresses the problems associated with current RCRA regulation of LBP debris.

B. RCRA Subtitle C and the Toxicity Characteristic Rule

Subtitle C of RCRA, 42 U.S.C. 6921-39b, establishes a comprehensive program for the regulation of hazardous waste. In enacting RCRA, however, Congress did not set forth a list of hazardous wastes nor provide a specific test for determining whether a waste is hazardous. Instead, in RCRA section 1004(5), Congress defined "hazardous waste" broadly as a "solid waste" which "may. . . pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed." Under RCRA section 3001(a), EPA is responsible for defining which solid wastes are hazardous by either identifying the characteristics of hazardous waste or listing particular hazardous wastes.

In response to the Congressional directive in RCRA section 3001(a), EPA adopted a two-part definition for identified or listed "hazardous wastes" (45 FR 33084, May 19, 1980). First, EPA published lists of specific hazardous wastes, in which EPA described the wastes and assigned a "waste code" to each of them (40 CFR part 261, subpart D). These wastes are known as "listed" hazardous wastes. Second, the Agency identified four characteristics of hazardous waste that are subject to objective measurement: ignitability, corrosivity, reactivity, and toxicity (see 45 FR 33121-22, May 19, 1980). Any solid waste exhibiting one or more of these characteristics is a "characteristic hazardous waste" subject to regulation under RCRA Subtitle C (see 40 CFR parts 262, 264 to 268, and 270).

To measure objectively the characteristic of "toxicity" under RCRA Subtitle C, EPA established the Toxicity Characteristic Leaching Procedure (TCLP) test as part of the Toxicity Characteristic (TC) rule. (55 FR 11798, March 29, 1990). Under the TC rule, a waste may be a hazardous waste if any chemicals identified in the rule, such as lead, are present in leachate from the waste (generated from use of the TCLP) at or above the specified regulatory levels (40 CFR 261.24).

Under the TC rule, generators of solid waste must either use their knowledge of the waste or perform the TCLP test using a representative sample of the waste "as generated" to determine if the waste exhibits a toxicity characteristic. The regulatory level for lead in the waste extract (i.e., leachate) is 5 milligrams per liter (mg/L). If the leachate of waste contains lead at this level or higher, then the waste is a "characteristic" hazardous waste, and the generator must comply with the applicable RCRA Subtitle C requirements in 40 CFR parts 262 through 266, 268, and 270.

IV. Overview of Proposed Rule

This Unit is designed to provide a brief review of the main provisions in this proposal. Rationale, analyses supporting the proposal, and the details of the provisions outlined in this section are discussed later in this preamble.

A. Summary of Management and Disposal Standards

1. *Scope of proposed standards.* This proposal would apply to persons who generate, store, transport, reuse, transfer for reuse, reclaim and/or dispose of LBP debris from the following structures and activities: (1) Abatement, demolition, renovation and remodeling in target housing and child-occupied facilities; and (2) deleading, demolition, renovation and remodeling in public buildings and commercial buildings. The definition of LBP debris at § 745.303 of the regulatory text does not include concentrated LBP wastes such as LBP chips, dust, blast media, solvents, sludges, and treatment residues. Such wastes would remain subject to RCRA requirements (discussed further in Unit VII.B. of this preamble).

The proposal would not apply to LBP debris generated by persons who conduct abatement or renovation and remodeling activities themselves in target housing in which they reside. Such debris may, also, be exempt from RCRA Subtitle C requirements under the household hazardous waste exclusion. For a further discussion please refer to

the companion proposed RCRA Toxicity Characteristic Suspension document issued elsewhere in today's **Federal Register**. Under this TSCA proposal, if a homeowner hires an individual or firm to perform abatement, demolition, or renovation activities and LBP debris is created, the individual or firm would be considered to be a generator of LBP debris. In such cases, the individual or firm would be responsible for compliance with the generator requirements in today's proposal rather than the homeowner.

One important distinction between this proposal and current RCRA Subtitle C requirements is that today's proposal would apply to all LBP debris (as defined at § 745.303), whereas RCRA Subtitle C requirements apply only if LBP debris is a waste and is determined to be "hazardous." The comprehensive coverage of today's TSCA proposal would resolve the current problems involved in conducting the TCLP test on heterogeneous LBP debris and in leaving largely unregulated large quantities of "non-hazardous" LBP debris. Today's proposal would have the effect of subjecting all LBP debris to one common sense regulatory scheme including management controls which take into account the risks that LBP debris poses to humans, particularly children—even if LBP debris has not been found to be "hazardous" under the TCLP test. See Unit VII.B. through VII.D. of this preamble for an in-depth discussion of the wastes, activities, and structures covered in this proposal.

2. Disposal/reclamation options. Section 745.309 of today's proposal would allow disposal of LBP debris in a variety of facilities, specifically:

- i. Construction and demolition landfills.
- ii. Nonmunicipal landfills which accept conditionally exempt small quantity generated waste.
- iii. Hazardous waste disposal facilities, including hazardous waste incinerators and landfills.
- iv. In the case of incineration, facilities subject to specified Clean Air Act requirements.

Each of the disposal options listed above is discussed in greater detail in Unit VII.F. of this preamble. Under the proposal, LBP debris would be able to be reclaimed (either for recovery of lead, or for energy combustion value) only in facilities which meet the Clean Air Act requirements specified at § 745.309(b) of today's proposal.

3. Controls on transportation, storage, and reuse. The Agency has included proposed controls on the transportation, storage, reuse and transfer for reuse of LBP debris in §§ 745.308 and 745.311. If

finalized, today's proposed rule would stipulate that when LBP debris is stored for more than 72 hours, there must be access limitations, and that LBP debris must not be stored for more than 180 days (§ 745.311). There are also proposed limitations on when LBP debris may be transferred for reuse (§ 745.311). In addition, the proposal would require that LBP debris be transported in covered vehicles to prevent any inadvertent release of LBP chips or dust (§ 745.308). These controls are discussed at length in Unit VII.G. of this preamble.

4. Notification and recordkeeping. In order to promote compliance and provide for effective enforcement of the standards contained in today's proposal, the Agency has included a proposed requirement that when LBP debris is transferred from one party to another, the recipient should be notified in writing that the material is LBP debris (§ 745.313(a)). Both parties to any transfer of LBP debris would also be required to keep a copy of the notification on record for 3 years (§ 745.313(b)). The notification and recordkeeping requirements are discussed in Unit VII.H. of this preamble.

B. State and Tribal Programs

Today's proposal contains provisions for EPA authorization of State or Tribal LBP debris management and disposal programs. States and Indian Tribes are encouraged to develop and seek EPA authorization of their own LBP debris management and disposal programs. EPA invites States and Tribes to submit their applications 60 days after promulgation of the final rule.

Sections 745.350 and 745.352 of today's proposal identify key program elements which EPA believes are needed to administer and enforce a LBP debris management and disposal program which is at least as protective as the Federal standards at §§ 745.307 through 745.319 and provides for adequate enforcement. The proposed required program elements found at § 745.350 are: (1) Requirements governing the reuse and storage of LBP debris; (2) requirements governing the transportation of LBP debris; (3) requirements for the disposal or reclamation of LBP debris; and (4) requirements for notification and recordkeeping. The proposed required elements found at § 745.352 are designed to ensure that State or Tribal programs provide adequate enforcement.

The proposed §§ 745.341 through 745.359 also contain procedures for States and Indian Tribes to follow when

applying to EPA for LBP debris management and disposal program authorization. State or Tribal programs would be required to be "at least as protective as" the Federal requirements at §§ 745.307 through 745.319 and to provide adequate enforcement. In their application, States and Tribes would be free to retain or establish more stringent requirements for the management and disposal of LBP debris in their jurisdictions. State and Tribal program requirements are discussed in Unit VIII. of this preamble.

V. Policy Basis for Today's Proposal

It is important to understand the relationship between today's proposal and the existing RCRA Subtitle C regulations. The regulated community has expressed a variety of concerns about the appropriateness of current RCRA requirements governing the management and disposal of LBP debris.

In keeping with EPA's responsibility under TSCA Title IV to promote and facilitate the expeditious reduction of risks related to LBP, the Agency has explored alternative options for management and disposal of LBP debris. The result of this investigation is today's proposed rule providing safe, effective, and reliable TSCA management and disposal standards for LBP debris. Sections A through F of this unit describe stakeholder consultation and the policy basis for today's proposal.

A. Stakeholder Consultation

The input and comments of stakeholders have been important in the development of today's proposal. As mentioned in Unit II. of this preamble, the TSCA section 1015 Task Force, which represented a wide array of interested parties, specifically requested that EPA "shift regulation of discarded architectural components from the hazardous waste regulatory program to a tailored management program under TSCA sections 402/404."

In addition, the Agency held a stakeholders' meeting on September 28, 1994, to discuss possible approaches to improving management and disposal requirements for LBP debris. Stakeholders participating in the meeting included HUD, State agency representatives, environmental and advocacy groups, labor representatives, professional organizations representing the building and waste management trades and private contractors. The participants provided many opinions and suggestions.

As noted, many stakeholders have urged EPA to develop today's proposal. A number of commenters on the LBP Training and Certification rule (40 CFR

part 745) specifically requested that EPA issue disposal standards for LBP debris under TSCA. In response, the Agency has, in today's proposal, identified new disposal options for LBP debris (in addition to those currently allowed under RCRA Subtitle C). The new LBP debris disposal options are discussed in Units VI. and VII. of this preamble. Stakeholder concerns about this proposed rule have generally focused on the risk of ground water contamination resulting from alternative disposal options, a question which is addressed by the analyses conducted for this proposal (as discussed in Unit VI. of this preamble).

Other stakeholders have expressed concern about the Agency's characterization of the current market for disposal, believing the Agency may have overestimated costs of disposal under RCRA Subtitle C. The Agency has reviewed current data as part of the economic analysis conducted for this proposal and believes that Agency estimates of the current costs of LBP debris disposal are accurate. It is clear from the economic analysis that management and disposal costs for LBP debris which fails the TCLP for lead are high and that these high costs can act as a deterrent to the removal of LBP hazards.

Stakeholders have also noted that under current RCRA requirements, all LBP debris is not treated equally. First, the RCRA regulations only apply if the debris is a waste. There are no RCRA standards for the management of LBP debris that is intended for re-use. For LBP that is a waste, difficulties conducting the TCLP (discussed in section D. of this unit) can result in insufficient management and disposal standards for potentially hazardous LBP debris (debris which does not exhibit the TC due to anomalous TCLP results) while other, similar LBP debris fails the TCLP and is subject to the strict and costly requirements of RCRA Subtitle C. Stakeholder concerns about the unequal requirements and regulations governing the management and disposal of LBP debris are addressed in today's TSCA proposal.

In June of 1996, EPA sent a stakeholders' mailing to a large list of parties the Agency had identified as potentially having an interest in today's proposed rule. The stakeholder mailing included an outline of provisions under consideration for inclusion in today's proposal, the draft background document for the Groundwater Pathway Analysis for LBP Architectural Debris conducted in support of today's proposal, and names of Agency staff to contact with questions. Further input by

stakeholders as a result of the mailing has been considered during development of today's proposal.

B. RCRA Coverage of LBP Debris

Under current RCRA requirements, all LBP debris is not treated equally. Some LBP debris, specifically, debris which fails the TCLP for lead or is assessed by the generator to exhibit the Toxicity Characteristic, is subject to the strict and costly requirements of RCRA Subtitle C. However, LBP debris which passes the TCLP or is correctly determined by the generator to be nonhazardous solid waste is not subject to Subtitle C management and disposal standards. Unfortunately as further described in section D. of this unit, TCLP results are not reproducible on LBP debris. Therefore, one piece of LBP debris might fail the TCLP in one instance and pass it in another, subjecting the debris to radically different management and disposal requirements in each case.

During the development of this proposal, it has become clear to the Agency that the two management and disposal standards which apply to LBP debris under RCRA are both inappropriate. In cases where LBP debris is determined to be hazardous, the Agency has concluded that RCRA Subtitle C management and disposal requirements are unnecessarily strict and costly (see Unit VI. of this preamble for a discussion of the analytical basis for this finding).

Conversely, in cases where LBP debris passes the TCLP or is determined by the generator to be nonhazardous, EPA believes that the absence of clear management and disposal standards is inappropriate and could result in LBP hazards. Today's proposal would resolve the problems associated with RCRA regulation of LBP debris by affording equal and appropriate standards for all LBP debris.

C. LBP Debris Exclusions/Exemptions from RCRA Subtitle C

Currently, certain types of waste are excluded from RCRA hazardous waste requirements. Some LBP wastes, including certain types of LBP debris eligible for exclusion from RCRA requirements, are not covered by today's TSCA proposal (see Unit VII.B. of this preamble for a discussion of LBP wastes not covered by this proposal). The Agency believes that the RCRA exclusions clearly and adequately address management and disposal of these types of waste and new TSCA standards are not necessary for these RCRA-exempted LBP wastes. The exclusions described in the RCRA proposal include: (1) The household

waste exclusion; (2) the conditionally exempt small quantity generator (CESQG) exclusion; and (3) the scrap metal exemption. See today's RCRA proposal published elsewhere in today's **Federal Register** for a thorough discussion of these exemptions.

D. Difficulties in Conducting the TCLP on LBP Debris

An important factor the Agency considered in developing today's proposal is the difficulty of performing reproducible TCLP tests on LBP debris. Proper TCLP testing requires the collection of a representative sample of the waste "as generated." LBP debris typically includes a mixture of painted and unpainted material, and debris generated at a single site often includes a variety of building materials (e.g., wood, metal, brick, plaster, etc.). In addition, different components of the debris frequently have different numbers of layers of paint—often with different formulations—each of which may contain varying amounts of lead. Collection of manageable-sized samples that are representative of the entire heterogeneous waste stream presents obvious challenges.

A second testing difficulty is sample preparation. The particle size reduction step of the TCLP requires that samples be small enough to pass through a $\frac{3}{8}$ -inch sieve. Thus, the various components of the sample may require different procedures in order to accomplish size reduction. For example, grinding may be the most appropriate procedure to apply to plaster components of a sample, but may not be practicable for the sample's metal components. One consequence of this is that paint layers originally on the surface of different types of materials can vary widely after the size-reduction step, ranging from a powdered state to $\frac{3}{8}$ inch-sized pieces. Because of sample preparation difficulties, the result from one sample (e.g., lead present above the regulatory level) may not be duplicated by the result from another sample of the same waste. EPA is concerned that this situation creates an uncertain regulatory environment and that it may lead to inappropriate regulation or lack of regulation of LBP debris.

A third difficulty is introduced by the physical state of the paint matrix. LBP on exposed exterior components will usually have been subject to years of weathering, since it was almost exclusively applied before the late 1970s. In contrast, paint from interior surfaces would likely not be weathered and the paint matrix would still be intact. It is reasonable to expect that the integrity of the paint matrix would be a

factor in the leachability of lead from the paint when it is subjected to the TCLP test and that the amount of weathered exterior paint versus interior paint in the sample would affect test results. Variability of weathering in painted surfaces poses a significant problem in collecting a representative, reproducible sample of LBP debris.

The Agency believes that these factors contribute significantly to variation in TCLP results for LBP debris, causing considerable difficulty in characterizing LBP debris under the Toxicity Characteristic. These problems are reflected both in stakeholder comments and in the Agency's empirical data on TCLP testing of LBP debris.

In March 1993, EPA completed a study that examined the RCRA status of various waste materials from abatement projects. The study had three components: First, the Agency evaluated data on waste that HUD collected during its nationwide abatement demonstration project (Ref. 5). Second, EPA carried out a detailed testing program for two categories of waste—large solid debris and protective plastic sheeting. Third, EPA examined the waste disposal experience of HUD's contractor on the abatement project in order to obtain preliminary estimates of the volume of hazardous waste that was generated and the cost of disposal. The goal was to determine whether the Agency could provide useful guidance to individuals and firms conducting abatements, on the likely result of TCLP testing for various types of waste generated during abatements.

The study identified three major categories of waste produced during abatements: filtered wash water, solid architectural debris, and plastic sheets and tape used to cover floors and other surfaces. The study concluded that filtered wash water is generally nonhazardous. The results for solid architectural debris demonstrated that LBP debris tends to fail the TCLP when the lead in the paint, as measured by Atomic Absorption Spectrometry (AAS) exceeds 4 milligrams per square centimeters (mg/cm²). However, TCLP failure in the study was not well-correlated with results of on-site testing of lead levels in paint using an X-Ray Fluorescence (XRF) device. The study's failure rate for plastic sheeting tended to depend on the abatement method. For example, removal and replacement tends to generate nonhazardous plastic sheeting, but use of a heat gun for LBP removal tends to result in plastic sheeting which exhibits a hazardous characteristic. The study also notes that other categories of waste, such as sludges, LBP chips, mops and rags,

often exceed the RCRA regulatory limit for lead.

The Agency learned from this study that there is no clear and well-defined sampling strategy for LBP debris, and that the TCLP may not give consistently reproducible results for LBP debris. Today's proposal addresses these difficulties.

E. Economic Impacts of RCRA Subtitle C Regulation on LBP Abatements

RCRA Subtitle C requirements for the management and disposal of a hazardous waste include making the determination that the waste is hazardous, the completion of a manifest which tracks waste from the generator to ultimate disposal, maintenance of records for 3 years, treatment subject to land disposal restrictions, transport to a hazardous waste facility, and disposal at a hazardous waste facility. Disposal in a RCRA Subtitle C facility is not required for hazardous lead waste which is treated (i.e., decharacterized) such that it no longer exhibits the Toxicity Characteristic for lead. This alternative requires the generator to test the waste after treatment using the TCLP to demonstrate compliance with the land disposal restrictions at 40 CFR 268.9. For further explanation of RCRA Subtitle C, please see Unit III.B. of this preamble or the RCRA companion document to this proposed rule published elsewhere in today's **Federal Register**.

RCRA Subtitle C hazardous waste management and disposal requirements can substantially increase the costs of performing abatements which remove and replace painted architectural components (e.g. doors and windows), a technique which results in a relatively large volume of waste but which minimizes dust generation that can cause further human exposure to LBP. In a 1991 report on its demonstration project on LBP abatement in public housing, HUD noted that the abatement strategy chosen relates directly to a unit's eventual passing of post-abatement dust clearance tests (Ref. 6). HUD found that units which had undergone removal and replacement abatements were more likely to pass clearance tests, suggesting that these activities tend to generate less lead-containing dust than other abatement options.

Among the materials generated during abatement, LBP architectural component debris (e.g., doors, windows and window frames, external woodwork) represent largest volume. Other materials, such as LBP chips and dust, treatment residues, solvents, blast media, waste water, plastic sheets, and

worker equipment and clothing, are generated in smaller quantities, are comparatively easy to sample and analyze, and are not covered under today's proposal (see Unit VII.B. of this preamble for a discussion of the scope of materials covered in this proposal).

However, the cost of disposal of the large volume of LBP debris which frequently results from removal and replacement abatements can be very high. EPA estimates these costs to be \$316 per ton, including the cost of waste analysis, transportation, and disposal. Disposal as a RCRA hazardous waste of an average amount of LBP debris from an abatement project in a single-family home can represent up to 18.9% of the total cost of the project (Ref. 7). Individuals and firms do not necessarily know when beginning an abatement project whether the resulting debris will require management as a hazardous waste, but they may frequently account for this possibility in cost estimates. In some cases, sampling and analysis performed prior to bidding on a project allows estimation of disposal cost, which affects the decision about whether or not to undertake an abatement project.

RCRA subtitle C requirements may also interfere with achieving economies of scale in LBP debris disposal. RCRA requires that LBP debris which is determined to be hazardous be sent directly from the site of generation to a hazardous waste treatment, storage, and disposal facility and thereby precludes the aggregation of waste from different work sites at a central collection site, which would allow for lower transportation and disposal costs.

As noted above, RCRA Subtitle C testing, transportation and disposal costs can add up to approximately \$316 per ton (Ref. 7). The estimated cost to dispose of LBP debris in a construction and demolition landfill, taking into account the costs of the management and disposal requirements in today's proposal is approximately \$37.20 per ton (including average transport and disposal costs) (Ref. 7). Thus, the management and disposal cost of 100 tons of LBP debris which failed the TCLP from an abatement at a 100 unit apartment complex would be \$31,600 under Subtitle C requirements as opposed to \$3,720 under today's proposal.

The alternatives to RCRA hazardous waste management and disposal presented in today's proposal would result in significant cost saving for the conduct of LBP abatement activities. These savings would be achieved primarily by allowing disposal of LBP debris in construction and demolition

landfills and eliminating the testing and other requirements associated with RCRA Subtitle C regulations. These cost savings could stimulate demand for abatements which would in turn serve to reduce hazards to human health and mitigate the economic impacts associated with human exposure to LBP hazards including: reduced lifetime earnings due to diminished intelligence, increased educational costs, increased health care costs, lost work days and productivity, and costs associated with increased morbidity and mortality. In the public housing sector alone, where a fixed amount of funds are currently designated specifically for modernization including the performance of abatements (24 CFR part 965, subpart H), the cost savings associated with today's proposal would result in an increase in the number of LBP abatements of more than 5,454 annually. These economic and risk considerations were also important factors leading the Agency to identify the alternative management controls and disposal options being proposed today.

F. TSCA Coverage of LBP Debris

The legislative history of TSCA Title X shows clearly that by enacting TSCA Title IV, Congress wanted to "remove all major obstacles to progress, making important changes in approach and laying the foundation for more cost-effective and widespread activities for reducing LBP hazards." S. Rep. No. 102-332, 102nd Cong., 2nd Sess. 111 (1992). As the Senate Committee on Banking, Housing and Urban Affairs stated, ". . . by establishing realistic, cost-effective procedures for achieving hazard reduction, Title X will speed the clean-up of lead paint hazards . . . and greatly decrease the incidence of childhood lead poisoning." (Id. at 112.)

Given the demonstrated risks that LBP poses and the clear Congressional intent for risks from LBP hazards to be reduced, the Agency is using today's proposal to improve the regulatory program governing the management and disposal of LBP debris from abatement, deleading, renovation, remodeling, and demolition activities.

It is important to note that although EPA is proposing to suspend the RCRA Subtitle C regulations which apply to LBP debris (see companion RCRA proposal), the Agency is not basing the proposed suspension on a determination that regulation of LBP debris is unnecessary. On the contrary, EPA believes that regulation of the management and disposal of LBP debris is necessary, and that TSCA, Title IV is

the more appropriate and effective authority for such regulation.

EPA is today proposing a determination that improper management of LBP debris or reuse of certain LBP debris constitute LBP hazards.

According to TSCA, Title IV, "LBP hazard" means "any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects" as established by EPA. EPA believes that, in the absence of appropriate controls, the management and disposal of LBP debris creates a "LBP hazard." This preliminary determination is a statutory prerequisite to EPA's application of the TSCA management and disposal requirements developed for abatements and deleading activities to debris from renovations. (TSCA section 402(c)(3)).

Historically, research on hazards associated with residential LBP has focused upon deteriorated paint in homes, rather than on the debris generated during abatements and renovation. In today's determination that improper management of LBP debris is a hazard, the Agency believes that the same exposure pathways are relevant for debris and that, in general, debris by its very nature would tend to pose a greater hazard than deteriorated LBP in a home. This is because, except in the case of re-use, the debris has little or no value and there is no motivation to maintain the integrity of the paint on the debris surfaces. Hence, even the intact paint on debris would be expected to deteriorate (e.g., flake or peel off) rapidly.

Exposures to lead from deteriorated LBP can occur in several ways. First, children who exhibit pica, a hunger for substances not fit for food, may eat paint chips from accessible waste piles, resulting in the ingestion of substantial amounts of lead (Ref. 8). Also, the deteriorated paint from uncontrolled piles of debris is likely to fall onto the ground resulting in potentially high soil-lead levels. (LBP, as defined in today's proposal, contains at least 5,000 ppm lead.) Such contaminated soil can be inadvertently ingested by children through their normal hand-to-mouth activity. In addition, the lead-contaminated soil can be tracked into a residence, introducing lead into the household dust.

These scenarios have been demonstrated in various studies that used stable isotopes of lead as tracers. Basically, this technique relies upon the

fact that the isotope ratios of lead ores vary by deposit. Consequently, lead-containing products such as LBPs, leaded gasolines, etc. can have unique ratios of the stable isotopes in the lead. Comparison of the isotope ratios in these products to those of environmental media and blood can in some cases identify these products as the source of lead in the environmental media and/or lead in the blood.

Rabinowitz reports use of this technique to investigate the specific sources and pathways of lead exposure in three cases of chronic, high-level lead poisoning (blood-lead concentrations of 120, 83, and 66 $\mu\text{g}/\text{dl}$) (Ref. 9). In each case, blood, feces, and the child's home environment (paint, dust, and soil) were sampled and analyzed. All of the children had deteriorated paint present in their homes. Additionally, a series of environmental samples were collected and analyzed to characterize background lead throughout the city.

In the first two cases, the isotopic composition of the blood (indicative of chronic exposure) and the feces (indicative of exposure during the preceding day) were nearly identical. In the first case, they resembled the paint sample from the child's bedroom wall (which was similar to the exterior soil). In the second case, they closely matched the lead in window sill paint, but not the kitchen wall or garden soil. In the third case, the blood lead was close to that of the paint in the child's bedroom, which was believed to be the source of his chronic exposure, whereas the fecal lead appeared to be similar to fallout from current automobile emissions in the area. While such data do present some ambiguities, they are consistent with paint being the proximate or remote source of the child's lead exposure and the conclusion that, in cases of severe lead poisoning, the lead in the child's blood and feces closely resembles lead in paint on an accessible surface. Additionally, based upon isotopic comparisons between household dust and urban soils, the study also concluded that: (1) In the absence of lead paint, the lead in urban soils and household dust have nearly the same isotopic composition, and (2) lead paint, when present, can be responsible for 20-70% of lead in household dust and much of the lead in yard soil.

Yaffe, *et al.* presented two cases which also included measurement of the isotopic ratios of lead in blood, paint, dust, and soil (Ref. 10). In both cases, it was unlikely that direct ingestion of paint chips was the cause of the elevated blood-lead concentrations. This was based on the

facts that: (1) There was no indication that the children were pica-prone based upon interviews with the children and their parents, and (2) higher than exhibited blood-lead concentrations would be expected if paint chips were being ingested, given the very high lead levels in the paint.

The first case involved 10 children with blood-lead concentrations from 28 to 43 $\mu\text{g}/\text{dl}$. The isotopic ratios of the children's blood lead were similar, suggesting a common set of lead exposures. These ratios were quite similar to those of soil samples collected around the house and interior dust samples. The close agreement between the average isotopic ratios of exterior paint samples and the soils near the house suggested that the soil was contaminated by the exterior paint, which was badly deteriorated.

The second case involved twin 2-year-old males with blood-lead concentrations of 37 and 43 $\mu\text{g}/\text{dl}$. The isotopic ratios of the twins' blood lead were similar to the soil in their side yard and in the back yard of a nearby house where they often played. These soils had similar ratios to adjacent exterior walls. This suggests that the lead in the soils was primarily derived from the weathering of nearby painted surfaces and that the contaminated soil was a significant source of the twins' exposure. The interior dust sample lead was not similar to the exterior soil or the twins' blood lead.

The scientific literature also includes several studies that have identified a statistically significant relationship between deteriorated paint and children's blood-lead concentrations. One study suggests that infant blood-lead concentrations are a function of paint deterioration and lack of maintenance of the residence (Ref. 11). In this study, deteriorated housing was classified as deteriorated if the exterior was not well maintained or had peeling paint, as observed from the street. For infants at 12 to 18 months old, geometric mean blood-lead concentrations were twice as high in deteriorated housing (33 $\mu\text{g}/\text{dl}$) than in housing graded as satisfactory (15 $\mu\text{g}/\text{dl}$).

Improper management and disposal of LBP debris could cause a LBP hazard by allowing the accumulation and deterioration of LBP in locations, such as uncontrolled waste piles, where it may be accessible to children or contaminate the soil.

EPA believes that allowing such a LBP hazard to go unregulated would undermine benefits gained through the elimination or reduction of exposure to LBP in target housing, public buildings

and commercial buildings. The proposed controls on storage and transportation which are included in today's proposal (see Unit VII.G. of this preamble for a more thorough discussion of these controls) are intended to facilitate safe management of LBP debris.

In order to prevent the transfer of LBP hazards from one structure to another, today's proposal also prohibits the reuse and transfer for reuse of any LBP debris which is identified as a LBP hazard in today's TSCA proposal. The proposal identifies a LBP hazard as the presence of any deteriorated LBP on the debris. Under today's proposal, reuse or transfer for reuse of LBP debris which is identified as a LBP hazard (i.e., LBP debris with deteriorated LBP) would be prohibited. The prohibition would not apply if the LBP is removed prior to reuse or transfer for reuse. See Unit VII.G.1. of this preamble for a more in-depth discussion of reuse of LBP debris.

In authorizing EPA under TSCA Title IV to promulgate management and disposal standards for LBP debris, Congress did not directly address the conflict that would arise concerning the overlapping jurisdiction of the RCRA TC rule and any new TSCA management and disposal standards. Nor did Congress clearly address the obstacles to the conduct of lead abatements and deleading that could result if LBP debris is determined to be hazardous and subject to the high costs of compliance with RCRA Subtitle C. The concurrent proposal of today's RCRA TC suspension and new TSCA standards should resolve the duplication inherent in the statutory schemes. The new TSCA standards would be less burdensome than RCRA Subtitle C requirements and therefore would remove obstacles to the conduct of LBP activities while identifying standards to prevent improper management, disposal, and reuse of LBP debris.

VI. Analytic Basis for Landfill Disposal Options in Today's Proposed Rule

Identification of safe, effective, and reliable alternative landfill disposal options for LBP debris has been an important component of this proposed rulemaking. EPA believes that landfill disposal is the most common waste management practice for LBP debris, and, as noted above in Unit V. of this preamble, disposal of LBP debris in RCRA Subtitle C landfills (hazardous waste landfills) is very expensive. To identify safe and accessible alternative landfill disposal options, the Agency considered the following information.

A. Leaching and Mobility of Lead from LBP Debris

Under RCRA, LBP debris is considered hazardous if it exhibits the hazardous waste characteristic of toxicity (other hazardous waste characteristics of ignitability, corrosivity, and reactivity are not likely relevant). EPA changed the test to determine whether a waste exhibits the characteristic of toxicity under RCRA in 1990, when the Agency promulgated the Toxicity Characteristic (TC) rule (40 CFR 261.24). In addition to adding more hazardous compounds that are regulated under that characteristic, the TC rule replaced the Extraction Procedure (EP) test with the Toxicity Characteristic Leaching Procedure (TCLP). The test was designed to indicate a waste's potential to leach hazardous constituents into groundwater if the waste was co-disposed in a landfill with municipal wastes. In such a landfill, the decomposition of municipal wastes would produce organic acids creating relatively more aggressive leaching conditions than in landfills without co-disposal with municipal waste. (55 FR 11862, March 29, 1990.)

After the promulgation of the TC rule, concerns were expressed to the Agency that TCLP tests conducted on LBP debris for determining lead concentrations in leachate produced higher lead leachate levels than the old EP test. The results of TCLP testing caused certain previously nonhazardous LBP debris to be classified as hazardous waste under RCRA Subtitle C. Thus, the higher lead leachate levels produced by the TCLP effectively limited disposal options for LBP debris. LBP debris that had previously been managed as nonhazardous waste now often became subject to RCRA hazardous waste management requirements. In response, the Agency conducted a study to investigate which LBP wastes would be hazardous under the TC rule. This report contained EP test results from some wastes and TCLP results from others. While the study did not include testing of duplicate samples with both tests, in general, TCLP results were higher than EP results for similar materials.

The Agency conducted another study to investigate the leaching behavior of lead from LBP wastes under the TCLP as compared with the Agency's "Synthetic Precipitation Leaching Procedure" (SPLP). While the TCLP is designed to simulate leaching in a municipal landfill environment, the SPLP is designed to simulate the leaching of wastes disposed in landfills that do not accept municipal garbage

and other putrescible wastes that could decompose and form organic acids that could aggressively leach hazardous constituents in waste. Accordingly, the SPLP uses a mild inorganic leaching solution that would be typical of acid rain instead of the organic (acetic) acid used in the TCLP. This study indicated that LBP waste leached considerably lower levels of lead in the SPLP than in the TCLP (Ref. 12).

In a third study of LBP waste, the Agency analyzed more samples of LBP debris using both the TCLP and SPLP methods to compare lead concentration in the leachate (Ref. 13). The results showed that when LBP debris was subjected to the TCLP analysis, the leachate concentration of lead exceeded the TC limit of 5.0 mg/L for lead in approximately 75% of the cases. However, when the samples were subjected to the SPLP, in only a few cases did the lead in leachate exceed 5.0 mg/L. In general, for those materials that comprise LBP debris as defined at § 745.303 of the regulatory text, lead in leachate samples subjected to the SPLP was approximately 1/10 of the amount of lead measured in leachate samples subjected to the TCLP.

Lead was the only contaminant for which analysis was done in the LBP debris leachate testing described in the above three studies. This was simply because these studies focused on lead as the principal hazardous constituent in LBP debris. The Agency has no reason to believe that LBP debris would be a TC hazardous waste for any other reason. However, EPA requests comments and information on whether contaminants other than lead associated with LBP debris may cause LBP debris to be identified as a TC hazardous waste.

The relative immobility of lead in subsurface soils under non-highly acidic conditions, and its increased mobility under conditions of higher acidity, has been documented in many studies (Ref. 14). Deutsch provides a review of lead geochemistry and has summarized some of these studies. Lead entering the subsurface environment may be strongly affected by adsorption and/or chemical precipitation onto the solid-phase surfaces. Due to their strong adsorption affinity for lead, soils appear to have large capacities for immobilization of lead. Lead generally is likely to be confined to the top soil layers due to adsorption to the soils. Whatever lead moves past the top soil zone, iron and manganese oxides in the subsurface soil may play the greatest roles in the adsorption and chemical precipitation of lead.

While Deutsch concludes that lead is one of the least mobile of the common metal contaminants in the environment, he also states that lead can be relatively mobile, as with most metals, if the contaminant source is very acidic and the environment does not have the capacity to neutralize the acid. These conclusions are consistent with the findings of the leaching tests described above. That is, lead, in general, tends to be less mobile in less aggressive acidic conditions than in a highly acidic environment. For LBP debris, the organic acid of the TCLP (which is predictive of conditions in a municipal waste landfill) is considerably more aggressive in leaching lead than the milder, "acid rain" type of inorganic acid of the SPLP (nonmunicipal landfill scenario).

Regardless of the mobility issues noted above, there are certain other environmental conditions in the United States where lead, if soluble, might move appreciably with groundwater. For example, the existence of highly fractured bedrock, or highly porous soils, karst formations, soils with low cation exchange capacity or low organic content, and dissolved organic acids in the groundwater can appreciably increase the mobility of lead in the subsurface soil.

Upon review of the above-cited studies and the LBP debris leachate testing data, EPA made some preliminary conclusions regarding the potential for lead leachability in non-municipal versus municipal landfills. Based on these data, because non-municipal landfills are likely to be less aggressive environments for the leaching of lead, the Agency focused its further analysis on these types of landfills. Specifically, the Agency has focused on evaluating the safety of disposal of LBP debris in construction and demolition (C&D) landfills.

However, the Agency recognizes a need to conduct further analyses to come to more definitive conclusions regarding the potential for lead leachability and mobility from disposal of LBP debris under various types of landfill conditions. Therefore, the Agency plans to conduct such additional studies. The results of such analyses could potentially cause the Agency to revise its current conclusions regarding the leachability and mobility of lead in various landfill environments. However, until that time, the Agency maintains its long-held position that, in general, municipal solid waste landfills represent a more aggressive leaching environment for lead (and other hazardous constituents) than many non-municipal landfill environments.

Municipal landfill disposal remains the worst-case, generic mismanagement scenario that the Agency has determined, under RCRA, to be a plausible scenario for disposal of non-municipal solid wastes. The TCLP remains the appropriate leaching test to mimic municipal landfill conditions for determining whether solid waste exhibits the RCRA toxicity characteristic. The TCLP is also an important factor used by the Agency, when determining whether industrial process waste should be listed as a RCRA hazardous waste.

B. Ground Water Risks from C&D Landfills

The Agency has performed several studies providing data on leachate quality and on the environmental performance of some C&D landfills.

One study investigated leachate quality in C&D landfills (Ref. 15). The results indicated that of 21 C&D landfills for which there were leachate data, 18 landfills monitored leachate for lead, and of these, 15 had detectable lead concentrations. Although the existence of lead in landfill leachate at levels above the detection level is not unusual, the Agency intends to conduct further studies on the presence of lead in leachate from various types of landfills.

Additionally, the Agency has performed two studies which provide data on the environmental performance of some C&D landfills. Because these two studies were completed for the purpose of identifying cases of environmental releases from C&D landfills, they do not include data from the vast majority of C&D landfills for which there is no evidence of groundwater contamination.

The first of the two studies, "Damage Cases: Construction and Demolition Waste Landfills," identified 11 C&D landfills for which there was adequate evidence to find that they may have threatened or damaged human health or the environment (Ref. 16). The second report "Hazardous Waste Characteristics Scoping Study," reviewed the 11 C&D landfill cases documented by the first report but used more stringent criteria pertaining to proof of damage (Ref. 17). In particular, the second report eliminated from consideration 5 of the 11 cases documented by the first report, due to the fact that these 5 C&D landfills, in addition to receiving C&D wastes, also received municipal, hazardous or other improper wastes. Disposal of the inappropriate wastes at these C&D landfills may have adversely influenced their environmental performance.

Of the six damage cases that are described in the Hazardous Waste Characteristics Scoping Study, two are documented to have lead concentrations in groundwater that, at least once, exceeded a State or Federal standard. The highest reported values of lead in these cases are 0.090 and 0.056 mg/L, exceeding 0.015 mg/L, the Safe Drinking Water action level for lead at the tap. The site having the higher of these lead concentrations in ground water (0.090 mg/L) was operated during its entire life as an illegal dumpsite with no regulatory oversight. Therefore, it is not particularly surprising that release of lead has occurred at this site. The Agency is currently conducting further studies to better understand the circumstances that have resulted in these levels of lead being detected in groundwater at these C&D landfills.

To provide a more comprehensive understanding of the potential ground water risks of allowing LBP debris to be disposed in C&D landfills, the Agency conducted a groundwater modeling analysis. This analysis was done on a national scale, using groundwater modeling techniques similar to those used in previous EPA rulemakings (e.g., the Toxicity Characteristics Final rule (40 CFR 261.24); the Hazardous Waste Identification Proposed Rule (60 FR 66344, 66406, December 21, 1995) (FRL-5337-9); and the Petroleum Refining Listing Determination (62 FR 16747, April 8, 1997) (FRL-5807-5)). The groundwater modeling analysis is summarized briefly below and in more detail in the background document "Groundwater Pathway Analysis for LBP Architectural Debris," a copy of which is in the docket for today's proposal (Ref. 18).

The Agency recognizes that any "national" modeling analysis is limited in its ability to reflect every relevant siting and operational condition at any particular landfill. Public comments and supporting data are invited on this approach.

1. Parameters used for the groundwater pathway analysis—i.

Leachate composition. SPLP data from the 1995 report on LBP debris was used to estimate the concentration of lead from LBP debris in the leachate emanating from the modeled C&D landfills. As noted above, the SPLP data, which represent the disposal of LBP debris in RCRA Subtitle D non-municipal solid waste landfills was designed to be more representative of the C&D landfill environment than the TCLP data, which is intended to represent co-disposal in an environment with wastes containing predominantly municipal garbage. Although the

Agency is aware that organic matter and putrescible wastes have been found to be present in some unknown number of C&D landfills, the Agency believes that C&D landfills generally produce less organic acids than municipal solid waste landfills (MSWLFs) (Ref. 19).

Thus, the SPLP data is more appropriate for this analysis. The Agency specifically solicits comments on the use of the SPLP leachate test data for the LBP debris risk analysis. EPA has initiated studies to obtain data concerning C&D and municipal solid waste landfill leachate quality and to determine whether organic waste disposed in C&D landfills generates leachate that could facilitate the leaching of lead in C&D landfills.

ii. **LBP debris quantity.** Using information from a 1990 HUD Report to Congress, the Agency first estimated total quantities of LBP debris likely to be generated from abatement of housing and day-care facilities (Ref. 20). For this estimate, the Agency conservatively assumed that all abatements would result in removal and replacement of painted architectural components from pre-1978 housing and day-care facilities. The analysis estimated that approximately 19 million tons of debris will be generated annually over the next 34 years comprised mainly of three types of LBP debris: doors, exterior wood (e.g., soffits, clapboards), and miscellaneous components (e.g., windows, window sills) (Ref. 20). The Agency used this quantity estimate for LBP abatement debris for the groundwater risk analysis.

The Agency also estimated total quantities of C&D waste and building construction and demolition waste that is disposed of in C&D landfills (Refs. 18 and 20). Data for waste quantities from renovation and remodeling (R&R) activities are not available separately and are likely to fluctuate from year-to-year. EPA assumed that part of the demolition waste could be attributed to R&R waste. The Agency used the quantities of LBP demolition waste in conjunction with the LBP abatement debris volumes to assess the combined groundwater risks from the disposal of these wastes in C&D landfills (Ref. 18).

For the ground water risk analysis, based on finite source modeling (i.e., each C&D landfill would contain a pre-determined quantity of LBP debris over the operating life of a landfill), the Agency conservatively assumed that only one-half (900) of the nation's existing 1,800 C&D landfills would receive the 19 million tons of LBP debris for disposal until LBP debris generation ceases (approximately after the next 34 years). It was also assumed

that all C&D landfills would receive building construction, demolition, and R&R debris and other C&D waste equally. The Agency requests comment on these assumptions and their use in the groundwater risk analysis.

iii. **C&D landfill characteristics.** The Agency has information on the number of commercial C&D landfills (1,800) and a distribution of their sizes (areas). However, the Agency does not have other site-specific data (e.g., hydrogeology) for these C&D landfills. These data representing the national distribution of various parameters are required as input for the groundwater risk modeling. Therefore, for the site-specific parameters with no data specific to C&D landfills, the Agency decided to use information from the Industrial Subtitle D Landfill Survey discussed below. The basis for this decision was that both C&D and Industrial D landfills are subject to the Federal regulations at 40 CFR part 257, subpart A (which includes some restrictions on siting of landfills), and therefore, both types of these facilities would be located in similar hydrogeologic regions of the country.

The national survey of Industrial Subtitle D landfills was conducted in the late 1980's and the results are presented in the background documents to this proposal (Refs. 18 and 22(b), (c), (d)). This stratified and weighted survey represents the nationwide distribution of the Industrial D landfills (e.g., geographic location, area, etc.), and represents the best available data on Industrial Subtitle D landfills on a nationwide basis. The survey represents a snapshot of the Industrial Subtitle D universe in the U.S. and has been used by the Agency in support of other regulatory (RCRA) programs.

The Agency assumed that the national distribution of C&D landfill locations is similar to that of Industrial D landfills. Therefore, this modeling analysis used the surficial soil and hydrogeologic data from the Industrial D landfill data base in order to represent relevant characteristics of C&D landfills (Refs. 18 and 22(a), (b), (c), (d)).

These assumptions add some uncertainty to the overall results, the exact magnitude of uncertainty is presently unknown. However, EPA believes it to be low, because the Agency used only the locational information from the Industrial D survey. The errors resulting from some differences in locations are not likely to add major errors in the national Monte Carlo analyses, as long as the respective modeled site locations are in the same hydrogeologic region as the original site locations.

The Agency has information from a survey on the location of closest downgradient drinking-water wells relative to municipal solid waste landfills, but, similar information is not available for C&D or Industrial D landfills. Therefore, the Agency used the distances to the closest downgradient drinking-water wells from the distribution of distances from the municipal solid waste landfill survey (Refs. 18 and 22(b), (c), (d)). In characterizing the drinking-water well distribution with respect to municipal landfills, the Agency collected information on the receptor wells closest to the landfills that were located within a radial distance of 1 mile from the downgradient edge of the landfill. The distribution of receptor well distances from municipal landfills used in the modeling analysis for the LBP debris rule is the best information available to the Agency on distances to receptor wells. As discussed later in this section, for this proposal, the Agency estimated lead concentrations in the drinking water wells located downgradient anywhere within a radial distance of 1 mile. However, the Agency intends to examine the effect on lead levels if the downgradient drinking water wells were restricted in location to the plume centerline or within the plume, as opposed to downgradient well location within a radial distance of one mile, prior to the promulgation of the final rule.

The data from the Industrial D and municipal solid waste landfill surveys, and all other data used as inputs in the modeling exercise are described in detail in the background documents for this proposal.

The Agency seeks comment on whether other data exist for C&D landfill locations and drinking water well locations that could be used as inputs to achieve a reduction in the uncertainty in the modeling analysis. Also, the Agency seeks leachate composition data for C&D landfills.

2. *Modeling approach.* The Agency modeled lead leachate migration from the bottom of unlined C&D landfills into the subsurface environment, and estimated the overall percentage of C&D landfills across the nation which might indicate peak lead concentrations in the closest down gradient receptor wells above the lead health-based levels (i.e., the Federal regulatory action level for lead in drinking water of 0.015 mg/L). As in previous RCRA rulemakings (e.g., the TC rule), the groundwater modeling analysis used a "Monte Carlo" approach to determine the national probability distribution of peak receptor well concentrations over the exposure time

horizon. Also, as in many other EPA groundwater risk analyses, a modeling time horizon of 10,000 years was used.

The Agency recently enhanced the subsurface transport model used to support RCRA rulemakings. The new model is called EPACMTP (EPA's Composite Model for Leachate Migration with Transformation Products). The model simulates the migration of contaminants in three dimensions to take into consideration the mounding effects beneath waste management units. The model also can simulate the fate and transport of primary constituents and their secondary reaction, decay products. The model is particularly appropriate for the LBP debris risk analysis, because it can consider the nonlinear nature of the lead isotherm (the relation between the mass of lead adsorbed or precipitated on the solids and the concentration of lead in water). The Agency developed a technique for the nonlinear isotherms and this was incorporated in to the EPACMTP analyses for lead (Ref. 23). The Agency also invites comments on the use of this nonlinear isotherm approach.

For the 1990 TC rule, EPA assumed that the source of contamination was infinite; i.e., waste would be disposed within a landfill continuously, therefore, hazardous constituent loading would never be depleted. For this reason, EPA limited its application to selected chemical constituents which correspond to infinite source behavior. The EPACMTP has a new modeling methodology. The new approach is called Regional Site-Based finite source methodology (Ref. 22(b)). The Monte Carlo-based approach uses all site-specific data and, if some site-specific data are not available, it uses data from regional distributions as the default data. If regional data are not available, then data from national distributions are used. The approach uses the best available data and keeps the site-correlated hydrogeological parameters together for each Monte Carlo realization in the modeling analyses.

For this risk analysis, the Agency used the Regional Site-Based approach to reduce data gaps related to the EPACMTP model input parameters. For example, since site-specific depth-to-groundwater information was not available, EPA used groundwater depth data within the Monte Carlo framework for the geographical region in which the site is located. The Agency assigned specific values for the climatic and hydrogeological model parameters based on the geographical locations of waste disposal sites across the U.S. This approach preserves the interdependence

between the site location and the climatic and hydrogeological region.

As mentioned in the previous section, when specific locational data for C&D landfills were lacking, the Agency used data from the EPA Survey of Industrial Subtitle D Waste Management Facilities. In certain instances (e.g., well location), information from the Agency's municipal solid waste landfill database was used. The underlying assumption in using these data is that, in general, the overall C&D site distribution is similar in terms of climatic and hydrogeological settings to other non-hazardous waste landfill sites. Thus, even if the locations of these types of landfills do not coincide exactly, the regional climatic and hydrogeologic characteristics would not be expected to vary widely and, therefore, would not significantly affect the results in a nationwide Monte Carlo framework. The size of the landfill and waste volumes, however, tend to be significant factors influencing the outcome of the Monte Carlo results as long as the sites under consideration are within the same climatic region. EPA requests comments on whether assumptions related to landfill size and waste volume are appropriate, as well as any supporting data.

The Agency's modeling approach assessed a full range of fate and transport conditions, including the climatic and hydrogeological properties which were assumed to characterize C&D landfills across the nation. Correlated hydrogeologic characteristics were utilized, based on a survey conducted by the National Water Association, in the Monte Carlo analysis. Impossible combinations of site conditions are rejected in the Monte Carlo analysis; e.g., very low rainfall and high infiltration. However, some assumptions can lead to overestimation or underestimation of risks. For example, the approach assumed that the receptor well may be located anywhere, within a radial distance of a mile from the edge of the landfill, on the down gradient side of the landfill. This may underestimate the risk compared to sites where the receptor well was restricted in location to the plume centerline or within the plume. However, the risk modeling approach also assumes that the receptor wells pump water from the uppermost layer of groundwater below the ground surface, where leachate releases from landfills would be most likely. This may overestimate potential exposure, because many private wells gather water from deeper layers of groundwater which may not be exposed to the landfill leachate. The Agency seeks comment on the modeling

approach and data to improve the modeling analyses.

The new model (EPACMTP) and the Regional Site-Based Monte Carlo approach were favorably reviewed by EPA's Science Advisory Board (SAB) (Ref. 24). The SAB also provided suggestions for improving the model, which EPA has considered. The Agency's response to the SAB's review is also in the docket for today's proposal (Ref. 25). The Agency believes it is applying the best available modeling approach for this national assessment. EPA may conduct additional analyses using this modeling approach should additional data for C&D landfills become available. This Monte Carlo approach avoids the compounding effects of conservatism that may occur if, for example, single, reasonable-worst-case values were used for each parameter.

The MINTEQA2 (geochemical speciation model) is another EPACMTP model component which determines subsurface lead sorption isotherms under a range of environmental conditions i.e., variation in pH and other factors controlling the subsurface mobility of lead (Refs. 18 and 22(a), (b), (c), (d)). The Agency considered the subsurface behavior of lead in combination with waste volume, hydrogeological, climatological and soil characteristics to generate the distribution of concentrations of lead in drinking water wells.

3. *Modeling results.* The results of the LBP debris modeling effort are summarized below. These findings result from application of the parameters described in section B.1. of this unit, including the use of SPLP data for leachate composition, to the modeling approach described in section B.2. of this unit.

- The peak receptor well lead concentration would be between zero and 0.015 mg/L over the 110,000 year modeled time frame in approximately 95% of the modeling simulations. (Each simulation corresponds to a single downgradient well located within a radial distance of a mile. Every Monte Carlo simulation picks a different downgradient well location within a radial distance of a mile along with an input data set, including landfill size, soil hydraulic conductivity, etc.)

- In less than 4.5% of the cases would the receptor well lead concentration exceed the Federal regulatory action level for lead in drinking water of 0.015 mg/L over the full modeling time horizon, and most of these exceedances would occur between 5,000 and 10,000 years after the disposal of LBP debris in C&D landfills.

- The drinking water action level for lead was not exceeded in any receptor well during the first 500 years and, between 500 and 1,000 years, it was potentially exceeded at only one site in 10,000 Monte Carlo realized sites (i.e., 0.01%).

Thus, at the national level, the modeling results indicate that the impact on groundwater at drinking-water wells down gradient of C&D landfills accepting LBP debris appears to be very low and would only occur after an extremely long period of time.

For this proposal, modeling efforts indicate that the disposal of LBP debris in C&D landfills would be protective of human health at the 95th percentile protection level. This level of protectiveness is at the high end (most protective) of the levels of protectiveness that the Agency has used in regulating hazardous wastes under the RCRA program. Historically, the EPA RCRA program has used levels of protectiveness ranging from 85 to 95%, when considering the results of various risk analyses. For example, for the TC rule, the level was 85% (40 CFR 261.24); for hazardous waste delistings, the level was 95% (56 FR 67197, December 30, 1991); and for the Hazardous Waste Identification Rule for Process Wastes (HWIR), the level was 90% (60 FR 66344, December 21, 1995) (FRL-5337-9).

4. *Monte Carlo Modeling uncertainties.* Monte Carlo analysis is a statistical technique that can be used to simulate the effects of natural variability and informational uncertainty which often accompany many environmental conditions. It is a process by which an outcome is calculated repeatedly for many actual situations, using in each iteration randomly selected values from the distribution of each of the variable input parameters. Information on the range and likelihood of possible values for these parameters is produced using this technique. When compared with alternative approaches for assessing parameter uncertainty or variability, the Monte Carlo technique has the advantages of very general applicability, no inherent restrictions on input distributions or input-output relationships, and relatively straightforward computations. Monte Carlo application results can also be expressed in easily understood graphs, can be used to satisfactorily calculate uncertainty, and can be used to quantitatively specify the degree of conservativeness used. With deterministic analyses (e.g., worst-case analyses), an alternative to Monte Carlo, it is often not possible to quantify the level of protection represented by the

results. However, some potential limitations may also exist when applying Monte Carlo techniques for modeling risks depending on the data and model utilized for the analyses.

The Agency has been using the Monte Carlo modeling methodology in various rulemakings for many years. EPA has conducted numerous sensitivity analyses and comparison with deterministic approaches in those rulemakings (e.g., Proposed rule for Petroleum Refining Waste Listing Determination, 62 FR 16747, April 8, 1997). The methodology and the model have gone through many reviews and evaluations by the SAB and EPA's Office of Research and Development (Ref. 24). Additionally, these analyses were subjected to the public review and comment process. Consequently, the model and the modeling methodology have been significantly enhanced over a number of years as noted by the SAB in their latest review.

The modeling analyses conducted on disposal of LBP debris in C&D landfills have some uncertainties associated with them, like any other modeling analyses. The uncertainties may include the following: (1) The use of the Industrial Subtitle D locational data; (2) the exact nature of the leachate environment in C&D landfills; (3) the likelihood that lead which may leach from LBP debris would form soluble or insoluble organic complexes which may increase or decrease the potential for lead migration; (4) the possibility of the existence of certain environments underneath the modeled C&D landfills that might increase or decrease the migration of lead from C&D landfills, e.g., highly fractured or highly impermeable subsurface environments; (5) the location of drinking water wells, exposed to leachate from C&D landfills, that might not have been factored in the distribution of well locations; (6) limitations associated with model validation and verification; and (7) the difficulties in predicting conditions over very long periods of time into the future.

This analysis may have certain other limitations. For example, the Agency did not model some specific environmental conditions (e.g., karst and fractured rocks, highly porous soils, presence of excessive amounts of organics in groundwater). To attempt to compensate for the inability to address all possible environmental conditions where C&D landfills may be located, the Agency modeled the disposal of LBP debris conservatively. For example, the Agency made a number of assumptions to help ensure protectiveness: (1) The fate and transport of lead in the subsurface environment was modeled

over a time horizon of 10,000 years; and (2) The total amount of waste in C&D landfills was doubled by assuming the waste is managed in 900 landfills instead of the actual 1,800 landfills.

The Agency specifically invites comments and data on the areas of uncertainty within the LBP debris modeling analysis.

C. Preliminary Conclusions on Disposal of LBP Debris in C&D Landfills

Based on the data and analyses discussed in sections A and B of this unit, the Agency is proposing to allow disposal of LBP debris in C&D landfills as defined at § 745.303 of the regulatory text.

The relative immobility of lead in the soil and subsoil environment under non-highly acidic conditions is described in section A of this unit. The results of comparative leaching studies using the SPLP and TCLP tests are generally consistent with those findings. That is, under conditions of higher acidity, the potential for lead to leach from LBP debris is greater than under low acidity conditions. Once released, the subsurface movement of lead depends on the hydrogeologic conditions which may contribute to the increased or decreased movement of lead through soils and subsoils. The environment in a C&D landfill is not considered likely to be highly acidic and generally should not result in high levels of lead leaching. The Agency conducted groundwater modeling (as described in section B of this unit) of the fate and transport of lead from C&D landfills that would accept LBP debris and found in this modeling that the likelihood of contamination of groundwater in drinking-water wells downgradient from C&D/landfills appears to be remote.

These modeling results (in combination with the TCLP and SPLP data for LBP debris and the general geochemical behavior of lead in the subsurface environment) were convincing factors leading the Agency to propose a rule allowing disposal of LBP debris in C&D landfills. EPA believes that such disposal would, in general, be a safe, effective, and reliable option for management of LBP debris.

As discussed in section B of this unit, EPA recognizes that uncertainty in the national groundwater modeling analysis exists, especially relating to site-specific conditions that might be present at some C&D landfills. This concern is perhaps reinforced by the Agency studies on environmental releases from a limited number of C&D landfills which raise questions regarding the mobility of lead and the potential for groundwater

contamination. As stated above, the Agency is further examining the sites addressed in these studies.

States with C&D landfills regulate them to some degree, but the extent of regulatory coverage varies. Twenty-nine States require the facilities to have some form of groundwater monitoring and 22 have corrective action requirements. In addition, 22 States require C&D landfills to have a liner and 18 require a leachate collection system (Ref. 15). The State requirements for groundwater monitoring and leachate collection are deterrents against the migration of hazardous constituents.

EPA is proposing that LBP debris may be disposed of in C&D landfills subject only to the requirements in 40 CFR part 257, subpart A. These criteria do not include groundwater monitoring or corrective action requirements, but do include some location and other standards. The Agency solicits comments on whether it should require disposal of LBP debris only in the C&D landfills with ground water monitoring and corrective action systems. In addition, EPA is interested in comments on whether the Agency should restrict the disposal of LBP debris to C&D landfills which satisfy additional State requirements. Data demonstrating the need for these protective measures is particularly requested, as is information on whether such requirements would significantly limit disposal options for LBP debris.

D. Other Non-hazardous Waste Disposal Options

1. *Non-municipal landfills accepting conditionally exempt small quantity generator hazardous wastes.* The Agency believes that preliminary conclusions reached regarding C&D landfills meeting 40 CFR part 257, subpart A requirements also apply to industrial and C&D landfills meeting 40 CFR part 257, subpart B requirements that would accept hazardous waste from conditionally exempt small quantity generators (CESQG). These preliminary conclusions, however, do not apply to industrial waste landfills subject to 40 CFR part 257, subpart A requirements since the industrial facilities may generate leachate with different leachate characteristics. If LBP debris were to be disposed of in these landfills, the landfill conditions may accelerate lead leaching. Because EPA has not studied this possibility, EPA has not proposed disposal of LBP debris in industrial solid waste landfills meeting 40 CFR part 257, subpart A requirements.

Under the 1995 promulgated regulations for the disposal of CESQG wastes (61 FR 34252), CESQG wastes

must be disposed of at either: (1) Subtitle C hazardous waste landfills; or (2) municipal solid waste landfills subject to 40 CFR part 258 landfill design criteria; or (3) nonmunicipal, nonhazardous waste disposal units subject to part 257, subpart B requirements. These subpart B requirements for nonmunicipal, nonhazardous waste disposal units accepting the CESQG wastes for disposal include location standards, groundwater monitoring, and corrective action provisions. If LBP debris disposal occurs in C&D landfills or Industrial D landfills accepting CESQG hazardous wastes for disposal, these requirements would, during the landfill operating life and post-closure period, allow detection and control against potential migration of not only lead leachate but also leachate containing other hazardous constituents associated with CESQG hazardous wastes. Because of the recent promulgation of the CESQG waste disposal requirements, it is unclear at this time, how many of the approximately 1,800 C&D landfills nationwide will accept CESQG waste.

Currently, more than half the States require groundwater monitoring and some also require corrective action at C&D landfills. C&D landfills in these States can accept CESQG waste for disposal. The Agency believes it is unlikely that disposal of LBP debris in landfills subject to 40 CFR part 257, subpart B requirements (whether or not these landfills are also C&D landfills) would pose a threat to groundwater. Accordingly, the Agency is also proposing today to allow disposal of LBP debris in those landfills that receive CESQG wastes and are subject to part 257, subpart B requirements. Public comments are invited on this disposal option.

2. *Municipal solid waste landfills.* The Agency has not included municipal solid waste landfills (MSWLF) in the list of allowable disposal facilities at § 745.309 of today's proposed rule. However, the Agency is actively considering whether MSWLFs are acceptable for disposal of LBP debris, and the Agency solicits comments, data and studies that are relevant to this question.

As stated above, the Agency decided, based on concerns about disposal of LBP debris in the organic-acid-generating environment of MSWLFs, as well as the supporting TCLP and SPLP leachate test data, to focus its analytic effort in preparing for today's proposal on the disposal of LBP debris in C&D landfills. However, the Agency has recently also completed a groundwater risk analysis on the disposal of LBP

debris in MSWLFs. This risk analysis has been incorporated into the background document describing the groundwater pathway analysis supporting this proposed rule (Ref. 22(a)).

Although the results of the groundwater risk analysis for MSWLFs, as described in the background document, are quite similar to those for C&D landfills (i.e., the calculated risks are quite low), the Agency remains concerned about the results of the leaching tests that were described earlier. That is, lead leachate levels resulting from use of the TCLP (intended to mimic leaching in a MSWLF) on LBP debris samples were found, in general, to be an order of magnitude greater than those resulting from use of the SPLP (intended to mimic leaching in a non-municipal waste landfill). Given these higher rates of predicted leaching of lead from MSWLFs, the Agency decided not to propose a regulation allowing the disposal of LBP debris in MSWLFs at this time, but to study this issue further.

EPA seeks information concerning quantities of lead-containing waste disposed in municipal landfills, MSWLF leachate characteristics (pH, nature of organic acids) and empirical data for groundwater/leachate monitoring from older MSWLFs and new MSWLFs operated according to 40 CFR part 258 requirements. Also, the Agency requests comment on: (1) Whether engineered landfill systems will be operational for extended time periods (since groundwater modeling shows it can take hundreds, if not thousands, of years for lead to reach hazardous concentrations at downgradient drinking water wells), and (2) other options that might be available to ensure that, if EPA allows MSWLFs to receive LBP debris, those options are fully protective of human health and the environment over such long time frames. Depending on the information received, the results of planned EPA analyses, and public comments on this proposal, EPA might allow the disposal of LBP debris in MSWLFs when it finalizes today's proposed rule.

VII. Proposed Rule Provisions: §§ 745.301 - 745.319

A. General

Should today's TSCA proposal and the companion RCRA proposal become effective, the current Federal requirements that generators of LBP debris waste conduct the TCLP test or use their knowledge to determine whether their waste is hazardous, and

Federal requirements that hazardous LBP debris waste be managed and disposed of under RCRA Subtitle C rules would be suspended. Instead, the TSCA standards in today's proposal or the equally (or more) protective standards of an authorized State or Tribal TSCA program would become effective. However, RCRA Subtitle C requirements will remain applicable to LBP debris if it is a hazardous waste by virtue of the presence of any hazardous constituent other than lead or if a State with an authorized RCRA TC program elects not to suspend the applicability of the TC for LBP debris.

The language in TSCA Title IV compelled the Agency to tailor today's proposed standards to specific types of materials generated during the conduct of specific activities in specific structure types. Sections B., C., and D. of this unit outline the applicability of the proposed rule to material type, activity type, and structure type. Those units also explain the Agency's rationale for the scope of the proposal. Sections F., G., and H. of this unit discuss the disposal options, management controls and notification and recordkeeping requirements respectively.

B. What Types of Materials Are Covered?

The proposed TSCA standards and suspension of the RCRA TC rule are limited in applicability to LBP architectural component debris (e.g., doors, windows, etc.) and LBP demolition debris (both terms are defined in § 745.303 of the regulatory text). As noted at the beginning of this preamble, these types of debris are referred to collectively as LBP debris (the term LBP debris is also defined at § 745.303). LBP refers to paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or more than 0.5 percent by weight. The definitions and coverage of these terms are designed to capture high-volume LBP materials that are the most difficult to test and most costly to manage and dispose of under RCRA Subtitle C. Other types of LBP waste, which would not be considered to be LBP debris such as LBP chips, dust, blast media, solvents or treatment residues (as outlined in section B.1. and B.2. of this unit) are not covered.

There would be no *de minimis* threshold for the management and disposal standards in this proposal. Therefore, even small amounts of LBP debris would be subject to the standards in the proposal. The Agency believes that improper management or disposal of any amount of LBP debris represents a LBP hazard.

The practical effect of this decision is that LBP debris from very small renovations or abatements should be managed and disposed of subject to today's proposed standards (it should be noted that there is a 72-hour grace period for access limitations as described in section H.4. of this unit). EPA believes this is a common sense approach given the potential for children to chew LBP debris, to track LBP into homes, or to otherwise ingest LBP resulting from improper management. An alternative approach might be to set a *de minimis* level below which LBP debris would not become subject to today's proposed management standards. One option would be to set a *de minimis* threshold based on the amount of LBP disturbed. The Agency seeks comment on its decision not to set a *de minimis* level in these proposed standards and specifically requests suggestions and support for possible *de minimis* levels that could be established in the final rule.

1. *Concentrated LBP wastes not covered.* Many abatement approaches are available to address LBP hazards. These various approaches and the wide range of renovation and remodeling techniques generate a variety of LBP wastes. EPA is not, however, including materials (from any activity) other than LBP architectural component debris and LBP demolition debris in today's proposed rule. LBP wastes, such as paint chips or paint dust, blast media, solvents or treatment residues are homogenous in physical characteristics, easy to test for toxicity using the TCLP, and are easily recognizable. Some of these wastes are more likely than LBP debris to consistently and significantly exceed the TCLP regulatory level for lead (see section B.3. of this unit for a discussion of dust and paint chips generated during demolitions). These wastes, because of their high lead concentration, may pose a higher risk of groundwater contamination than LBP debris if disposed of in nonhazardous solid waste (i.e., C&D) landfills. The analyses described in Unit VI. of this preamble did not study these types of concentrated lead-contaminated wastes. The focus of the Agency's risk analysis was LBP debris, as defined at § 745.303 of the regulatory text.

Given the smaller volume of these concentrated wastes, it is not extremely costly to manage them under RCRA Subtitle C. Also, the regulated community has not identified management and disposal of these wastes as a substantial cost factor in abatement projects. Thus, under today's proposal, waste of this nature would still be subject to RCRA regulations, and

if it fails the TCLP (i.e., exceeds the TC regulatory limit of 5 ppm for lead in TCLP Leachate) or is determined through knowledge to be hazardous, must still be managed as hazardous waste under RCRA Subtitle C. Public comment on this approach and data regarding disposal options for these wastes is encouraged.

2. *Heterogenous/incidental waste not covered.* Another category of waste not covered by today's proposal is heterogenous materials incidental to LBP activities. These wastes may include items such as contaminated HEPA vacuum filters, plastic sheeting, worker clothing, and equipment. These materials would remain subject to RCRA requirements under today's proposal. Because of the lower volume of these wastes, if they are determined to be hazardous, generators can manage and dispose of them without excessive costs. Public comment on this approach and data regarding disposal options for these wastes are encouraged.

3. *LBP demolition debris.* The definition of "LBP demolition debris" in today's proposal includes all materials that result from demolition of target housing, public buildings, or commercial buildings which are coated wholly or in part with or adhered to by LBP at the time of demolition. LBP demolition debris includes dust, paint chips, and other solid wastes which would not be covered under today's proposal if they were generated during a LBP activity other than demolition (for example, abatement or deleading). Quantities of LBP waste are small in proportion to the overall volume of unpainted waste generated during demolition activities. As described in Unit IV. of this preamble, in order to make a RCRA hazardous waste determination, the generator must obtain a representative sample of waste. In the case of demolition debris, a representative sample for a TCLP analysis would represent both painted and unpainted components in the proportion that they are present in the debris. A representative sample of demolition debris subjected to the TCLP, is not likely to exceed the TC regulatory limit for lead because of the small amount of paint in relation to the overall waste stream (Ref. 26). The Agency requests adequate scientific and historical data which would confirm anecdotal evidence that demolition debris never or almost never fails the TC regulatory level for lead.

Separation of dust, particulate matter, and paint chips from other demolition material is virtually impossible and the Agency believes that requiring such a separation would be impractical and

unnecessary. Therefore, all materials generated during demolitions, including dust, paint chips, or other particulate matter are included in the definition of demolition debris and, therefore, covered by today's proposal.

If LBP demolition debris fails the TC regulatory level for a hazardous constituent other than lead, it would remain subject to all applicable RCRA Subtitle C requirements. Thus, this proposed rule would not relieve a generator of LBP demolition debris from requirements related to other kinds of hazardous waste in the debris. He or she must still determine whether any of the regulatory levels for TC hazardous constituents (other than lead) are met or exceeded or if a listed hazardous waste is present.

Today's proposal includes management and disposal of LBP debris from demolitions. The Agency believes that demolition debris is identical to debris generated from other types of LBP activities such as abatements and renovations and that waste transporters and disposal facilities will not be able to distinguish LBP demolition debris from other LBP debris. The Agency requests relevant data and comments on the coverage of LBP demolition debris under today's proposal.

4. *LBP contaminated soil.* LBP contaminated soil is not included in the scope of this proposal and is not addressed in the proposed RCRA suspension of the TC with respect to LBP architectural components. The Agency has not extended this proposal to include LBP contaminated soil, because the analysis to support its inclusion does not exist at this time. Also, EPA believes that the disposal of LBP contaminated soil has already been addressed, for the most part, in the RCRA household waste exclusion.

When a homeowner or contractor removes LBP contaminated soil from residences, the LBP contaminated soil is eligible for the household waste exclusion under the existing RCRA hazardous waste rules if the LBP contaminated soil has been contaminated as a result of routine household maintenance or the weathering or chalking of the paint. EPA believes that this exclusion addresses the disposal of LBP contaminated soil in most instances. EPA is interested in receiving comments and information about the potential impacts of the current regulations and exemptions, as well as alternative approaches related to the disposal of LBP contaminated soil from residences. EPA is also interested in any information about the potential number of soil abatements and costs currently associated with the disposal of

LBP contaminated soil, whether or not the disposal is conducted pursuant to the RCRA exclusion. Because EPA's interim guidance for addressing LBP hazards recommends soil abatements under certain conditions, EPA is particularly interested in receiving comments on whether the completion and implementation of other lead rules promulgated under the LBP Hazard Reduction Act of 1992 or "Title X" (such as 403: Identification of Dangerous Levels of Lead (63 FR 30302, June 3, 1998) (FRL-5791-9); 402: LBP Activities Training and Certification (61 FR 45778, August 29, 1996) (FRL-5389-9); 406: Requirements for Lead Hazard Education before Renovation of Target Housing (63 FR 29908, June 1, 1998) (FRL-5751-7); 1018: Requirements for Disclosure of Known Lead Based Paint and/or Lead Based Paint Hazards in Housing (61 FR 9064, March 6, 1996) (FRL-5347-9)) would have an impact on the number of soil abatements.

As also indicated in the proposed RCRA Suspension of the TC for LBP Debris, the Agency does not currently have a sufficient technical basis for reducing the RCRA subtitle C requirements for LBP contaminated soil. In that proposal, EPA is seeking other data to determine whether there is a sound technical basis for reducing the subtitle C requirements that might apply to some soil removed from residences. (Comments on this issue should be submitted in accordance with the instructions in the RCRA proposal, found elsewhere in today's **Federal Register**). In addition, EPA is interested in receiving information or data on the fate of LBP contaminated soil in landfill environments.

C. What Activities Are Covered?

Today's proposed rule would cover: LBP architectural component debris generated during the following activities: abatement, deleading, renovation, and remodeling at target housing, public buildings, and commercial buildings; and LBP demolition debris generated by demolition of target housing, public buildings and commercial buildings that contain LBP at the time of demolition.

The Agency is including deleading, renovation, and demolition activities in the scope of today's TSCA proposal, because the LBP debris these activities produce is similar and in some cases identical to the LBP debris produced by abatement activities. The analyses conducted for today's proposal show no significant risk associated with disposal of LBP debris (from any activity or structure) in C&D landfills. These analytical conclusions (as discussed in

Unit VI. of this preamble) combined with EPA's desire to subject all LBP debris to one clear regulatory scheme resulted in the inclusion of LBP debris from renovation and remodeling, deleading and demolition activities under today's proposal. While the Agency feels that inclusion of these activities under the proposed standards is a logical decision, public comments on the inclusion of the activities and structures in today's proposal are encouraged.

1. *Catastrophic events.* Catastrophic events (such as fires, hurricanes, floods, tornadoes, earthquakes, etc.) may, in many cases, generate materials similar or identical to those from planned demolitions. Therefore, today's definition of LBP demolition debris includes debris generated by catastrophic events as well as by planned activities.

2. *Deconstruction.* Some stakeholders have brought an activity commonly referred to as "deconstruction" to the Agency's attention. Generally, deconstruction refers to the salvaging of building components by removing them prior to demolition or during remodeling and renovation. The goal of such salvaging is usually to resell the components for reuse. Anecdotal evidence leads the Agency to believe that deconstruction may be a fairly common practice in structures containing LBP architectural components (Ref. 27). LBP architectural components which are removed prior to a demolition, as part of a "deconstruction" or similar activity would be subject to today's proposal under the definition of renovation at § 745.303:

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in this section. The term renovation includes but is not limited to: the removal or modification of painted surfaces or painted components. . . .

Deconstruction or similar activities would result in the "disturbance" or "removal" of "painted structures" and therefore LBP debris generated during these activities would be subject to this proposal. It should be noted that reuse of LBP debris or transfer of LBP debris for reuse is permitted under this proposal provided that the components are not considered "LBP hazards" at the time of reuse or transfer. Reuse of LBP debris is discussed in more detail in Unit VII.G.1. of this preamble. EPA encourages recycling or reuse of waste products when such activities do not pose health threats.

D. Who Must Comply With This Proposal?

Firms and individuals who generate, store, transport, reuse, offer for reuse, reclaim, or dispose of LBP debris from activities which are covered by this proposal, explained in Unit VI.C. of this preamble, would have to comply with today's proposed regulations. Regulated entities include firms and individuals who offer to conduct, in whole or part, abatement, renovation, remodeling, deleading or demolition in target housing and public and commercial buildings for compensation.

Homeowners who perform abatement, renovation or remodeling work in their own homes are not subject to today's proposed regulations, unless the housing is occupied by persons other than the owner or the owner's immediate family. EPA recognizes, though, that not all abatements, renovation, and remodeling are performed solely by a home owner. In some cases a homeowner may hire a "handyman" to assist in conducting these activities. The Agency believes that the homeowner exclusion would not apply to "handymen" assisting the homeowner in the work unless the homeowner generates the majority of the LBP debris and serves as direct supervisor to the "handyman." EPA encourages comments on this topic as insufficient information is available to determine how often "handymen" are hired to assist in abatements, renovations and remodeling, how much LBP debris is generated by "handymen," and whether or not "handymen" should be subject to today's proposal.

Although homeowners are not subject to today's proposed requirements, EPA encourages homeowners performing work in their own home to follow the management requirements outlined in the proposal. The Agency believes that the management requirements in today's proposal reduce risks to LBP hazards, and homeowners following these management practices will be able to reduce LBP hazards in their home.

The proposal allows the disposal of debris in C&D landfills, as defined at § 745.303. Although these landfills are subject to the RCRA requirements in 40 CFR part 257, subparts A or B, the proposal does not require that, for purposes of these TSCA rules, the landfills in fact be in compliance with 40 CFR part 257, subparts A or B. Because EPA generally lacks the authority under RCRA to enforce the requirements at 40 CFR part 257, subpart A (44 FR 53438, September 13, 1979), EPA requests comment on

whether the final TSCA rule should specify that C&D landfills accepting LBP debris must be in compliance with 40 CFR part 257, subpart A or B.

Being in compliance would require adherence to all or a subset of the provisions in 40 CFR part 257 that are relevant to LBP debris. Examples include limiting access to the landfill and groundwater monitoring requirements. With TSCA authority, EPA would be able to enforce these requirements on any landfill that accepts LBP debris. EPA recognizes that many states already enforce 40 CFR part 257 requirements under their State RCRA programs. EPA expects that, even with Federal TSCA enforcement authority regarding the provisions of 40 CFR part 257, subpart A for C&D landfills accepting LBP debris, most enforcement actions for such landfills would be taken by states. If the proposed rule were modified to provide for Federal enforcement of RCRA 40 CFR part 257, subpart A requirements for C&D landfills accepting LBP debris, a necessary consequence is that, as part of a state approval process, EPA would evaluate each State's program to determine the adequacy of enforcement capability of state requirements that are at least as stringent as those found at 40 CFR part 257. EPA requests public comments on whether landfills that accept LBP debris and are found not to be in compliance with 40 CFR part 257, subpart A or B, should be subject to enforcement under TSCA. EPA would also like comment on whether enforcement of 40 CFR part 257, subpart A or B under TSCA would confuse and complicate the requirements for disposal of LBP debris. For example, a landfill owner or operator may become confused between the requirements under RCRA for landfills, and the requirements under TSCA for disposal, and inadvertently fall out of compliance from lack of understanding of the requirements for disposal of LBP debris. Finally, the Agency requests comment on whether imposition of TSCA enforcement on landfills that accept LBP debris would discourage or deter C&D landfill owners and operators from accepting this material.

E. When Does LBP Debris Become Subject to This Proposal?

In the case of LBP demolition debris, the proposal is designed to cover all material that is created by demolitions when LBP is present in the structure being demolished. The definition of LBP demolition debris at § 745.303 states:

LBP Demolition Debris means any solid material which results from the demolition of target housing, public buildings, or

commercial buildings which are coated wholly or in part with or adhered to by LBP at the time of demolition.

This definition subjects LBP debris generated by demolitions to the standards in this proposal as soon as a demolition occurs.

In the case of LBP architectural component debris, the definition at § 745.303 states:

. . . LBP architectural component debris is generated when an architectural component which is coated wholly or in part with or adhered to by LBP is displaced and separated from commercial buildings, public buildings, or target housing as a result of abatement, deleading, renovation or remodeling activities. . . .

This clause in the definition makes LBP debris subject to today's proposal when it is "separated" from a structure. In the context of this definition, "separated" does not necessarily imply that the component is taken out of the structure, although it may be. For example, doors detached from a structure and stacked inside that structure are considered to be "separated" from the structure. This definition is designed to require that the management controls in today's proposal (particularly access limitations where applicable) take effect as soon as LBP debris is generated.

Under this proposal, if a homeowner hires a individual or firm to perform any of the above activities and LBP debris is created, the individual or firm is considered to be the generator. In such cases, the individual or firm who generated the debris would be responsible for compliance with the requirements in today's proposal rather than the homeowner.

Any generator of LBP debris from the activities covered in this proposal may choose to separate components containing LBP from the rest of the waste stream. LBP debris separated from the rest of the waste stream would be subject to today's proposed standards. However, the remaining wastestream which does not contain LBP would not be subject to today's proposed standards. Although the Agency believes that complying with the requirements in today's proposal would generally be easier than separating LBP debris from the waste stream, the proposal gives the generator of LBP debris the flexibility to determine the best course of action for each individual activity.

During the development of this proposal, the issue of paint chips or dust generated incidentally during the transportation of LBP debris for disposal or reuse was raised. EPA believes that chips or dust generated during

transportation for disposal or reuse should be subject to the provisions of this proposal and disposed of as LBP debris. For example, if LBP debris is transported to a C&D landfill in a covered dumptruck, the whole load (including paint chips that fall off the LBP debris during transport) should be disposed of together. Similarly, chips and dust loosened from debris during storage in a dumpster or during transport is covered by today's proposal. Subjecting such incidentally-generated chips or dust to RCRA Subtitle C requirements would create an impractical waste management scenario requiring separation and TCLP testing of the waste after transportation to the LBP debris disposal site. Given the small volumes of such incidental chips and dust expected to be generated, EPA does not believe that there is any justification for regulation of such waste under RCRA.

The Agency considers chips and dust that fall off of LBP debris during storage and transport for disposal or reuse to continue to be LBP debris. Such waste would therefore be subject to today's proposal. The Agency is seeking comments or relevant data on this subject.

F. What Structure Types Are Covered?

Structures covered under today's proposal include target housing, public buildings, and commercial buildings. Covering target housing and other child-occupied facilities, such as day care centers in today's proposal is expected to reduce the risk of lead exposure to children, who are likely to spend a great deal of time in residences, schools, and day care centers. The term "child-occupied facility" was defined by EPA in the LBP certification and training rule (40 CFR 745.223). For the purposes of today's proposal, child-occupied facilities are considered to be a subset of public buildings and are covered by the definition of that term in today's proposal at § 745.303. Therefore, a separate definition for child-occupied facilities is not included in this proposal.

As noted in Unit VI.C. of this preamble, coverage of LBP debris from activities in structures which are not considered to be target housing or child-occupied facilities (i.e., many commercial buildings and public buildings) is not expected to result in as great a direct reduction of LBP risks to children. The Agency, however, wishes to provide one common sense regulatory scheme for the management and disposal of LBP debris with similar characteristics regardless of the structure from which the debris

originates. Having different management and disposal requirements for identical wastes would likely create enforcement problems as well as confusion for generators, transporters, and landfill facility operators.

LBP debris from only target housing, public buildings, and commercial buildings is included in today's proposal. However, the Agency believes the rulemaking should also cover housing excluded from the definition of target housing such as housing for the elderly, or persons with disabilities and "0 bedroom" dwellings such as dormitories and efficiencies, as well as post-1978 housing that may have LBP hazards. EPA thinks that LBP debris from these dwellings is identical to LBP debris for target housing, public buildings and commercial buildings. Additionally, individuals and firms receiving LBP debris may not be able to distinguish LBP debris from target housing versus LBP debris from non-target housing. In order to provide one common sense regulatory scheme and encourage the reduction of LBP hazards from all housing, the Agency would like to extend today's proposed standards to all housing. The Agency encourages comment on whether LBP debris from non-target housing should be subject to the same requirements as LBP debris in target housing.

The fact that structures other than target housing and child-occupied facilities often produce similar or identical LBP debris made extension of today's proposed standards to all such structures a logical decision. As noted in Unit VI. of this preamble, the analyses conducted for today's proposal show no significant risk associated with disposal of LBP debris (from any activity or structure) in C&D landfills, and, therefore, no need for the stringent and costly RCRA Subtitle C testing, management and disposal requirements. These factors have resulted in the inclusion of LBP debris from public buildings and commercial buildings under today's proposal. Public comment on the decision to cover LBP debris from public buildings and commercial buildings in today's proposal is encouraged.

EPA has not included debris generated during activities in steel structures and superstructures in this proposal. The wastes from steel structures and superstructures are fundamentally different than those from occupied structures. The Agency also believes that most large volume wastes from steel structures will be composed of and recycled as scrap metal and will therefore qualify for the scrap metal exemption from RCRA Subtitle C

requirements (see the RCRA proposed rule published elsewhere in today's **Federal Register** for a discussion of the scrap metal exemption). Even if steel structures and superstructures were covered by today's proposal, the concentrated LBP wastes resulting from deleading of such structures (paint chips, treatment residues, blast media, filters, etc.) would remain subject to RCRA requirements, including possible regulation as hazardous wastes. (See section B.1. of today's preamble). In addition, the risk analyses conducted for this proposal did not study the volume or other characteristics of debris from steel structures and superstructures (e.g., leachability of lead compounds present in the rust-inhibiting paints used on steel structures).

EPA requests comments on whether its assumptions regarding wastes generated at steel structures and superstructures are correct and on whether it is appropriate to exclude LBP debris from such structures from this proposal. To include debris from steel structures and superstructures in the final rule, EPA would need additional information regarding the character of wastes from such structures. The Agency encourages submission of relevant data on this subject.

G. What Are the Proposed Disposal and Reclamation Options for LBP Debris?

Section 745.309 of today's proposed rule requires that LBP debris be disposed in one of the following: (1) A construction and demolition landfill as defined at § 745.303; (2) a landfill subject to the requirements in 40 CFR part 257, subpart B, applicable to non-municipal, non-industrial, non-hazardous waste disposal units receiving conditionally exempt small quantity generated waste (as defined in 40 CFR 261.5); (3) a hazardous waste disposal facility permitted under 40 CFR part 270; (4) a hazardous waste disposal facility authorized to manage hazardous waste by a State that has a hazardous management program approved under 40 CFR part 271; (5) a hazardous waste treatment, storage and disposal facility that has qualified for interim status to manage hazardous waste under RCRA section 3005(e); or (6) RCRA hazardous waste incinerators subject to the requirements of 40 CFR part 60, subparts Cb, Eb, or part 63, subpart X.

These disposal options include all of the categories of solid waste landfills which were identified by the Agency as being safe for the disposal of LBP debris (see Unit VI. of this preamble for a discussion of the analytical basis for

these findings), as well as certain incinerators. Under the proposal, it would still be permissible to dispose of LBP debris in hazardous waste landfills regulated under Subtitle C of RCRA or equivalent State programs if the generator of the LBP debris wishes to do so, or if it is required under State law. Note that the proposal does not preclude the reclamation of lead from LBP debris in secondary lead smelters subject to 40 CFR part 63, subpart X requirements or the reclamation of energy, such as burning in waste-to-energy facilities operated subject to specified Clean Air Act requirements (discussed in Unit VII.G.2. of this preamble).

During the development of today's proposal, some State solid waste officials have raised the issue of separate cells within larger landfill facilities. The officials wanted to know if separate construction and demolition cells of larger non-C&D facilities would be acceptable options for the disposal of LBP debris under the proposed rule. The issue of separate cells of larger landfills is not specifically addressed in the regulatory text. Section 745.309(a)(1) identifies facilities which may accept LBP debris for disposal. If both the separate cell or unit of the larger facility satisfy any of the criteria for an acceptable landfill specified in § 745.309(a)(1), then LBP debris may be disposed in either the separate cell or that facility. For example, a separate cell for construction and demolition debris meeting the criteria specified in § 745.309(a)(1)(iii) within a hazardous waste disposal facility permitted under 40 CFR part 270 would likely be an allowable disposal site for LBP debris. On the other hand, a separate C&D cell within the physical or permitted area of a landfill not included in the proposal as a permissible disposal site for LBP debris (such as an MSWLF permitted under 40 CFR part 258) would not be an allowable disposal option unless the separate cell was permitted separately as a construction and demolition landfill.

H. What Controls on the Management of LBP Debris are Included in the Proposal?

In addition to the disposal and reclamation standards included in today's proposal, EPA is proposing controls on the management of LBP debris. EPA believes that LBP debris should be subject to common sense management standards in order to minimize risks. The management standards outlined below are designed to be as simple as possible while taking into account safety, effectiveness and

reliability. EPA believes improper reuse, storage or transportation of LBP debris constitute LBP hazards and has included controls on those activities in today's proposal.

To assess the need for management controls, the Agency took a number of steps. First, the Agency identified management alternatives or activities that are currently practiced or may be feasible. Second, the Agency determined whether any of these management practices might pose health risks, particularly from inhalation and direct ingestion of LBP. Third, the Agency ascertained whether practices which might pose health risks are already subject to regulation by EPA or other Federal agencies. Fourth, the Agency assessed whether management practices not subject to current regulation require controls to curb potential health hazards.

The Agency identified the following current or plausible practices as potential public health risks: (1) Application of LBP debris as mulch or wood chips or use of LBP debris as ground cover or for any landscaping purpose; (2) compacting or burying LBP debris for use as fill material, roadbed material, or for site leveling purposes; (3) reuse of LBP debris which has deteriorated paint; (4) reclamation through burning of LBP debris (whether for the purpose of reclamation of lead or reclamation of energy value) in facilities without controls on lead emissions; (5) transporting LBP debris in uncovered vehicles; and (6) storage of LBP debris without access limitations.

The application of LBP debris as mulch, ground cover, or topsoil or for site leveling, fill or roadbed material may cause health risks through ingestion of LBP, dust, or contaminated soil. Such an application is considered improper disposal under today's proposal. The shredding, compacting, burying, or chopping of LBP debris may also make it difficult to identify the presence of LBP, leading to unwitting handling of a potentially hazardous material. Therefore, today's proposal permits these types of applications only if LBP is removed from LBP debris prior to such applications. In cases where LBP is removed, all LBP must be removed (i.e., the level of lead on the substrate must be below 1 mg/cm²) prior to applying it to the ground. See § 745.301(d) of the regulatory text.

EPA is aware of several States, including Connecticut, New Hampshire, and New Jersey, that have similar regulatory prohibitions. Note that any paint chips, dust, or other stripping waste from LBP debris that may be generated during removal of LBP are

subject to RCRA requirements; chips or flakes that the generator does not contain may be considered illegal hazardous waste disposal under RCRA Subtitle C.

EPA is unaware of data on the prevalence and methods associated with application of LBP debris as landscape material, roadbed material or fill material. Such applications would constitute improper disposal under today's proposal, unless LBP is first removed. The Agency requests data and further information on these practices and encourages public comment on how these activities should be regulated in the final rule.

The remainder of this Unit addresses the management standards included in this proposal to address concerns about the practices noted above.

1. *Reuse of LBP debris: § 745.311(a).*

The Agency believes that current prevalent practice for managing LBP debris is landfill disposal. However, some LBP debris is being reused and transferred for reuse as architectural components, decorative pieces or in another manner. For the purposes of today's proposal, reuse means "to use again for any purpose other than reclamation or disposal." This definition is intended to capture all potentially hazardous reuses of LBP debris and subject them to the controls in today's proposal.

Reuse of architectural component debris may be a practice in historic building preservation or on occasions when homeowners are replacing hard-to-find doors, windows, or other components. Historic preservation projects have the goal of keeping properties intact, so LBP removal or covering of LBP with protective coating (encapsulation) may be a desirable abatement approach. Even so, there may be benefits to replacement in these properties, such as increased energy efficiency from replaced windows (Ref. 28). The Agency is aware of reuses of LBP debris ranging from the transfer of components for reuse within or between structures, and the application of unique items as decorative pieces or artifacts.

Reuse of LBP debris is not currently subject to Federal regulation. Today's proposal would permit reuse or the transfer for reuse of LBP debris as a building or structural component or artifact (defined in today's proposal at § 745.303) only if the article to be reused does not constitute a "LBP hazard" as defined in § 745.305 of today's proposed regulation. Section 745.305 states that reuse of components with deteriorated LBP is a LBP hazard. Today's proposal defines "deteriorated paint" as paint

that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component. Today's proposal would prohibit the reuse or transfer for reuse by individuals subject to the rule of components which are identified as LBP hazards at § 745.305 (i.e., components with deteriorated paint) as described above.

The Agency feels that reuse of components with any deteriorated paint would pose a LBP hazard, and should be prohibited unless LBP is first removed.

It is important to note that waste resulting from removal of LBP prior to reuse (e.g., paint chips, paint dust, treatment sludges, solvents and residues) is not covered by today's proposal and would remain subject to RCRA requirements. For example, a generator of such waste would have to make a hazardous waste determination, and if the waste was determined to be hazardous, it would be subject to RCRA Subtitle C requirements.

EPA is aware that the limitations on reuse of LBP debris included in today's proposal would not preclude all reuses of LBP debris. For example, reuse of LBP debris with no deteriorated paint would be permissible under the proposal. EPA considers the standards in today's proposal to be the minimum acceptable limitations on the reuse of LBP debris. Other approaches to the regulation of reuse of LBP debris were considered during the development of this proposal and have not been ruled out by EPA as possible components of a final regulation. The Agency seeks public comment on the prevalence and methods of reuse, the approach contained in this proposal, and other possible approaches to the issue as well as any unintended effects of this proposed rule on the reuse of architectural components.

Some stakeholders have expressed concern that reuse of LBP debris which has no deteriorated paint may pose a future LBP hazard. As noted above, such reuse would be allowed under the proposal, but the Agency is requesting comment on these provisions. Allowing such reuse would be in keeping with EPA's desire to encourage recycling of materials while continuing to protect human health. Perhaps the most relevant question for public comment on the subject is: Do the reuse standards proposed today adequately protect human health?

One possible alternative approach would be to require that warning labels be placed on all components which contain LBP and are destined for reuse. Another possible approach might be to prohibit reuse of all LBP debris

regardless of the condition of the paint, unless all LBP is removed. However, EPA does not believe that components with intact LBP necessarily represent LBP hazards, so such an approach may prohibit reuse of LBP debris which would not pose a hazard. EPA specifically seeks comment, however, on whether the reuse of LBP debris by a homeowner who is not advised of the presence of LBP should be considered a hazard, not because of the present condition of the paint but due to the possibility that an uninformed homeowner may sand or strip the LBP without taking proper precautions.

Many historic preservation projects reuse antique or historically significant architectural components. Since many of these components were created before 1978, they can contain a variable amount of LBP. The Agency is proposing that all LBP should be removed from architectural components which have deteriorated paint before the components are reused in order to reduce the spread of potential LBP hazards. Removal of LBP is especially important on friction or impact surfaces where paint is more likely to wear off, creating lead contaminated dust and exposing the layers of lead paint. The Agency defines "deteriorated paint" as paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

However, the Agency recognizes that in order to preserve as much of the original historic fabric and the historic character of the antiques or historical architectural components as possible, removal of all LBP may not be an option. Sometimes the architectural component is too fragile to undergo LBP removal or the process of removing the LBP may damage the design or ornate woodwork which makes the piece an antique or historically significant. The Agency requests information on whether, in these cases, encapsulation or other techniques not allowed under the proposed rule may be less invasive and a better restoration practice when preserving antique and historic architectural components. The Agency would also like information on relevant historic preservation practices used when restoring and fixing architectural components of antique or historic value with LBP.

Under the proposal, generators or transporters of LBP debris, or owners or operators of disposal facilities which accept LBP debris may not transfer LBP debris to entities (such as antique dealers or salvagers) which intend to reuse the debris or offer it for reuse if the LBP debris has deteriorated paint. For example, the proposal is designed to

prevent transfers of LBP debris with deteriorated paint from a generator to a business which then offers the debris for sale. Even though the business selling the LBP debris is not technically using it, the term "transferring for reuse" is defined in today's proposal to prevent generators, transporters, or others from transferring LBP debris with deteriorated paint which will ultimately be reused. Generators and transporters of LBP debris, owners or operators of disposal or reclamation facilities accepting LBP debris, or owners or operators of any enterprise which transfer LBP debris with deteriorated paint for reuse without first removing the LBP would not be in compliance with today's proposal. However, LBP debris may be transferred specifically for the purpose of LBP removal. For example, if a generator of a door with deteriorated LBP gave or sold the door to an individual who then reused it, the generator would be in violation of the transfer-for-reuse restrictions in today's proposal. Generators wishing to avoid this potential liability could remove the LBP prior to transfer of a component, could transport the LBP debris to a reclamation facility for removal of LBP or could decide not to transfer the component for reuse. If the generator transferred the door to a reclamation facility for removal of LBP before reusing or selling the door, the generator would be in compliance with today's rule. Once the LBP is completely removed from an architectural component (as described in § 745.301(d)) it is no longer considered LBP debris and is no longer subject to today's proposed regulations.

EPA is seeking public comment on the provision in today's proposal which would prohibit a generator or transporter from transferring LBP debris with deteriorated paint to antique dealers or other businesses or entities for reuse or to offer for reuse. EPA is concerned that the requirement may prevent transfers of debris to enterprises specializing in paint removal and restoration of building components with a historic value. The Agency would like to know what effect this provision might have on antique and salvaging businesses and what alternatives might be available which would also prevent the transfer of LBP hazards from one structure to another.

2. Reclamation: § 745.309(b).

Companies that reclaim lead waste (either for recovery of lead, or for energy combustion value) have voiced concerns to EPA that the provisions in today's proposed rule would discourage the reclamation of LBP debris by lowering landfill disposal costs. Today's

proposed standards would not preclude the reclamation of LBP debris for lead and/or energy recovery in facilities that meet Clean Air Act requirements. EPA wishes to stress that reclamation can be a viable alternative to landfill disposal and encourages this activity in situations where it is safe and practical. However, estimates have shown that currently, the costs (to a generator) of sending LBP debris to a reclamation facility can be comparable to the cost of disposal in RCRA Subtitle C facilities. Such high costs may lead generators to seek alternatives to reclamation of LBP debris. EPA encourages generators of LBP debris to identify reclamation facilities meeting the requirements described in this unit to determine the feasibility of reclamation as an alternative to disposal.

EPA is concerned about risk of lead exposure from the processing of LBP debris in smelters, combustors, and incinerators without proper controls on emissions. Burning of wooden LBP debris may allow energy recovery facilities or power plants to rely less on fossil fuels and virgin wood. Paint, as noted in a report prepared for EPA's Office of Air Quality and Planning and Standards, makes up a small percentage of the weight of painted wood, and metals (including lead) comprise only a fraction of this percentage (Ref. 29). However, burning or incineration of LBP debris may result in lead releases. Therefore, prior to accepting LBP debris for any of these activities, a facility should ensure that it will not be in violation of Clean Air Act permit conditions.

EPA has promulgated a national emission standard for hazardous air pollutants (NESHAP) that is based on the use of Maximum Achievable Control Technology (MACT) for meeting emission standards for lead compounds released from existing and new secondary lead smelters (40 CFR part 63, subpart X). EPA also has promulgated new source performance standards (NSPS) for new municipal waste combustor (MWC) units, and emission guidelines for existing MWC units, which establish emission limits for nine pollutants, including lead. (See 40 CFR part 60, subparts Eb and Cb, respectively; 60 FR 65389, December 19, 1995). New MWC units are those that either commenced construction after September 20, 1994, or commenced reconstruction after June 19, 1996; existing MWC units are those for which construction commenced on or before September 20, 1994. As a result of a recent Court of Appeals decision, 40 CFR part 60, subparts Cb and Eb apply only to MWC units with individual

capacity to combust more than 250 tons per day of municipal solid waste (large MWC's). See *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), amended 108 F.3d 1454 (D.C. Cir. 1997) (the Davis decision).

EPA believes that the NESHAP for new and secondary lead smelters, the NSPS emission standard for lead for large MWCs, and the lead emission guidelines for large MWCs are sufficient to ensure safe management of LBP debris in these facilities. Thus, EPA is proposing to prohibit burning of debris in any facility that does not meet the applicable Clean Air Act standards/guidelines for lead emissions set forth in 40 CFR parts 60, subparts Cb and Eb (as amended by the Davis decision) and part 63, subpart X. LBP debris would be allowed to be incinerated in industrial boilers and furnaces for energy recovery provided that boilers and industrial furnaces are subject to the RCRA 40 CFR part 266, subpart H requirements.

Today's definition of reclamation includes the practice of removing existing LBP from debris in order to reuse or recycle such debris. The Agency encourages the transport of LBP debris to reclamation facilities for removal of LBP before reuse of any components. Reclamation practices employed to remove existing LBP from a component include stripping, blasting, sanding, etc. Once debris has been entirely stripped of LBP as described in § 745.301(d), it would no longer be considered LBP debris, and therefore, would no longer be subject to the requirements in today's proposal. Wastes, such as sludges and concentrated LBP generated by the removal of LBP, continue to be subject to RCRA disposal requirements. Firms and individuals receiving LBP debris for reclamation would be subject to the storage and access limitations in §§ 745.311 and 745.313 of today's proposed rule.

3. *Transportation of LBP debris: § 745.308.* Shipping or transport of LBP debris in uncovered vehicles is a possible source of releases in the form of paint chips or dust. The U.S. Department of Transportation does not specifically regulate the transport of non-hazardous LBP debris. Many individual States or local authorities, however, have requirements for covering vehicles which carry debris or rubble of any kind.

Today's proposed rule would prohibit shipment of LBP debris off-site in vehicles without covers that prevent identifiable releases of material. Proper management requires the covering of vehicles or containers used for

transportation of LBP debris to minimize possible releases of particulate matter. Some practical approaches might include but are not limited to: transportation of LBP debris in a vehicle covered with secured tarp or plastic, transport in covered containers/drums, transport in covered dumpsters, or transport in covered mobile trailers.

Although LBP debris could under today's proposal be moved within a work site without using a covered vehicle, EPA encourages those managing LBP debris to keep LBP debris covered at all times including when moving LBP debris within a site in order to prevent the release of LBP chips, dust or debris.

The HUD "Guidelines for the Evaluation and Control of LBP Hazards in Housing" (hereafter referred to as the HUD Guidelines) recommend wrapping LBP debris in plastic upon generation, and through storage and shipment (Chapter 14) (Ref. 30). Although EPA does not feel that plastic wrap alone represents an adequate access limitation (see Unit VII.G.4. below) during storage, some stakeholders have suggested that plastic wrap used in accordance with the HUD Guidelines may present a satisfactory alternative to covering vehicles for transportation. Although wrapping LBP debris in plastic would not be an allowable transportation method under this proposal (unless the transport vehicle is also covered), the Agency is seeking comment on whether such wrapping would be sufficient to prevent releases of particulate matter during transport as well as on the cost of using plastic wrap. EPA particularly seeks comment from transporters on their experience in delivering plastic-wrapped debris to disposal facilities, and whether or not the plastic wrap is punctured during loading or transport.

4. Access and storage time limitations: § 745.311(b)—i. Access limitations. As explained in Unit V.F. of this preamble, the Agency considers improper management and disposal of LBP debris to be a LBP hazard. As discussed in detail earlier in Unit V.F. of this preamble, improper storage pending disposal of LBP debris can cause a LBP hazard by allowing the storage or deterioration of LBP in locations, such as uncontrolled waste piles, where it may be accessible to children or contaminate the soil. Therefore, EPA is proposing common sense access limitations for LBP debris, with the exception of LBP debris generated from demolitions, which is stored for more than 3 days (72 hours). The access limitations in today's proposal are designed to ensure safe

management of LBP debris while minimizing dispersal of and access to LBP debris by anyone other than persons performing work, or managing or otherwise needing access to the debris.

Under today's proposal, acceptable access limitations (described at § 745.311(b) of the regulatory text) include:

- Enclosing LBP debris in closed or covered receptacles (e.g., containers, drums, mobile trailers, covered dumpsters or covered transport vehicle.).
- Keeping LBP debris in a dumpster or container which is at least 6 feet tall.
- Keeping LBP debris in fenced areas that are locked when work activities are not being performed on the site.
- Keeping LBP debris in an unoccupied structure which is locked when work activities are not being performed on the site.
- Keeping LBP debris on an unoccupied level of a multi-story structure and keeping the level locked when work activities are not being performed on the site.

Access and storage limitations do not apply to debris which is reused in compliance with this rule. See Unit VII.G.1. entitled Reuse of LBP Debris for a detailed discussion of reuse.

Access limitations apply to LBP Architectural Component Debris (LBPACD) which is transferred for reuse but has not yet been reused. LBPACD must be stored in a fenced or enclosed area such as within a store or salvage yard and locked when not monitored. Cases where LBPACD have been transferred for reuse but have not yet been used include mantles, doors, windows, banisters, cabinets or any other type of LBPACD offered for sale in an antique store or a salvage yard. Once the LBPACD has been reused it is no longer subject to these access limitations.

While common sense dictates some degree of control on the storage of LBP debris, the Agency has attempted to identify logical measures which would impose the least burden while still taking into account safety, effectiveness, and reliability. For example, item b. above allows use of the standard type of large dumpster which is generally used at renovation or abatement projects which last more than a few days. The Agency encourages comments on current "real world" practices which may represent adequate access limitations, but are not included in this proposal. EPA does not want to preclude from a final rule any access limitations which may be appropriate

but have been inadvertently omitted from those being proposed today.

The Agency is exempting demolitions from access limitation requirements in this proposed rule. Many demolition projects require a permit issued by local governments which require some type of access limitations. In addition, EPA believes that demolitions, due to liability from other type of hazards such as falling debris, are required to prevent access to these hazards. In places where access limitations are not required by the permitter, EPA believes that the permitter would have sufficient justification, such as demolitions in remote areas, not to require these access limitations. Therefore, EPA is not requiring any further access limitations for demolitions. EPA encourages comments on the adequacy of the proposed access restrictions, the types of access requirements needed for obtaining a demolition permit, and whether demolition permits generally require access limitations.

Access limitations for LBP debris which are more stringent than the disposal requirements at C&D landfills are necessary for safety, effectiveness, and reliability. The Agency believes that most LBP debris is generated in residential areas where children and adults may have access to an uncontrolled LBP debris wastepile as opposed to C&D landfills which EPA believes are located in less populated areas. The Agency requests more information on controlling public access to and the location of C&D landfills.

LBP debris which is stored for less than 3 days is not required to have access limitations under today's proposal. This *de minimis* cut-off level is intended to allow small renovation and abatement projects to accumulate LBP debris prior to disposal without incurring the expense of implementing additional access limitations. While investigating the issue of access limitations, the Agency determined that as many as 51% of renovation and remodeling projects last less than 3 days (Ref 31). The Agency believes that the access limitations which are prescribed in today's proposal represent common practice in these smaller projects, and would not therefore impose significant additional costs.

The Agency is aware that alternative approaches to setting a *de minimis* level for requiring access limitations exist. Some alternative approaches might be based on: (1) The volume of waste produced; (2) square footage of paint surface disturbed; or (3) time limits other than 3 days. The Agency chose 3 days as the *de minimis* level for access limitations because it appeared to

represent a natural dividing line between smaller projects and projects which last significantly longer. EPA factored in the resources needed to implement access limitations for these smaller jobs and concluded that the costs associated with access limitations for short timeframes less than 72 hours outweighed the potential benefits. Risk-benefit analysis is the principle analytical tool available to the Agency to measure the effectiveness of using resources to reduce human health risks. EPA feels that the 72-hour threshold for access limitations represents a clear and logical standard for the regulated community to comply with and will be safe and effective. EPA solicits comment on this approach and suggested alternative approaches to establishing a *de minimus* exclusion for access limitations.

The Agency would like interested parties to comment on or submit data related to the appropriateness of the proposed access limitations. Specific design requirements for fencing or containers are not, with a few exceptions, detailed in today's proposal. The Agency believes that the general descriptions provided in the proposal are sufficient and would result in adequate access limitations; however comments or relevant data on alternative approaches including additional design criteria are encouraged.

ii. *Storage time limitations.* Today's proposal establishes a 180-day time limit on the storage of LBP debris. EPA believes that the access limitations in this proposal would minimize risk; however, access limitations can and do fail. The cumulative probability of access limitation failure increases the longer LBP debris is in storage. The management and disposal options for LBP debris presented in this proposal are numerous and inexpensive. Therefore the Agency believes that lengthy storage of LBP debris will be unnecessary. The 180-day time limitation for storage of LBP debris contained in today's proposal is the same as the minimum storage time limit for generators of between 100 and 1,000 kilograms of hazardous waste per month (51 FR 10148; March 24, 1986).

The storage time limit begins on the date of generation of the LBP debris. Transfer of LBP debris to a different storage site is permitted under the proposal, but the storage time limit remains 180 days from the date of generation regardless of the number of storage sites for any given LBP debris.

Situations may occur for which generation of LBP debris at one site occurs over an extended time period

and the debris is commingled (e.g., debris is disposed of in a dumpster at different times over a 90-day period). In such cases, the 180-day storage time limit would begin on the date that LBP debris was first generated, and that limitation would apply to all of the commingled LBP debris. EPA believes that 180 days provides an adequate amount of time to arrange for the transport and disposal of LBP debris but encourages public comment on the length of this proposed storage limitation.

5. *Size reduction/processing of LBP debris.* It is possible that a generator may need to chop, trim, or otherwise reduce in size LBP debris to fit it in storage containers, drums or transport vehicles. EPA believes there is the possibility of a release of dust, LBP chips, or particulate matter during this activity. Generators working where LBP is present should use processing or size reduction techniques that will control releases, such as use of a plastic contained area with a plastic floor, top and sides, or a mobile enclosure. As noted, previously, paint chips and dust generated during such activities are still subject to RCRA requirements under today's proposal and may be considered hazardous waste.

Today's proposal does not include standards regulating size reduction of LBP debris or other similar activities. The Occupational Safety and Health Administration (OSHA) Lead in Construction standards, however do apply to the following:

- Alteration, renovation, or repair of substrates containing lead.
- Removal of materials containing lead.
- Transportation, disposal, storage, or containment of materials containing lead on the site.
- Maintenance activities associated with the construction activities listed above.

The OSHA standard establishes maximum limits of exposure to lead for all workers covered, including a permissible exposure limit (PEL) and an action level. Under the standard, no employee may be exposed to lead at airborne concentrations greater than 50 g/m averaged over an 8-hour period (58 FR 26598; May 4, 1993).

EPA believes that compliance with the OSHA Lead in Construction standards represents sufficient controls on LBP debris size reduction activities and that additional regulation under today's proposal would be duplicative. The Agency requests comment, however, on whether TSCA standards for such activities are warranted.

I. What Are the Notification and Recordkeeping Requirements? § 745.313

In order to ensure that LBP debris is managed and disposed of properly, the Agency is proposing a requirement that when LBP debris is transferred from one party to another, the recipient should be notified in writing of the presence of LBP debris (§ 745.313(a)). The notification document should: (1) Disclose the presence of LBP debris; (2) indicate the date of generation of the LBP debris; (3) be signed and dated by the recipient; (4) be signed and dated by the transferor; (5) contain the generator's name and address; and (6) notify the recipient of the need to comply with LBP debris management and disposal standards. The proposal requires both parties (the transferor and the recipient) to any transfer of LBP debris to retain a record of the notification for 3 years (§ 745.313(b)).

LBPACD transferred for reuse, including components intended for sale, are also subject to notification and recordkeeping requirements at § 745.313. Notification requirements begin upon generation of the debris intended for reuse and terminate at the point at which the LBPACD is reused. For example, a salvage yard which sells LBPACD generated by an abatement, renovation, or demolition must notify, in writing, any purchaser or user of any LBPACD of the presence of LBP debris and keep records of the notification and transfer as required by this proposed rule § 745.313. Once the LBPACD is reused further notification is not required.

Without notification requirements, a recipient (e.g., transporter or owner/operator of a disposal facility) might unknowingly accept LBP debris and then violate the provisions of today's proposal by improperly managing or disposing of the material. For example, if a generator transferred LBP debris to a transporter for disposal without notifying the transporter of the presence of LBP debris, the transporter might not cover the vehicle or might dispose of the LBP debris in a facility not allowed to receive LBP debris under this proposal.

The effect of the notification requirement will be that each person who receives LBP debris for any reason would be aware that they are receiving LBP debris and will be referred to the requirements for LBP debris management and disposal in this proposal. Any person who manages LBP debris in compliance with this proposal, including proper notification, will generally be deemed to have fulfilled their responsibilities under the proposal. EPA would view any

noncompliance with the proposed requirements subsequent to a transfer (which included proper notification) to be the responsibility of the person who is not in compliance with the requirements, not of any person who had prior possession of the LBP debris. However, a party in prior possession may be in noncompliance if the party knew or had reason to know that the person receiving the LBP debris would not handle it properly. In addition, a generator who incorrectly determines that LBP debris is not present, would be liable for any and all subsequent violations of today's proposal.

EPA believes a recordkeeping requirement is a necessity from the standpoint of enforcement because it establishes a clear chain-of-custody. This would allow inspectors to identify and locate the generators and recipient(s) of LBP debris for

questioning and to gather further material evidence from them to aid an investigation, if necessary. In addition, the recordkeeping requirement would result in the retention of important evidence that is likely to be used should an enforcement action be necessary. The notification document contains information needed to establish a foundation for enforcement actions.

The Agency would like comment on whether there are less expensive or more efficient ways that maintain safety, reliability, and effectiveness of notifying and keeping records of LBP debris for transport and disposal than the one outlined in the proposal. An example of an alternative to the suggested paper notification and recordkeeping may be a system of notification and recordkeeping with electronic signature and storage. Any type of alternative notification and recordkeeping system

should: (1) Disclose the presence of LBP debris; (2) indicate the date that the LBP debris was generated; (3) be signed and dated by the recipient; (4) be signed and dated by the transferor; (5) contain the generator's name and address, and (6) notify the recipient of the need to comply with LBP debris management and disposal standards.

A sample notification which meets the requirements of proposed § 745.313 is included at the end of this unit. The sample is intended to serve as an example and does not represent the only format or wording that might meet the requirements of the proposal. The sample is not included in the regulatory text itself and nothing in the proposal would require the use of any specific form or format. Instead, the regulatory text, at § 745.313 contains the specific information which must be included in the notification.

SAMPLE NOTIFICATION

NOTIFICATION OF THE PRESENCE OF LBP DEBRIS

Lead Warning Statement

Lead from paint can pose health hazards if not managed, transported and disposed of properly. Lead exposure is especially harmful to young children and pregnant women. Before transferring LBP (LBP) debris to any party for any reason, transferors must notify recipients of the presence of LBP debris.

Notification of Presence of LBP Debris

LBP debris is present in the materials being transferred from

_____ (Transferor name) to _____ (Recipient name).

When Was this Lead-Based Paint Generated?

This LBP debris was generated on _____ (Date).

**Who Generated this Lead-Based Paint Debris?
(Name and Address of Generator)**

John Doe
1000 Main Street
Hope, Arkansas 12345

Requirements for the Management and Disposal of LBP Debris

LBP debris is subject to EPA regulations found at 40 CFR 745.301–745.319. See those regulations for further details. Requirements and restrictions on the MANAGEMENT OF LBP debris include the following:

- (1) LBP debris MUST BE COVERED when it is transported.
- (2) LBP debris stored for more than 72 hours after initial generation MUST HAVE ACCESS LIMITATIONS (except for demolition debris).
- (3) LBP debris MAY NOT BE STORED for more than 180 days after it is generated.
- (4) LBP debris with deteriorated paint MAY NOT BE REUSED or TRANSFERRED FOR REUSE.

Requirements and restrictions on the DISPOSAL OR RECLAMATION of LBP debris include the following:

- (1) LBP debris MAY NOT be disposed of in any landfill which accepts municipal or industrial waste.
- (2) LBP debris MAY ONLY be reclaimed, incinerated or recycled at facilities subject to the regulations specified at 40 CFR 745.309(b).

Transferor

Date

Recipient

Date

NOTE: Both parties (transferor and recipient) must keep a copy of this Notification for at least 3 years from the date it is signed.

VIII. State and Tribal Programs

This section outlines the State and Indian Tribe (including Alaskan Native Villages where appropriate) program approval process for today's proposed rule.

A. General

Section 404(a) of TSCA Title IV provides that any State which seeks to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 may submit an application to EPA for approval of such a program. TSCA section 404(b) states that EPA may approve such an application only after finding that: (1) The State program is at least as protective of human health and the environment as the Federal program; and (2) that the program provides adequate enforcement. Although TSCA does not specifically address Tribal lead programs; EPA is extending to Tribes the same opportunity as States to apply for authorization (see section G. of this unit for further discussion.)

EPA's final rule addressing LBP training and certification (61 FR 45778), outlined specific procedures for program approval under the authority of TSCA section 402 at 40 CFR 745.320. Today's proposed rule adopts a similar process with some alterations including specific requirements for LBP debris management and disposal program applications. A State or Tribe may apply for LBP debris management and disposal program authorization if it does not have an authorized LBP training and certification program.

Political subdivisions of States or Tribes (e.g., cities, towns, counties, etc.), are not eligible for authorization.

B. Submission of an Application

Under this proposal, before developing an application for authorization, a State or Indian Tribe would have to distribute publicly a notice of intent to seek such authorization and provide an opportunity for a public hearing. The State or Indian Tribe is free to conduct this hearing and provide an opportunity for comment in any manner it chooses. Upon completion of an application that reflects this public participation, the State or Indian Tribe may submit the application to the appropriate EPA Regional Office.

As proposed at § 745.344, an application for program authorization should include the following seven elements: (1) A transmittal letter from the Governor or Tribal Chairperson (or equivalent official); (2) a summary of the State or Tribal program; (3) a

description and analysis of the program; (4) a statement which identifies resources the State or Tribe intends to devote to the administration of its compliance and enforcement program; (5) a statement agreeing to submit to EPA the Summary on Progress and Performance of LBP debris management and disposal compliance and enforcement activities as described at § 745.355(b)(2); (6) an Attorney General or Tribal equivalent's statement attesting to the adequacy of the State or Indian Tribe's program authority; and (7) copies of all applicable State or Tribal statutes, regulations, standards and other materials that provide the State or Indian Tribe with the authority to administer and enforce a LBP debris management and disposal program.

Sections B.1., B.2., and B.3. of this unit outline the application elements.

1. *Program description: § 745.346.* A program application should contain information, specified in § 745.346, that describes the program. The program description is the portion of the application that the State or Indian Tribe will use to characterize the elements of their program. The Agency would use this information to make an approval or disapproval decision on a State or Indian Tribe's application. The program description contains four distinct sections (five in the case of Tribal applications).

In the first section (§ 745.346(a)), the State or Indian Tribe should list the name of the State or Tribal agency that will administer and enforce the program and the name of a contact at that agency, and if there will be more than one agency administering or enforcing the program, describe the relationship between or among these agencies.

Second (§ 745.346(b)), the State or Indian Tribe should demonstrate that the program has all of the required program elements specified in § 745.350. These elements represent the minimum elements or requirements a State or Tribal program should have to be considered for authorization.

Third (§ 745.346(c)), the application should provide an analysis of the entire State or Tribal program that describes any dissimilarity from the Federal requirements in §§ 745.301 through 745.319. The analysis should explain why, considering these differences, the State or Tribal program is at least as protective as the provisions outlined at §§ 745.301 through- 745.319 and provides adequate enforcement. The Agency would like to be as flexible as possible in reviewing applications which contain provisions different from the Federal requirements; however in such cases, the State or Tribe should

demonstrate in its program analysis that its program is at least as protective as the Federal program and provides for adequate enforcement. The Agency will use this analysis, along with its own comparison, to evaluate the protectiveness of the State or Tribal program.

Fourth (§ 745.346(d)), the State or Tribal application should demonstrate that the program meets the compliance and enforcement requirements at § 745.352. This section of the application is discussed in more detail in section H. of this unit.

In addition to the above, the program description for a Tribe should also include the information required by § 745.346(e) (special requirements for Tribal Program Descriptions).

2. *Attorney General's Statement: § 745.347.* The State or Indian Tribe should provide an assurance that it has the legal authority necessary to administer and enforce the LBP debris management and disposal program. The State or Tribal Attorney General (or equivalent Tribal official) should sign this statement.

3. *Public availability of application: § 745.344(c)-(d).* Section 404(b) of TSCA requires EPA to provide notice and an opportunity for a public hearing on a State or Tribal application for authorization. Accordingly, the Agency will publish in the **Federal Register** a notice announcing the receipt of a State or Tribe's application, a summary of the State or Tribal program (to be provided by the applicant (§ 745.344(b)(2))), the location of copies of the application available for public review, and the dates and times that the application will be available for public review. Individuals may at that time submit a request to the Agency for a public hearing on the State or Tribal application. It should be noted that this opportunity for public hearing is separate and distinct from the public comment, discussed in section B. of this unit, that the State or Indian Tribe should seek before preparing an application for program approval.

C. State Program Certification

Pursuant to TSCA section 404(a), at the time of submitting an application for program authorization, a State may also certify to the Administrator that the State program is at least as protective as the Federal program proposed at §§ 745.301 - 745.319 and that it provides adequate enforcement.

If this certification is contained in a State application, the program will be deemed authorized until/unless EPA disapproves the program's application or withdraws the program's

authorization. This certification should be contained in a letter from the Governor or the Attorney General, to EPA, and should reference the program analysis contained in the program description portion of the application as the basis for concluding that the State program is at least as protective as the Federal program and provides for adequate enforcement. If a State application does not contain such certification, the State program will be considered authorized only after EPA approves the State application.

This program certification provision is not available to Indian Tribes because Indian Tribes should first demonstrate to the Agency that they meet the criteria proposed at § 745.324(b)(4) for treatment in the same manner as a State (TAS). Although Indian Tribes may be able to demonstrate that they have been approved for TAS for another environmental program (satisfying two of the four TAS criteria), the Agency must make a separate determination that an Indian Tribe has adequate jurisdictional authority and administrative and programmatic capability regarding its LBP debris management and disposal program before it can determine that the Tribe should be treated in the same manner as a State. These criteria are discussed in greater detail in section F. of this unit.

TSCA section 404(b) limits Agency review of program applications to 180 days. EPA encourages States and Indian Tribes to submit their authorization applications as soon as possible after the final rule is promulgated. Because the Agency anticipates needing the full 180 days allowed under today's proposal to properly review and act on an application, States and Indian Tribes are strongly encouraged to work with the appropriate EPA Regional office to develop and submit a complete application before promulgation of the final rule.

D. EPA Approval

Within 180 days following receipt of a complete State or Tribal application, EPA will approve or disapprove the application. EPA will authorize a program only if, after notice and opportunity for public hearing, EPA finds that:

(1) The program is at least as protective of human health and the environment as the Federal program contained at §§ 745.301 - 745.319.

(2) The program provides adequate enforcement of the appropriate State or Tribal regulations.

The Agency will notify the State or Indian Tribe in writing of the decision. As described in proposed

§ 745.354(a)(4), upon authorization of a State or Tribal program, it will be unlawful under TSCA section 15 and section 409, for any person to violate, fail or refuse to comply with any requirements of such a program.

The Agency believes that TSCA section 404 and the decision criteria above give it reasonably broad latitude in approving or disapproving State and Tribal programs. EPA interprets the TSCA section 404(b) standard “. . . at least as protective as. . .” to mean that a program need not be identical to, or administered and enforced in a manner identical to, the Federal program for that program to be authorized. The Agency expects to receive applications for State and Tribal programs that will differ in some respects from the Federal program established in this proposed rulemaking. This is unavoidable (and even desirable) given the differences that undoubtedly exist between LBP debris management and disposal programs at the State and Tribal level. The Agency will make every attempt to accommodate these differences while following the statutory requirement of ensuring that every State or Tribal program is at least as protective as the Federal program and provides for adequate enforcement.

1. *Establishment of the Federal program.* If a State or Indian Tribe does not have a program authorized under this proposed rule and in effect by the date that is 2 years from the promulgation date of the final regulation, EPA will, as of such date, establish the Federal program under 40 CFR part 745, subpart P in that State or Indian Country.

Although the definition of Indian Country is contained in a criminal statute, 18 U.S.C. 1151 (1994), it “generally applies as well to questions of civil jurisdiction.” *DeCoteau v. District County Ct.*, 420 U.S. 425, 427 n. 2 (1975). In addition, several cases have interpreted its scope, including the Supreme Court's recent decision, *Alaska v. Native Village of Venetie*, No. 96-1577, 1998 U.S. LEXIS 1449 (S.Ct. February 25, 1998) finding that an Alaska Native Village's lands held in fee simple were not Indian country; *Solem v. Bartlett*, 465 U.S. 463 (1984).

2. *EPA overfiling authority.* The Agency reserves the right to bring an enforcement action against a violator if a State or Indian Tribe fails to impose the proper penalty against a violator. However, before doing so, the Agency will notify the State or Indian Tribe in writing of its failure to impose the appropriate penalty. The State or Indian Tribe will have 30 days from receipt of such notice from the Administrator to

adjust the improper penalty amount. In the event that the State or Indian Tribe fails to rectify the situation, the Agency may issue an administrative penalty order against the violator with the appropriate penalty amount. In addition, if a State or Indian Tribe fails to bring an action against a violator, then the Agency has the authority to commence the appropriate action after giving the State 30 days notice to bring an action against the violator.

E. Withdrawal of Authorization: § 745.356

As required by section 404 of TSCA, if a State or Indian Tribe is not administering and enforcing its authorized program according to the standards, regulations, and other requirements of TSCA Title IV, including section 404(b)(1) and (b)(2), the Agency will so notify the State or Indian Tribe. If corrective action is not completed within a reasonable time, not to exceed 180 days, EPA will withdraw authorization of such program and establish a Federal LBP debris management and disposal program pursuant to TSCA Title IV in that State or Tribal land. Procedures for withdrawal of authorization can be found at § 745.356 of the regulatory text.

F. Model State and Tribal Program

Section 404(d) of TSCA directs the Agency to promulgate a model program that may be adopted by any State or Tribe that seeks to administer and enforce a LBP debris management and disposal program. For the purposes of this proposal, the Federal requirements at proposed §§ 745.301 through 745.319 serve as the model State and Tribal program.

G. Tribal LBP Debris Management and Disposal Programs

Today's action proposes a system that would provide Federally-recognized Indian Tribes the opportunity to apply for program authorization in a manner similar to States. Providing Indian Tribes with this opportunity is consistent with EPA's Policy for the Administration of Environmental Programs on Indian Reservations (hereinafter referred to as EPA's Indian Policy). This policy, formally adopted in 1984 and reaffirmed on March 14, 1994, by the Administrator, “. . . view[s] Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace,” consistent with Agency standards and regulations.

A major goal of EPA's Indian Policy is to eliminate statutory and regulatory barriers to Tribal administration of Federal environmental programs to the greatest extent possible. Today's proposal represents another step in the Agency's continuing commitment toward achieving this goal. However, EPA recognizes that some eligible Indian Tribes may choose not to apply for program authorization. Regardless of the choice made by a Tribe, the Agency remains committed to providing technical assistance and training when possible to Tribal entities as they work to resolve their LBP management and disposal concerns.

1. *EPA's authority to review and approve Tribal LBP debris management and disposal programs.* EPA believes it has adequate authority under TSCA to allow Indian Tribes to seek LBP debris management and disposal program authorization. EPA's interpretation of TSCA is governed by the principles of *Chevron, Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Where "Congress has not directly addressed the precise question at issue" in a statute, *Id.* at 843, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* at 844. Interpreting TSCA to allow Indian Tribes to apply for program authorization satisfies the Chevron test.

TSCA, including sections 402 and 404, does not explicitly define a role for Indian Tribes. Therefore, Congress did not directly address the precise question at issue. Indian Tribes' status as sovereign governments, see, e.g., *Worcester v. Georgia*, 31 U.S. (10 Pet.) 515 (1832); *United States v. Wheeler*, 485 U.S. 313 (1978), precludes the operation of State law within Tribal jurisdictions except in very limited circumstances. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). There is no indication in TSCA or its legislative history that Congress intended to abrogate any sovereign Tribal authority by extending State jurisdiction into Indian Country. The Supreme Court has stated that the "choice between [possible statutory constructions] must be dictated by a principle deeply rooted in this Court's Indian jurisprudence: statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *County of Yakima v. Yakima Indian Nation*, 502 U.S. 251, 268 (1992). Further, any statutory limitations on Tribal sovereignty must be stated explicitly. *Santa Clara Pueblo v. Martinez*, 436

U.S. 49 (1978); *Montana v. Blackfeet Indian Tribe*, 471 U.S. 759 (1985) (Congressional intent must be "unmistakably clear"). In addition, the Supreme Court has consistently admonished that Federal statutes and regulations relating to Tribes and Tribal activities must be construed generously in order to comport with traditional notions of Indian sovereignty and with the Federal policy of encouraging Tribal independence. *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832, 846 (internal quotations, ellipsis and brackets removed).

A recent decision of the U.S. Court of Appeals for the D.C. Circuit found that RCRA did not authorize EPA to review and approve certain Tribal solid waste programs in the same manner as States. *Backcountry Against Dumps v. EPA*, 100 F.3d 147 (9th Cir. 1996). In that case, the court found under the first step of the Supreme Court's analysis in *Chevron*, that RCRA was "neither silent nor ambiguous" on the role of Tribes. *Id.* at 151. The inclusion of Indian Tribes in the definition of "municipality" and the absence of Indian Tribes from the definition of "State" precluded EPA from interpreting RCRA section 4005(c)(1)(C) to authorize review and approval of Tribal programs. *Id.*

Importantly, however, the court noted that "if Indian Tribes were not defined anywhere in the statute . . . we would move to Chevron's second step." *Id.* Because Indian Tribes are not defined or even mentioned in TSCA, *Backcountry Against Dumps* supports EPA position that the Agency may, under step two of *Chevron*, adopt a reasonable interpretation of TSCA.

The D.C. Circuit held up *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981), as an example of such a case. *Backcountry* at 151. The *Nance* court recognized the reasonableness of EPA's actions in filling regulatory gaps on Indian Country. In *Nance*, the U.S. Court of Appeals for the Ninth Circuit upheld EPA's regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian Country under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act similar to the manner in which States could redesignate other lands. The Court found that EPA could reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian Country from the redesignation process. *Nance*, 645 F.2d 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities in Indian Country. *Id.* at 714.

Interpreting TSCA to allow EPA to review and approve Tribal LBP debris management and disposal programs is reasonable. Today's proposed rule is analogous to the rule upheld in *Nance*. Failure to authorize Tribal LBP debris management and disposal programs would deny Indian Tribes the option available to States to administer their programs in lieu of the Federal program. As with the redesignation program at issue in *Nance*, this proposal, however, would enable the most direct regulation of LBP debris management and disposal in Indian Country. Today's proposed rule would conform with the Congressional intent that the local sovereigns with program and enforcement authority--the States and Tribes--rather than the Federal government regulate. Approving Tribal regulation by eligible Tribes in lieu of Federal regulation also follows general principles of Federal Indian law and the Agency's Indian Policy. EPA believes that allowing Indian Tribes to apply for program authorization is consistent with the sovereign authority of Indian Tribes. EPA also has allowed Indian Tribes to seek program approval despite the lack of an explicit Congressional language in the past. (61 FR 45778, August 29, 1996 and 55 FR 30632, July 26, 1990) *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981) and (CAA PSD Program). Furthermore, EPA has broad expertise in reconciling Federal environmental and Indian policies. *Washington Dept. of Ecology v. EPA*, 752 F.2d 1465, 1469 (1985).

For a more detailed discussion of EPA's authority to treat Tribes in the same manner as States under TSCA, see 61 FR 45778, 45805-07, August 29, 1996, LBP activities.

2. *Tribal eligibility requirements.* Under several environmental statutes, including the Clean Water Act (CWA), and the Safe Drinking Water Act (SDWA), Congress specified certain criteria for EPA to determine whether it may treat an Indian Tribe in the same manner as a State. These criteria generally require that the Indian Tribe:

- Be recognized by the Secretary of the Interior.
- Have an existing government exercising substantial governmental duties and powers.
- Have adequate civil regulatory jurisdiction over the subject matter and entities to be regulated.
- Be reasonably expected to be capable of administering the Federal environmental program for which it is seeking approval.

EPA proposes to require Indian Tribes seeking program authorization and grants under TSCA section 404 to demonstrate in the program description

that they meet the four criteria listed above. The Agency has simplified its process for determining Tribal eligibility to administer environmental programs under several other environmental statutes (59 FR 64339; December 14, 1994). The proposed process for determining eligibility for TSCA section 404 programs parallels the simplification rule. Generally, the fact that an Indian Tribe has met the recognition or governmental function requirement under another environmental statute allowing for Tribal assumption of environmental programs (e.g., the CWA, SDWA, CAA) will establish that it meets those particular requirements for purposes of TSCA section 404 authorization. To facilitate review of Tribal applications, EPA requests that the Indian Tribe demonstrate that it has been approved for "TAS" (under the old TAS process) or been deemed eligible to receive authorization (under the simplified process) for any other program.

If an Indian Tribe has not received TAS approval or been deemed eligible to receive authorization, the Indian Tribe must demonstrate, pursuant to § 745.324(b)(5)(ii), that it meets the recognition and governmental function criteria described above. A discussion on how to make these showings can be found at 59 FR 64339, December 14, 1994.

EPA believes, on the other hand, that the Agency must make a separate determination that an Indian Tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each Tribal LBP debris management and disposal program. To have its LBP debris management and disposal program authorized by EPA under today's proposed rule, an Indian Tribe would need adequate authority over the regulated activities.

EPA proposes to require under § 745.346(e) that Indian Tribes provide a discussion of their jurisdiction to run a LBP debris management and disposal program. The Tribe should include copies of all documents, such as treaties, statutes, executive orders, constitutions, bylaws, charters, codes, ordinances, and/or resolutions which support the Indian Tribe's assertions of jurisdiction. EPA will review this documentation and comments submitted by appropriate governmental entities during the public comment period, and then will make a determination whether the Tribe has adequately demonstrated its jurisdiction over LBP debris activities in Indian Country. The Indian Country standard provides the guideline of the areas over

which a Tribe may demonstrate jurisdiction for purposes of Tribal programs. EPA, however, will not rely solely on the Indian Country standard, but will consider, on a case-by-case basis whether a Tribe has demonstrated its jurisdiction over LBP debris management and disposal in particular areas under principles of Federal Indian law.

The jurisdiction of Indian Tribes generally extends "over both their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975). However, Indian reservations may include lands owned in fee by nonmembers. "Fee lands" are privately owned by nonmembers and title to the lands can be transferred without restriction. The Supreme Court, in *Montana v. U.S.*, 450 U.S. 544, 565-66 (1981) noted that Tribes may have authority over nonmember activities on reservation fee lands in certain circumstances, including when the nonmember conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Indian Tribe."

The Supreme Court in several cases since *Montana* has explored several criteria to assure that the impacts upon Indian Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*. To date, however, the Court has not agreed in a case on point on any one reformulation of the test. In response to this uncertainty, in 1991 EPA decided in the context of a regulation under the CWA that it would apply a more rigorous formulation of the *Montana* test, establishing an "operating rule" that requires Tribes seeking eligibility to set water quality standards governing activities of nonmembers on fee lands to show that the effects are "serious and substantial" (56 FR 64878). EPA noted that "[t]he choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard per se." Since 1991, however, the Supreme Court has reaffirmed *Montana's* impacts test verbatim without addressing the need for "serious" or "substantial" impacts. e.g., *Strate v. A-1 Contractors*, 117 S. Ct. 1404 (1997); *South Dakota v. Bourland*, 508 U.S. 679 (1993). While it appears that the *Montana* test may not require "serious and substantial" impacts, for the time-being, as a matter of prudence, EPA will continue to look to see whether such impacts exist when evaluating Tribal authority over LBP debris activities under the *Montana* test.

In *Strate*, 117 S.Ct. at 1414, the Supreme Court made clear that *Montana* remains the controlling standard for evaluating Tribal authority over nonmember activities on fee lands. The Court emphasized in *Strate* that the purpose of *Montana's* impacts test is to ensure that Tribes retain their powers of self-government. EPA believes that protecting the public through environmental protection programs from serious and substantial effects on health and welfare is a core governmental function whose exercise is critical to self-government. (see 56 FR 64879).

Whether an Indian Tribe has jurisdiction over activities of nonmembers on fee lands, will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances and will likely vary from Indian Tribe to Indian Tribe. The Agency believes, however, that the activities regulated under the various environmental statutes, including TSCA, generally have the potential for direct impacts on human health and welfare that are serious and substantial. See 56 FR 64878.

The process that the Agency will use for Indian Tribes to demonstrate their authority over nonmembers on fee lands includes a submission of a statement pursuant to §§ 745.346 and 745.347 explaining the legal basis for the Indian Tribes' regulatory authority. The Indian Tribe must explicitly assert and demonstrate jurisdiction, i.e., show that LBP debris management and disposal activities conducted by nonmembers on fee lands could have impacts on the health and welfare of the Indian Tribe and its members that are serious and substantial. The Tribal submission should make a showing of facts that there are or may be activities regulated under TSCA Title IV by nonmembers on fee lands within the territory for which the Indian Tribe is seeking authorization, and that the Indian Tribe or Tribal members could be subject to exposure to LBP hazards from such activities through, e.g., dust, soil, air, and/or direct contact.

As noted above, the Supreme Court emphasized in *Strate* that the purpose of the *Montana* test is to ensure that Tribes retain their powers of self-government. While EPA believes generally that protecting Tribal health and welfare from serious and substantial environmental effects is essential to Tribal self-government, the Tribal submission should also discuss the extent to which Tribal implementation of the LBP debris management and

disposal program over nonmembers on fee lands is essential to Tribal self-government. However, EPA will also rely on its generalized findings regarding the relationship of LBP activities and related hazards to Tribal health and welfare.

Appropriate governmental entities (e.g., an adjacent Indian Tribe or State) will have an opportunity to comment on the Indian Tribe's jurisdictional assertions during the public comment period prior to EPA's action on the Indian Tribe's application.

The Agency recognizes that jurisdictional disputes between Indian Tribes and States can be complex and difficult and that it may, in some circumstances, be most effective to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of human health and the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

Finally, capability is a determination that will be made on a case-by-case basis. Ordinarily, the information regarding programmatic capability provided in the application for program approval submitted under proposed §§ 745.350 and 745.352 will be sufficient. Nevertheless, EPA may request, in individual cases, that the Indian Tribe provide a narrative statement or other documents showing that the Indian Tribe is capable of administering the program for which it is seeking approval. See 59 FR 64341.

Consistent with the simplification rule, no pre-qualification process will be required for Indian Tribes to obtain program approval for the LBP debris management and disposal program. EPA will evaluate whether Indian Tribes have met the four eligibility criteria listed above during the program approval process.

H. Enforcement and Compliance Provisions

1. *General.* As noted above, before approving a State or Tribal application for authorization to run a LBP debris management and disposal program, the Agency is required to determine that a State or Tribe will provide for the adequate enforcement of its regulations.

The Agency has developed, at proposed § 745.352, minimum requirements that a State or Tribal LBP debris management and disposal compliance and enforcement program should meet in order to receive authorization. The Agency believes that

a State or Indian Tribe that develops an enforcement program based on these requirements would provide "adequate enforcement" as that term is used in TSCA section 404(b)(2).

These requirements were developed based on the Agency's experience evaluating and approving other State and Tribal compliance and enforcement programs, as well as the Agency's experience in enforcing its own regulations. These requirements are also generally consistent with those found in the LBP certification and training rule (61 FR 45778, August 29, 1996). Further, the Agency's own compliance and enforcement program for these LBP debris management and disposal regulations will contain most of the elements described at § 745.352.

The compliance and enforcement portion of a State or Tribal LBP debris management and disposal program application should be submitted simultaneously with the other required elements. Today's proposal does not provide separate or interim approval procedures for compliance and enforcement portions of State or Tribal applications. This represents a notable distinction between the compliance and enforcement components in today's proposal and those found in the LBP certification and training rule. The Agency believes that because LBP debris is currently regulated by many authorized State RCRA programs, most States already have the necessary infrastructure in place to administer and enforce a LBP debris management and disposal program. In comparison, relatively few States had LBP certification and training programs in place at the time of the promulgation of that rule (August 29, 1996). EPA believes that the compliance and enforcement application procedures in today's proposal are simpler and will be easier to complete than those in the LBP certification and training rule. Comments from States and Tribes on this issue are encouraged.

Approval will be given to any State or Indian Tribe which has in place all of the elements of proposed § 745.352, provided the program is also found to be "at least as protective as" the Federal program. If a State or Indian Tribe does not have a LBP debris management and disposal program authorized by the Agency within 2 years after final promulgation of the LBP Debris Management and Disposal Rule, the Agency will enforce the provisions at proposed §§ 745.301 through 745.319 as the Federal program.

In order for a LBP debris management and disposal compliance and enforcement program to be considered

adequate for approval, the State or Indian Tribe should certify it has the legal authority and ability to immediately implement the elements at proposed § 745.352. States or Indian Tribes should submit copies of all applicable State or Tribal statutes, regulations, standards and other material that provide the State or Indian Tribe with authority to administer and enforce the lead debris compliance and enforcement program, and copies of the policies, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established at proposed § 745.352.

Finally, the State or Indian Tribe must agree to submit to EPA the Summary on Progress and Performance as described at § 745.355(b)(2). This report should be submitted to EPA by the primary agency for each authorized State or Indian Tribe beginning 12 months after the date of program authorization. Each authorized program will be required to submit the report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. The report should be submitted at least once every 12 months for the first 3 years after program approval. As long as these reports indicate that the authorized program is successful, the reporting interval will automatically be extended to every 2 years. If the reports demonstrate problems with implementation, EPA will revert to annual reporting in order to assist the State or Indian Tribe in resolving the problems. These programs will return to biannual reporting after demonstration of successful program implementation.

2. *Required enforcement and compliance elements.* The remainder of this Unit describes in more detail the required enforcement and compliance elements at proposed § 745.352. Section 745.352 "State and Tribal Compliance and Enforcement" requires that a State or Indian LBP debris management and disposal program should at a minimum have the compliance and enforcement elements discussed below.

i. *Authority to enter (§ 745.352(a)(1)).* State or Tribal officials should be able to enter premises or facilities where LBP debris management or disposal violations may occur. A State or Tribe must be able to subpoena any person who has possession of records or reports pertaining to LBP debris to produce such documents; in addition, a State or Tribe must be able to compel the appearance of any person to testify concerning any matter relating to LBP debris. A State or Tribe must also designate a judicial body that will have the authority to hold any person in

contempt who fails or refuses to obey such a duly issued subpoena. They should have the authority to take samples, if necessary, as part of the inspection process. A State or Indian Tribe should have the authority to seek a warrant if access is denied to inspect any place or vehicle.

ii. *Flexible remedies* (§ 745.352(a)(2)). State or Tribal LBP debris management and disposal programs should provide for a diverse and flexible array of enforcement remedies, which must be reflected in a Standard Enforcement Response Policy. A LBP debris management and disposal program should be able to select from among the available alternatives an enforcement remedy that is particularly suited to the gravity of the violation, taking into account potential or actual risk, including:

- Warning letters, or notices of noncompliance, or notices of violation, or the equivalent.
- Administrative or civil actions (e.g., administrative or civil penalty assessment).
- Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.

The Agency understands that Indian Tribes may have restrictions on their ability to levy criminal sanctions. e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); 25 U.S.C. 1302(7). This limitation will not necessarily have a negative impact on the ability of an Indian Tribe to receive program authorization. The Indian Tribe should, however, explain in its application the nature and extent of any limitation on its ability to levy criminal sanctions.

The Agency realizes that requiring Indian Tribes to demonstrate the same criminal authority as States might effectively prohibit any Indian Tribe from obtaining program authorization. The Agency, in Unit VII.F. of this preamble has stated that Indian Tribes are not required to exercise comprehensive criminal enforcement jurisdiction as a condition for LBP debris management and disposal program authorization. Under this proposal, Indian Tribes are required to provide for the timely and appropriate referral of criminal enforcement matters to the EPA Regional Administrator when Tribal enforcement authority does not exist or is not sufficient. Section 745.352(b) of today's proposal requires that such procedures be established in a formal Memorandum of Agreement with the Regional Administrator. This approach is the same as that which the Agency has taken in the context of Tribal programs under the Safe Drinking

Water Act and the Clean Water Act. EPA emphasizes that this referral mechanism is not available where limitations on Tribal enforcement arise under purely Tribal law, for example, the Tribal constitution or statutes. It should be further noted that, as in authorized States, EPA retains the authority to take enforcement action if an authorized Indian Tribe does not (or cannot) take such action or fails to enforce adequately.

iii. *Training for compliance and enforcement personnel* (§ 745.352(a)(3)). A LBP debris management and disposal program should offer training for compliance/enforcement personnel to ensure that the personnel are well trained. Enforcement personnel should understand case development procedures and the maintenance of proper case files. Inspectors should successfully demonstrate knowledge of the requirements of the particular discipline for which they have compliance monitoring and enforcement responsibilities. Inspectors should also be trained in violation discovery, evidence gathering, preservation of evidence and chain-of-custody, and sampling procedures. Instruction should take the form of both hands-on or on-the-job training and the use of prepared training materials. A State and Tribal LBP debris management and disposal program should also implement a process for continuing education of enforcement and inspection personnel.

iv. *Compliance assistance* (§ 745.352(a)(4)). LBP debris management and disposal compliance and enforcement programs should provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with the State or Indian Tribe's LBP debris management and disposal program(s).

v. *Sampling techniques* (§ 745.352(a)(5)). A State or Tribal compliance and enforcement program should show that the State or Indian Tribe is technologically capable of ensuring compliance with LBP debris management and disposal compliance and enforcement program requirements. As a result, an authorized program should have access to the facilities and equipment necessary to conduct the proper analysis of samples gathered from inspections of sites such as waste facilities, reclamation facilities, and vehicles. A State or Indian Tribe should use a laboratory facility as defined at 40 CFR 745.223 or implement a quality assurance program that ensures appropriate quality of laboratory

personnel and protects the integrity of analytical data.

vi. *Handling tips and complaints* (§ 745.352(a)(6)). An authorized LBP debris management and disposal program should have a method in place to respond to tips from the general public. The compliance and enforcement program should demonstrate the ability to process and react to tips and complaints or other information indicating a violation. EPA expects that the ability to process and react to tips and complaints would, as appropriate, include:

- A method for funneling complaints to a central organizational unit for review.
- A logging system to record the receipt of complaints and to track the stages of a follow-up investigation.
- A mechanism for referring complaints to the appropriate investigative personnel.
- A system for allowing a determination of the status of cases and ensuring correction of any violations.
- A procedure for notifying citizens of the ultimate disposition of their complaints.
- A procedure to conduct swift preliminary investigations of complaints, especially those that allege serious threats to public safety and the environment.
- A pledge of confidentiality to all informants, to encourage members of the public to come forward with tips and complaints.

vii. *Targeting inspections* (§ 745.352(a)(7)). LBP debris management and disposal compliance and enforcement programs should demonstrate the ability to target inspections to ensure compliance with the LBP debris management and disposal program requirements.

viii. *Follow-up to inspection reports* (§ 745.352(a)(8)). A State or Indian Tribe should develop a quick turnaround time to review and follow-up on identified violations and information that are gathered from inspections. Such information should be processed within a reasonable time to avoid risks associated with a stagnant investigation. The State or Indian Tribe should be in a position to ensure correction of violations, and, as appropriate, develop and issue enforcement remedies/responses in follow-up to the identification of violations.

ix. *Compliance monitoring and enforcement* (§ 745.352(a)(9)). A compliance and enforcement program should ensure correction of violations, and encompass either planned and/or responsive lead hazard reduction inspections and development/issuance

of State or Tribal enforcement responses which are appropriate to the violations.

x. *Tribal memorandum of agreement (MOA)* (§ 745.352(b)). Indian Tribes should enter into an MOA with the appropriate EPA Regional Administrator regarding criminal enforcement. The MOA should be executed by the Indian Tribe's counterpart to the State Director; e.g., the Director of Tribal Environmental Office, Program or Agency. The MOA should include a provision for timely and appropriate referral to the Regional Administrator of criminal enforcement matters for which the Indian Tribe does not have authority.

3. *Summary on progress and performance.* An authorized State or Indian Tribe should provide periodic reports to EPA as specified in § 745.355(b)(2). Section 745.355(b)(2) requires authorized States or Indian Tribes to submit a report which summarizes the results of implementing the State or Indian Tribe's LBP debris management and disposal compliance and enforcement program, including: (1) A summary of the scope of the regulated community within the State or Indian Tribe; (2) the inspections conducted; (3) Enforcement actions taken; (4) compliance assistance provided; and (5) the level of resources committed by the State or Indian Tribe to these activities and any other LBP debris management and disposal administrative and compliance/enforcement activities.

The report should describe any significant changes in the enforcement of the State or Tribal LBP debris management and disposal program implemented during the last reporting period. The report should also summarize the results of the State or Indian Tribe's implementation activities and what the State or Indian Tribe discovered, in general, with regard to compliance and enforcement in the State or Indian Tribe as a result of these activities. The report should also describe how any measures of success were achieved, and directly assess the impact of compliance/enforcement activities on reducing threats to public health.

IX. Rulemaking Record

EPA has established a record for this proposed rule under docket control number OPPTS-62160. A public version of the record without any information claimed to be confidential is available in the TSCA Non-Confidential Information Center (NCIC) from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

The rulemaking record contains information considered by the EPA in developing this proposed rule. The record includes: (1) All **Federal Register** notices, (2) relevant support documents, (3) reports, (4) memoranda and letters and (5) other documents related to this proposed rulemaking.

Unit X. of this preamble contains the list of documents which the Agency relied upon while developing today's regulation and can be found in the docket. Other documents, not listed there, such as those submitted with written comments from interested parties, are contained in the TSCA Docket office as well. A copy of today's proposed rule is also contained in the public record.

X. References

The following books, articles, reports and sources were used in preparing this notice and were cited in this proposal by the number indicated below:

1. U.S. Department of Health and Human Services, Centers for Disease Control. February 21, 1997. "Update: Blood Lead Levels- United States, 1991-1994." *Morbidity and Mortality Weekly Report*. Vol. 46, No. 7.
2. HUD. 1994. Department of Housing and Urban Development, *National Housing Survey*. Washington, DC.
3. Lead-Based Paint Hazard Reduction and Financing Task Force. July 1995. *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing*. HUD-1547-LBP.
4. Task Force on Lead-Based Paint Hazard Reduction and Financing. April 13, 1994. Letter to Honorable Carol Browner, Administrator, USEPA. Washington, DC.
5. USEPA. March 1993. *Applicability of RCRA Disposal Requirements to Lead-Based Paint Abatement Wastes; Final Report*. EPA 747-R-93-006.
6. HUD. April 1991. "The HUD Lead-Based Paint Abatement Demonstration (FHA)." Office of Policy Development and Research.
7. USEPA. September 1998. TSCA Title IV, §§ 402/404: Lead-Based Paint Debris Management and Disposal Standards Proposed Rule Economic Analysis. Office of Pollution Prevention and Toxics.
8. Stedman's Medical Dictionary. 1976. William and Wilken Co., Baltimore.
9. Rabinowitz, Michael. 1987. "Stable Isotope Mass Spectrometry in Childhood Lead Poisoning." *Biological Trace Element Research*. Vol. 12: 223-229.
10. Yaffe, Y., C.P. Flessel, J.J. Wesolowski, A. del Rosario, G.N. Guirguis, V. Matias, J.W. Gramlich, W.R. Kelly, T.E. Degarmo, and G.C. Coleman. 1983. "Identification of lead sources in California children using the stable isotope ratio technique." *Arch Environmental Health*. Jul-Aug 38(4):237-45.
11. Clark, C.S., R.L. Bornschein, P. Succop, S.S. Que Hee, P.B. Hammond, and B. Peace. 1985. "Condition and Type of Housing as an Indicator of Potential Environmental Lead Exposure and Pediatric Blood Lead Levels." *Environmental Research*. 38:46-53.
12. Science Application International Corporation. May 1992. Analytical Results of Lead in Construction Debris. Prepared for USEPA's Office of Solid Waste.
13. Science Application International Corporation. September 1994. *Background Document on Lead Abatement Waste Study; Interim Draft*. Prepared for USEPA's Office of Solid Waste.
14. Deutsch, W.J. 1997. *Groundwater Geochemistry*. Woodward-Clyde, Seattle, WA.
15. ICF Incorporated. 1995. *Construction and Demolition Waste Landfills*. EPA 530-R-95-018.
16. ICF Incorporated. *Damage Cases: Construction and Demolition Waste Landfills*. EPA 530-R-020.
17. USEPA. 1996. *Hazardous Waste Characteristics Scoping Study*. EPA 530-R-96-053.
18. USEPA. June 1998. *Groundwater Pathway Analysis for Lead-Based Paint (LBP) Architectural Debris; Background Document*.
19. Clinch, J. Michael. 1994. Summary of C&D Leachate Studies. Prepared for Ohio EPA C&D Landfill Regulation Negotiated Rulemaking Committee.
20. HUD, Office of Policy Development and Research. December 1990. "Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing." Report to Congress.
21. USEPA. 1995. Estimates for Disposal of LBP Debris in C&D Landfills. Developed for C&D landfill risk analysis.
22. EPA. 1997. *EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP)*. Office of Solid Waste.
 - (a) Background Document
 - (b) Users Manual
 - (c) Background Document for Finite Source Methodology
 - (d) Background Document for Metals: Methodology
23. Wu et al. January 1997. *Water Resources Research*, pp. 21-29.
24. EPA Science Advisory Board. August 1995. *An SAB Report: Review of EPA's Composite Model for Leachate*

Migration with Transformation Products-EPACMTP. Prepared by the OSWER Exposure Model Subcommittee of the Environmental Engineering Committee. EPA-SAB-EEC-95-010

25. USEPA. January 1996. Office of Solid Waste. Response by USEPA Office of Solid Waste to SAB Review of EPACMTP.

26. National Association of Demolition Contractors. October 21, 1997. Letter to Tim Torma, Office of Pollution Prevention and Toxics, USEPA, Washington, DC.

27. Holmes. Hannah 1997. "Bringing Down the House: Home Deconstructionists Make Salvaging a Class Act." *Sierra Club Magazine*; September/October, 1997: pp. 20-21.

28. U.S. Department of the Interior. 1995. National Park Service, Cultural Resources Preservation Assistance. Historic Preservation Brief #37:

Appropriate Methods for Reducing Lead-Based Paint Hazards in Historic Housing. Washington, DC, April 1995.

29. USEPA. November 1993.

Management of Whole-Structure Demolition Debris Containing Lead-Based Paint, Office of Waste Programs Enforcement.

30. U.S. Department of Housing and Urban Development. 1995. *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*. Office of Lead-Based Paint Abatement and Poisoning Prevention. June 1995.

31. Lehman, Timothy. September 15, 1997. USEPA, Office of Pollution Prevention and Toxics. Memorandum to Timothy Torma, USEPA, Office of Pollution Prevention and Toxics.

32. EPA. November 1984. *EPA Policy for the Administration of Environmental Programs on Indian Reservations*.

33. EPA. July 1994. Memorandum of Actions for Strengthening EPA's Tribal Operations.

XI. Regulatory Assessment Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this action is an "economically significant regulatory action" under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), because EPA estimates that this action may result in annual cost savings exceeding \$100 million. The Agency submitted today's proposed rule, along with the proposed Suspension under RCRA, to OMB for review under this Executive Order. Any changes made in response to OMB suggestions or recommendations have been documented in the public record for this proposal.

EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled, "TSCA Title IV, Sections 402/404: LBP Debris Management and Disposal Proposed Rule: Economic Analysis." This document is also available in the public record for this proposal.

The goal of the economic analysis was to identify, quantify, and value the cost savings associated with exempting LBP debris from RCRA Subtitle C and allowing for disposal in C&D landfills, and the incremental costs of compliance with the LBP debris management provisions of the proposed rules. Insofar as the cost savings and reduction in the price of abatements stimulates demand for additional LBP hazard-reducing activities, the analysis identified potential social benefits associated with those cost reductions.

The following is a brief summary of that analysis.

1. *Costs of the regulatory action.* The proposed TSCA rule imposes three new compliance requirements on regulated entities: notification and recordkeeping when LBP debris is transferred, access limitations for LBP debris stored longer than 72 hours, and covering of LBP debris during transport. The compliance costs associated with the new notification and recordkeeping requirements total \$30.86 million annually. The access limitation requirement imposes no new compliance costs, because EPA believes that all affected projects are: (1) Completed within the 72 hour timeframe, (2) presently using containers that meet the access limitations requirements (by virtue of their height or use of covers), or (3) capable of using compliant containers at no additional cost. The requirements for covering LBP debris during transport are expected to impose no new costs because transporters generally cover debris already or can provide covered vehicles or containers at no additional cost.

In addition to these compliance costs, EPA estimates that LBP debris generators, transporters, and disposers will incur \$21.61 million in the first year following promulgation of the rule to familiarize themselves and their employees with the requirements of the proposed rules, and \$1.08 million in subsequent years to familiarize new hires with the provisions of the proposed rules. Finally, as discussed in Section XI.A.3. of this preamble, states incur costs to apply for EPA approval to administer the proposed rules at the state level. EPA estimates that states will incur \$0.95 million in the first year

to apply for EPA approval and then \$0.06 million in the second and third years and biennially thereafter to submit annual reports. Thus, total costs for regulated entities in the first year will be \$53.42 million in the first year, \$32.00 million in years that states submit annual reports (second and third years and biennially thereafter), and \$31.94 million in years that state reports are not required.

The renovation and remodeling sector incurs the largest share of first year compliance costs at \$29.34 million, followed by waste transporters, who will incur \$15.86 million in the first year. Waste disposal facilities are expected to incur compliance costs of \$3.98 million in the first year, while abatement and demolition contractors will each incur \$1.38 and \$1.91 million in first year compliance costs, respectively. States incur the least compliance costs in the first year with \$0.95 million.

2. *Benefits of regulatory action.* The benefits of the proposed rule are two-fold. First, the proposed rule would result in significant cost savings for consumers of abatement, renovation, remodeling and demolition. These savings would be achieved by allowing the use of C&D landfills as an option for the disposal of LBP debris, and eliminating the hazardous waste determination currently required for LBP debris under RCRA Subtitle C. Second, the cost savings and reduced costs of abatements, renovation, remodeling and demolitions would stimulate demand for those services. The additional activities (in particular abatements) would serve to mitigate the economic impacts of lead risk, including: reduced lifetime earnings due to diminished intelligence, increased educational costs, increased health care costs, costs associated with increased morbidity and mortality, lost work days and lost productivity, and pain and suffering associated with adverse health effects.

The primary objective of the benefit analysis was to estimate the potential cost savings that would arise from relief from the expensive requirements of hazardous waste analysis, management, transportation, and disposal for LBP debris. Waste generators, in the short-term, would be relieved of the costly burden of managing LBP debris under RCRA Subtitle C. In the long-term, the economic benefits to waste generators are expected to be passed on to the consumers of abatement, renovation, remodeling, and demolition services in the form of lower costs. The net cost savings from the proposed rule are calculated as the baseline costs

associated with managing and disposing of LBP debris under current requirements minus the proposed rule compliance costs and the costs of disposing of the LBP debris as a nonhazardous waste. The net cost savings represent the potential magnitude of savings that would be passed on to consumers.

The cost-savings (reduced disposal costs minus new compliance costs) of the proposal are estimated at \$97.91 million in the first year. In subsequent years, the estimated cost savings increases to approximately \$119 million annually as initial compliance costs are reduced. The demolition sector is estimated to realize the most benefit with a \$78.95 million cost savings in the first year. The estimated savings for abatement activities is \$36.99 million in the first year and the savings for renovation and remodeling are estimated at \$2.75 million in the first year. The cost savings in these three sectors are then partially offset by increased costs incurred by waste transporters, waste disposal facilities, and states. The waste transportation sector is estimated to incur an additional \$15.86 million in costs and the waste disposal industry is estimated to incur new costs totaling \$3.98 million. States applying for EPA approval to administer the proposed rules will incur \$0.95 million in the first year.

When the net savings are divided by the baseline number of activities, the demolition sector is expected to see the largest per activity cost-savings with an average savings of \$272.50 per project in the first year. The average first year savings in the abatement sector (including target housing, public housing, and commercial buildings) and the renovation and remodeling sector are \$176.26 and \$0.62 per activity respectively. Waste transporters and waste disposal facilities are expected to incur costs of \$3.19 and \$0.80, respectively, for each transaction involving LBP debris.

The secondary objective of the benefit analysis was to determine how a potential change in demand for abatement, renovation, remodeling, and demolition activities associated with a reduction in the costs of those services would reduce the social costs of LBP risk. To the extent that the costs of abatement, renovation, remodeling and demolition decline as an outcome of this proposed rule and these savings are passed on to consumers, there will be a corresponding increase in demand for these activities.

This increase is likely to be particularly evident in the public

housing sector where local housing authorities operate under fixed budgets that often include funds which are earmarked specifically for abatement activity. Thus, any decrease in the cost of abatements should lead to a direct increase in abatement activity in public housing, and a subsequent accelerated depletion of the stock of public housing with LBP hazards. The benefits analysis estimates that if promulgated, the proposed rule would reduce the cost of public housing abatements from a current average of \$3,650 per unit to \$3,444 per unit, a decline of \$206 or 5.6%. In aggregate, the proposal would generate \$17.13 million per year in cost savings for public housing abatements. Under the assumption that public funding for LBP abatement remains stable, all public housing units will be abated within 12 years. The estimated \$17.13 million in cost savings per year to public housing could be used to fund additional abatements, shortening the time frame for completing all remaining abatements. The analysis estimates that the number of abatements in public housing will increase by 5,454 per year (an increase of 6.6% from the current baseline), eliminating the stock of public housing containing LBP 1 year earlier than predicted in the absence of the proposed rule.

In the target housing and child-occupied facility sectors, the decreased price of abatement activities is expected to also stimulate demand for abatement, R&R and demolition services. Data on the potential change in the demand for those services is not available, however, and therefore it is not possible to determine the magnitude of the potential benefits.

For each additional abatement, renovation, remodeling, and demolition activity demanded as a result of the proposed rule, there would be an additional reduction in LBP exposure. The elimination of exposures to LBP hazards associated with these additional activities will reduce the baseline number of cases of adverse health effects such as childhood lead poisoning and increased hypertension among adults.

In addition to the measured benefits of additional abatement, renovation, remodeling, and demolition activities described in the base analysis, other qualitative benefit categories exist. These categories include reductions in neonatal mortality, adult resident health effects such as hypertension, coronary heart disease and stroke, infant/child neurological effects, and occupational health effects such as hypertension, coronary heart disease, and stroke. Due

to data limitations, however, it was not possible to value these benefits.

3. *Costs to States.* Under the proposed rules, States, Territories and Tribes may incur costs associated with adopting and implementing both the RCRA TC suspension rule and the TSCA LBP debris management and disposal program. States are not required to implement these rules, and States that do not do so will not incur any costs. Despite the optional nature of the State requirements, EPA considers these costs attributable to the proposed rules and has prepared estimates of the potential costs that will be incurred by States.

Under the proposed TSCA rule, States would need to demonstrate and certify to EPA that they have adopted requirements at the State level that are at least as protective as the proposed Federal LBP debris program. As a conservative assumption (from a cost standpoint), EPA has assumed that 55 States, Tribes and Territories apply for such authorization. EPA estimates that each entity would incur costs of approximately \$9,900 in the first year to modify State laws, assemble an application package, and make the necessary certifications to EPA. States receiving authorization would be required to submit progress reports in the first 3 years after receiving authorization and biennially thereafter on their LBP management programs, which would cost them an estimated \$1,100 for each report, or a total of \$0.06 million for all States. In total, the highest costs to States would occur in the first year, when the combined State costs would total \$0.55 million.

Under the proposed RCRA TC suspension rule, States that are authorized for TC and that have an approved LBP debris management program in place (or that have certified to EPA that their programs are as protective as the Federal requirements) would be eligible to implement the TC rule at the State level. Presently, there are 35 States with authorized TC programs and another 10 States with TC rules adopted that are awaiting EPA authorization. Assuming again a conservative scenario (from a cost standpoint), if all 45 States eventually apply and incur costs similar to those incurred to implement the LBP debris program (approximately \$8,800 per State), the total costs of the TC rule to States would be \$0.40 million in the first year.

The combined costs incurred by States to implement both the LBP debris program and the TC suspension rule would be \$0.95 million in the first year under worst-case assumptions. In the second and third years and biennially

thereafter, States would only incur \$0.06 million to prepare and submit the required LBP debris management progress report.

4. *Sensitivity analysis.* Sensitivity analyses were prepared to examine the effects of key assumptions and modeling parameters on the pre- and post-regulatory costs, and their impact on the cost savings of the proposed rule. These analyses considered the effects of alternative TCLP failure rates for LBP debris, alternative assumptions concerning how frequently generators perform TCLP testing on LBP debris, alternative estimates of how often generators rely on relevant knowledge rather than TCLP testing to make hazardous waste determinations, how commonly generators use XRF testing to make hazardous waste determinations instead of TCLP, the time required to perform notifications under the proposed rule, and the number of States that will apply for EPA approval to administer the proposed TC suspension and LBP debris management and disposal program. In total, 16 different scenarios were generated by varying these assumptions.

In the sensitivity analysis, the net impact of the rule varies from a net savings of \$295.25 million in the first year to a net savings of \$46.04 million in the first year. The upper bound represents over a 300% increase over the results obtained using all of the baseline assumptions (\$97.91 million in the first year) while the lower bound represents a 53% decrease from the baseline cost savings. The upper bound scenario assumed more frequent use of XRF testing in the baseline scenario, which increased the baseline level of testing costs. The lower bound assumed that less testing and less reliance on relevant knowledge is used in identifying LBP debris compared to assumptions used in the baseline scenario. These two assumptions combined to reduce the baseline costs of waste disposal, thus reducing the potential cost savings of the proposed rules. The median estimate among the sensitivity analyses was \$107.70 million in the first year (this scenario assumes a only 23 states would apply for EPA approval under the TC suspension and 28 states would apply under the TSCA rule). Six of the sensitivity analyses generated lower cost savings estimates and 10 scenarios generated higher cost savings estimates compared to the baseline scenario.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that

this action will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this certification is included in the small entity analysis that was conducted as part of the economic analysis. This proposed rule will result in substantial cost and burden savings for all of the entities involved in LBP activities, regardless of the size of the entity. EPA's analysis, as summarized above, shows that this proposed rule consistently imposes compliance costs that are less than 1% of any industry's revenues, and in many cases, less than 0.1% of the industry's revenues. Information relating to this determination is provided upon request to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1822.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to, "farmer.sandy@epamail.epa.gov." An electronic copy of the ICR has also been posted with the **Federal Register** notice on EPA's homepage at "www.epa.gov/icr." The information requirements contained in this proposal are not effective until promulgation and OMB approval, which is presented by a currently valid OMB control number. An agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations after initial publication in the **Federal Register** are maintained in a list at 40 CFR part 9.

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA is required to estimate the notification, reporting and recordkeeping costs and burdens associated with the requirements specified in the proposed rule. The proposed rules contain three requirements that would impose paperwork burdens: reading and interpreting the proposed rules, the notification and recordkeeping

requirement of the TSCA rule, and the state application requirement under both rules. In addition to these new burdens, exempting LBP debris from RCRA subtitle C will reduce the burden associated with manifesting for LBP debris handled as hazardous waste. Paperwork burdens are estimated to be 1.6 million hours annually, with a total costs of \$36.9 million annually.

Under the Paperwork Reduction Act "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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), EPA has determined that this proposed action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The cost associated with this action are described in the Executive Order 12866 section above.

UMRA generally excludes from the definition of a "Federal intergovernmental mandate" (in sections 202, 203, and 205) duties that arise from participation in a voluntary Federal program. Adoption by States or Indian Tribes of today's proposed rule and the companion RCRA temporary TC suspension is voluntary and imposes no Federal intergovernmental mandate within the meaning of the Act. Because any possible burden on such governmental units would be incurred

as a result of voluntary action by those governmental units, there is not an unfunded mandate.

In addition, EPA has determined that today's proposed rule will not significantly or uniquely affect small governments, including Tribal governments, so no action is needed under section 203 of the UMRA. As indicated in Unit XI.B. of this preamble, if small governments, such as small municipalities or Tribes, are generators of LBP debris covered under today's proposed standards, then they will save the costs of complying with the RCRA TC rule and any costs of complying with RCRA Subtitle C standards when LBP debris is determined to be hazardous.

As a result, this proposed action is not subject to the requirements of sections 202, 203, 204, or 205 of UMRA.

E. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to 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."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule. Nevertheless, EPA has consulted with these governmental entities. Throughout the development of today's proposed rules, the Agency has worked closely with States, Tribal, and local governments. A more detailed discussion of these activities has been included in Unit V.A. of this preamble on stakeholder consultation. In working with these various governmental entities, EPA has provided notice to

small governments of the provisions of today's proposed rule and obtained meaningful and timely input from them. Furthermore, EPA will continue these outreach efforts during the comment period and subsequent to promulgation.

F. Executive Order 13084

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

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule. Nevertheless, as indicated above and discussed in more detail in Unit IV.A. of this preamble, EPA has consulted with State, local and Tribal governments during the development of these proposed rules. EPA will continue these outreach efforts during the comment period and subsequent to promulgation.

G. Executive Order 12898

Pursuant to Executive Order 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this proposed action on the environmental and health conditions in low-income and minority communities.

This examination shows that existing LBP hazards are a risk to all segments of the population living in pre-1978 housing. However, literature indicates that some segments of our society are at relatively greater risk than others.

A recent study by NHANES indicates that children of urban, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), or low-income families, or who live in older housing, continue to be most vulnerable to lead poisoning and elevated blood-lead levels. The February 21, 1997 Center for Disease Control's Morbidity and Mortality Weekly Report states that: "Despite the recent and large declines in BLLs [blood lead levels], the risk for lead exposure remains disproportionately high for some groups, including children who are poor, non-Hispanic black, Mexican American, living in large metropolitan areas, or living in older housing."

Although the baseline risks from LBP fall disproportionately on poorer sub-populations, it may be more likely that abatements will take place in residential dwellings occupied by mid- to upper-level income households. Abatements are voluntary, and wealthier households are more likely to have the financial resources to abate an existing problem in their home, or to avoid LBP hazards by not moving into a residential dwelling with LBP. Even though a national strategy of eliminating LBP hazards targets a problem affecting a greater share of poor households and minorities, the impact of income on the ability to undertake voluntary abatements may result in an inequitable distribution of LBP risks.

By making abatements more affordable, today's proposal helps to address this situation. To the extent that the proposal results in additional abatements, renovations, remodeling, and demolitions that reduce LBP hazards, there is a likelihood that poor and minority populations will benefit the most from risk reductions. This potential will likely be realized to the greatest extent in the case of public housing units with LBP hazards. The decrease in the cost of abatements in public housing will lead to an increase in abatement activity in public housing and a subsequent acceleration in the depletion of public housing with LBP hazards. The occupants of these public housing units are disproportionately lower income and minority populations. As the price of abatements is lowered as a result of cost savings associated with today's proposed rule, more low-income families will be able to afford to make

the decision to remove LBP hazards from their homes.

EPA also determined that the potential impact on minority-owned businesses in industries affected by the proposed rule would be minimal. Available information suggests that minority-owned business would not particularly benefit from this proposed rule, since minority ownership rates for firms that generate LBP debris are no higher than average.

H. 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 proposing any new test methods or other technical standards as part of today's proposed TSCA rule for LBP debris. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule. EPA invites public comment on this analysis.

I. Executive Order 13045

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997), because this proposal is not an economically significant regulatory action as defined by E.O. 12866. The environmental health or safety risks addressed by this action have a beneficial effect on children. This proposal will benefit children by allowing less costly management and disposal of LBP therefore lessening the cost of abatements. Reducing the costs of abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs will increase the amount of private homes undergoing abatements. By reducing costs associated with management and disposal of LBP debris, the Agency believes that the number of abatements will increase thus resulting in a

reduction of children exposed to LBP. Children are the primary beneficiaries of this proposed rule as well as from the entire Lead Program.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Hazardous waste, Lead poisoning, Management and disposal of LBP, Reporting and recordkeeping requirements.

Dated: December 9, 1998.

Carol M. Browner,
Administrator.

Therefore, 40 CFR part 745 is proposed to be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692, and 42 U.S.C. 4852d.

2. By adding a new subpart P to read as follows:

Subpart P—Management and Disposal of Lead-Based Paint Debris

Sec.

- 745.301 Scope and applicability.
- 745.303 Definitions.
- 745.305 Lead-based paint hazards.
- 745.307 Generator responsibilities.
- 745.308 Transporter responsibilities.
- 745.309 Disposal and reclamation facility owner or operator responsibilities.
- 745.311 General requirements for the reuse and storage of lead-based paint debris.
- 745.313 Notification and recordkeeping requirements.
- 745.315 Certification of workers.
- 745.317 Enforcement.
- 745.318 Inspections.
- 745.319 Effective dates.

Subpart P—Management and Disposal for Lead-Based Paint Debris

§ 745.301 Scope and applicability.

(a) *Regulated entities.* Except as provided in paragraphs (b) and (d) of this section, this subpart applies to all persons, individuals, and firms, who generate, store, transport, reuse, offer for reuse, reclaim and/or dispose of lead-based paint debris.

(b) *Exclusion of homeowners.* This subpart does not apply to lead-based paint debris generated by persons who conduct abatement or renovation and remodeling activities themselves in target housing that they own, unless the housing is occupied by a person or persons other than the owner or the owners' immediate family while the lead-based paint debris is being generated.

(c) *Other regulatory authorities.* Lead-based paint debris subject to this

subpart may also be subject to additional requirements under other regulatory authorities (e.g., the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA)).

(d) *Lead-based paint removal.* If lead-based paint is removed from lead-based paint debris and the remaining material has levels of lead less than 1 mg/cm², the material is no longer subject to the requirements in this subpart. Waste products generated during removal of lead-based paint (e.g., paint chips, paint dust, solvents) may be subject to other regulatory authorities (e.g., RCRA, CAA, non-Title IV TSCA authorities).

§ 745.303 Definitions.

The definitions in subparts A and L of this part apply to this subpart. In addition, the following definitions apply:

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with § 745.226, unless such projects are covered by paragraph (4) of this definition.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such

projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

Artifact means an item that is not used as a structural or utility (e.g., electrical, plumbing, heating, air conditioning) component of a building or other structure but is used for decorative or other purposes.

Commercial building means any building which is used primarily for commercial or industrial activity including but not limited to manufacturing, service, repair, or storage.

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements in part 257, subparts A or B of this chapter that does not receive hazardous waste (defined in § 261.3 of this chapter) (other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter)) or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste. Municipal solid waste landfill units as defined in § 258.2 of this chapter are not C&D landfills.

Deleading means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities in public buildings, commercial buildings, or steel structures.

Demolition means the wrecking, razing, or destroying of any building or significant element thereof using a method that generates undifferentiated rubble.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

Dispose means intentionally or accidentally to discard, throw away, or otherwise undertake any action resulting in the placement of lead-based paint debris in any location where it is not destined to be stored, reused, or reclaimed in accordance with this subpart. Application of lead-based paint debris as mulch, topsoil, ground cover, landscaping material, roadbed material, fill material or for any purpose which would require shredding, grinding, compacting, burying or mixing with soil is disposal. Any burning of lead-based paint debris that is not reclamation is disposal.

Encapsulation means the application of a substance that forms a barrier between lead-based paint and the environment, using a liquid-applied coating (with or without reinforcement materials) or an adhesively-bonded covering material.

Generator means any person, by site, whose act or process produces lead-based paint debris or whose act first causes lead-based paint debris to become subject to this part.

Indian Country means:

(1) All land within the limits of any American Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation.

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or outside the limits of a State.

(3) All Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or Tribe means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per centimeter squared or more than 0.5 percent by weight.

Lead-based paint architectural component debris (LBPACD) means:

(1) Elements or fixtures, or portions thereof, of commercial buildings, public buildings, or target housing that are coated wholly or in part with or adhered to by lead-based paint. These include, but are not limited to interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps,

balustrades, windows and trim, including sashes, window heads, jambs, sills, stools and troughs, built-in cabinets, columns, beams, bathroom vanities, and counter tops; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, facias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells.

(2) LBPACD is generated when an architectural component which is coated wholly or in part with or adhered to by lead-based paint is displaced and separated from commercial buildings, public buildings, or target housing as a result of abatement, deleading, renovation or remodeling activities. LBPACD does not include other types of lead-based paint waste such as paint chips, paint dust, sludges, solvents, vacuum filter materials, wash water, contaminated and decontaminated protective clothing and equipment except that paint chips and dust which are created after LBPACD is placed in a container or vehicle for transport to a disposal or reclamation facility specified in § 745.309 is considered LBPACD.

(3) LBPACD which is reused in compliance with this subpart is no longer LBPACD.

Lead-based paint demolition debris means lead-based paint demolition debris or lead-based paint architectural component debris.

Lead-based paint demolition debris means any solid material which results from the demolition of target housing, public buildings, or commercial buildings which are coated wholly or in part with or adhered to by lead-based paint at the time of demolition.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State or political subdivision thereof; any interstate body; and any department, agency or instrumentality of the Federal government.

Public building means any building constructed prior to 1978 which is generally open to the public or occupied or visited by the public, including but not limited to schools, daycare centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers, and government buildings. Note: "child-occupied facilities" as defined at § 745.223 are included in the definition of public building.

Reclaim or reclamation means to procure usable substances from lead-based paint debris. Examples of reclamation include the burning of lead-based paint debris for energy value, processing of lead-based paint debris in a smelter to obtain lead, or removing lead-based paint from debris prior to reuse of a component.

Remodeling means any construction-related work on an existing property intended to either maintain or improve the property that results in the disturbance of painted surfaces.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in this part. The term renovation includes but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

Reuse means to use again for any purpose other than reclamation or disposal. Examples of reuse include moving doors, windows or other components from one structure to another to be put to a similar use.

Site means the same or geographically contiguous property which may be divided by public or private right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, are considered part of a single site.

Storage means the holding of lead-based paint debris for a temporary period.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

Transfer for reuse means to physically relocate, or convey ownership of a building component prior to reuse.

§ 745.305 Lead-based paint hazards.

The following are lead-based paint hazards:

(a) Management or disposal of lead-based paint debris not in compliance with this subpart.

(b) Reuse or transfer for reuse of lead-based paint debris which is coated in part or in whole with deteriorated paint.

§ 745.307 Generator responsibilities.

(a) *Determination of presence of lead-based paint debris.* (1) Generators of lead-based paint debris are responsible for determining if lead-based paint debris is present. To make this determination, generators may:

(i) Test the waste for the presence of lead-based paint.

(ii) Use their knowledge of the waste.

(iii) Assume that lead-based paint debris is present. (2) Generators incorrectly determining that lead-based paint debris is not present are liable as separate violations of TSCA for any subsequent storage, transportation, disposal, reclamation or reuse of lead-based paint debris not in compliance with this subpart.

(b) *Other generator responsibilities.*

Generators of lead-based paint debris must comply with §§ 745.311 and 745.313 and may not:

(1) Transport, or arrange for the transportation of lead-based paint debris in any manner other than specified in § 745.308.

(2) Dispose of, or arrange for the disposal of, lead-based paint debris at any facility not specified in § 745.309(a).

(3) Reclaim, or arrange for the reclamation of, lead-based paint debris at any facility not specified in § 745.309(b).

(4) Transfer lead-based paint debris to any party other than for reuse, storage, transport, disposal or reclamation in compliance with this subpart.

§ 745.308 Transporter responsibilities.

Transporters of lead-based paint debris must comply with §§ 745.311 and 745.313 and may not:

(a) Transport or arrange for the transportation of lead-based paint debris off-site in any vehicle without a cover that prevents visibly identifiable releases of dust or debris.

(b) Dispose of, or arrange for the disposal of, lead-based paint debris at any facility not specified in § 745.309(a).

(c) Reclaim, or arrange for the reclamation of, lead-based paint debris at any facility not specified in § 745.309(b).

(d) Transfer lead-based paint debris to any party other than for reuse, storage, transport, disposal or reclamation in compliance with this subpart.

§ 745.309 Disposal and reclamation facility owner or operator responsibilities.

(a) *Disposal facility responsibilities.* Owners or operators of waste disposal facilities must comply with §§ 745.311 and 745.313 and may not:

(1) Accept lead-based paint debris for disposal in any facility other than:

(i) A construction and demolition landfill as defined in this subpart.

(ii) A facility which does not accept industrial waste but is subject to the requirements in part 257, subpart B of this chapter applicable to non-municipal, non-hazardous waste disposal units receiving conditionally exempt small quantity generated waste (as defined in § 261.5 of this chapter).

(iii) A hazardous waste disposal facility permitted under part 270 of this chapter.

(iv) A hazardous waste disposal facility that is authorized to manage hazardous waste by a State that has a hazardous waste management program approved under part 271 of this chapter.

(v) A hazardous waste disposal facility that has qualified for interim status to manage hazardous waste under RCRA section 3005(e).

(vi) A facility subject to the requirements of part 60, subparts Cb, Eb, or part 63, subpart X (such as a secondary lead smelter or a municipal combustor) of this chapter.

(2) Transport or arrange for the transportation of lead-based paint debris in any vehicle without a cover that prevents any visibly identifiable release of dust or debris.

(3) Reclaim lead-based paint debris except in a facility subject to the requirements of § 745.309(b).

(4) Transfer lead-based paint debris to any party other than for reuse, storage, transport, disposal, or reclamation in compliance with this subpart.

(b) *Reclamation facility responsibilities.* An owner or operator of a reclamation facility must comply with §§ 745.311 and 745.313. Reclamation facilities burning, incinerating or smelting may accept lead-based paint debris for reclamation only in a facility subject to the requirements of part 60, subparts Cb, Eb, or part 63, subpart X of this chapter.

(1) An owner or operator of a reclamation facility may not transport or arrange for the transportation of lead-based paint debris in any vehicle without a cover that prevents any visibly identifiable release of dust or debris.

(2) An owner or operator of a reclamation facility may not dispose of, or arrange for the disposal of, lead-based paint debris at any facility not specified in § 745.309(a).

(3) An owner or operator of a reclamation facility may not transfer lead-based paint debris to any party other than for reuse, storage, transport, disposal or reclamation in compliance with this subpart.

§ 745.311 General requirements for the reuse and storage of lead-based paint debris.

Generators and transporters of lead-based paint debris, owners or operators of disposal or reclamation facilities accepting lead-based paint debris, or owners or operators of any enterprise offering lead-based paint debris for reuse may not reuse, offer for reuse, or store lead-based paint debris, or transfer lead-based paint debris to other parties for reuse or storage unless the reuse or storage is in compliance with all requirements in this subpart.

(a) *Reuse.* Lead-based paint debris that is coated in part or whole with deteriorated paint identified as a lead-based paint hazard at § 745.305(b) may not be reused or offered for reuse as a building or structural component or artifact or transferred to another party for such reuse unless the lead-based paint is completely removed. Lead-based paint debris may be transferred to a reclamation facility for removal of lead-based paint prior to reuse.

(b) *Storage.* (1) With the exception of demolition debris, may not be stored at any site (including the site where the lead-based paint debris was generated) for more than 72 hours from the time of generation without one of the following access limitations:

(i) Enclosing lead-based paint debris in closed or covered receptacles (e.g., containers, drums, mobile trailers, or covered dumpsters).

(ii) Keeping lead-based paint debris in a dumpster or container which is at least 6 feet tall.

(iii) Keeping lead-based paint debris in fenced areas that are locked when work activities are not being performed on the site.

(iv) Keeping lead-based paint debris in an unoccupied or non-residential structure which is locked when work activities are not being performed on the site.

(v) Keeping lead-based paint debris on an unoccupied or non-residential level of a multi-story structure and keeping the level locked when work activities are not being performed on the site.

(2) May not be stored at any site or combination of sites for a period exceeding 180 days.

(3) May be stored in a covered transport vehicle for all or a portion of this 180-day period.

§ 745.313 Notification and recordkeeping requirements.

(a) *Notification.* When generators and transporters of lead-based paint debris, owners or operators of disposal or reclamation facilities accepting lead-based paint debris, or owners or

operators of any enterprise offering lead-based paint debris for reuse transfer lead-based paint debris (transferor) to any other person (recipient), for any reason, the transferor must notify the recipient in writing of the presence of lead-based paint debris. The Notification must:

(1) Disclose the presence of lead-based paint debris.

(2) Indicate the date of generation of the lead-based paint debris.

(3) Be signed and dated by the recipient.

(4) Be signed and dated by the transferor.

(5) Contain the generator's name and address.

(6) Include a citation referring the recipient to this subpart.

(b) *Recordkeeping.* The transferor and the recipient must each retain a copy of the Notification for a minimum of 3 years from the date that the Notification is signed by the recipient.

§ 745.315 Certification of workers.

Individuals and firms engaged in the transport, reuse, storage, disposal or reclamation of lead-based paint debris or in offering lead-based paint debris for any such activity whose practices are in compliance with the requirements of this subpart are deemed certified by this section to engage in the transport, reuse, storage, reclamation or disposal of lead-based paint debris pursuant to section 402 of the Toxic Substances Control Act.

§ 745.317 Enforcement.

(a) Failure or refusal of any person to comply with §§ 745.307, 745.308, 745.309, 745.311, 745.313 or 745.315 is a prohibited act under 15 U.S.C. 2689 of the Toxic Substances Control Act and may subject a violator to civil and criminal sanctions pursuant to 15 U.S.C. 2615 for each violation.

(b) Failure or refusal of any person to establish, maintain, provide, copy, or permit access to records or reports as required by § 745.313 is a prohibited act under 15 U.S.C. 2689 of the Toxic Substances Control Act.

(c) Failure or refusal of any person to permit entry or inspection as required by § 745.318 or 15 U.S.C. 2610 of the Toxic Substances Control Act is a prohibited act under 15 U.S.C. 2689 of the Toxic Substances Control Act.

§ 745.318 Inspections.

EPA may conduct reasonable inspections pursuant to 15 U.S.C. 2610 of the Toxic Substances Control Act to ensure compliance with this subpart.

§ 745.319 Effective dates.

EPA will begin enforcement of the provisions at §§ 745.307 through 745.318 on [insert the date 2 years after date of publication of the final rule in the **Federal Register**] in any State or Indian Country which does not have a lead-based paint debris management and disposal program authorized under subpart Q of this part in effect by that date.

3. By revising the heading for subpart Q to read as follows:

Subpart Q—State and Tribal Lead-Based Paint Debris Management and Disposal Programs

4. In § 745.320, by adding paragraph (h) to read as follows:

§ 745.320 Scope and purpose.

* * * * *

(h) For State or tribal lead-based paint management and disposal programs, a State or Indian Tribe may seek authorization to administer and enforce §§ 745.307 through 745.315. The provisions of §§ 745.301, 745.303, 745.317, 745.318 and 745.319 shall be applicable for the purposes of such program authorization.

5. By adding new §§ 745.341 through 745.359 to subpart Q to read as follows:

§ 745.341 Options for lead-based paint debris management and disposal programs in States and Indian Country.

(a) *State and Tribal programs.* A State or Indian Tribe may apply to EPA for authorization to administer and enforce a lead-based paint debris management and disposal program. No program application will be approved unless EPA finds that the program is at least as protective as the Federal requirements in §§ 745.307 through 745.319 and that it provides adequate enforcement.

(b) *EPA administration and enforcement in States and Tribes without authorized programs.* If a State or Indian Tribe does not have a lead-based paint debris management and disposal program authorized under this subpart and in effect on or before the date which is 2 years after the date the final rule is published in the **Federal Register**, EPA will on such date, begin enforcement of the provisions at §§ 745.307 through 745.319 as the Federal program for that State or Indian Country.

§ 745.344 Application for authorization of State and Tribal programs.

This section establishes requirements for State or Tribal applications to EPA to administer and enforce a lead-based paint debris management and disposal program under TSCA section 404. This section also establishes the public

participation procedures EPA will follow as part of its review of State or Tribal applications.

(a) *Public comment.* Before submitting an application to EPA for program authorization, a State or Indian Tribe must:

(1) Issue in the State or Indian Country a public notice of intent to seek authorization. The comment period on the public notice must be at least 30 days.

(2) Provide an opportunity for public hearing.

(b) *Application contents.* A State or Tribal application must include:

(1) A transmittal letter from the State Governor or Tribal Chairperson (or equivalent official) requesting program authorization.

(2) A program summary that will be published in the **Federal Register** by EPA to provide notice to residents of the State or Tribe that EPA will review the application.

(3) A description of the program in accordance with § 745.346.

(4) An Attorney General's or Tribal Counsel's (or equivalent) statement in accordance with § 745.347.

(5) A statement which identifies resources the State or Tribe intends to devote to the administration of its compliance and enforcement program.

(6) A statement agreeing to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at § 745.355(b)(2).

(7) Copies of all applicable State and Tribal statutes, regulations, standards, and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint debris management and disposal program.

(c) *Public comment on applications.* After receipt of a State or Tribal application, EPA will publish a **Federal Register** notice containing:

(1) An announcement of the receipt of the application.

(2) The program summary provided by the State or Tribe in accordance with paragraph (b)(2) of this section.

(3) A request for public comments to be mailed to the appropriate EPA Regional Office. The comment period will last at least 45 days. EPA will consider public comments during its review of the application.

(d) *Public hearing.* EPA will, if requested, conduct a public hearing in the State or Indian Country of the Tribe seeking program authorization and will consider all comments submitted at that hearing during its review of the State or Tribal application.

§ 745.346 State or Tribal Program Description

A State or Tribe applying to administer and enforce a program under this subpart must submit a description of its program. The State or Tribal program description must include the following components:

(a) *Primary agency and contact.* A designation of the agency or agencies responsible for administering and enforcing the program and an agency contact. This designation must be in accordance with the specifications at § 745.324(b)(1).

(b) *Program elements.* A description of the program demonstrating that it contains all of the elements specified in § 745.350.

(c) *At least as protective as.* An analysis of the State or Tribal program that compares the program to the Federal provisions in §§ 745.307 through 745.319. This analysis must demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the Federal provisions in this subpart. EPA will use the analysis to evaluate the program in making its determination pursuant to § 745.354(a)(2)(i).

(d) *Adequate enforcement.* A description of the State or Tribal compliance and enforcement program demonstrating that the program contains all of the enforcement requirements specified at § 745.352. This description must include copies of all policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the requirements specified at § 745.352.

(e) *Special requirements for tribal program descriptions.* The program description for an Indian Tribe must also include the information and documents specified in § 745.324(b)(4)(i) through (b)(4)(iii).

§ 745.347 State or Tribal Attorney General's statement.

An application for program authorization by a State or Indian Tribe must include a written statement signed by the Attorney General or Tribal Counsel (or equivalent). The statement must include all information and certifications as specified in § 745.324(c)(1) through (c)(3).

§ 745.348 State program certification/ interim approval.

(a)(1) When submitting an application, a State may also certify to EPA that the State program meets the requirements in §§ 745.350 and 745.352 of this subpart.

(2) If a State application contains this certification, the program will be

considered authorized until EPA disapproves the program or withdraws the authorization. A program will not be considered authorized to the extent that jurisdiction is asserted over Indian Country, including non-member fee lands within an Indian reservation.

(3) If the application does not contain such certification, the State program will be authorized only after EPA approves it in accordance with § 745.354.

(4) This certification must be contained in a letter from the Governor or the Attorney General to the EPA.

(5) The certification must reference the analyses required in § 745.346(d) as the basis for concluding that the State program is at least as protective as the Federal program and provides adequate enforcement.

(b) [Reserved]

§ 745.350 State or Tribal programs: required program elements.

To receive authorization from EPA, a State or Tribal program must contain at least the following program elements for lead-based paint debris management and disposal activities:

(a) *Requirements for reuse and storage.* The State or Tribe must have requirements for the reuse and storage of lead-based paint debris including but not limited to:

(1) Standards that prevent reuse of hazardous lead-based paint debris.

(2) Standards that limit access to and prevent dispersal of lead-based paint debris which is being stored.

(b) *Requirements for transportation.* The State or Tribe must have requirements for the transportation of lead-based paint debris including but not limited to measures to prevent the release of dust or paint chips from lead-based paint debris while it is being transported. Requirements for disposal or reclamation. The State or Tribe must have requirements for the disposal or reclamation of lead-based paint debris including but not limited to:

(1) Clear standards identifying disposal facilities which may safely accept lead-based paint debris. These standards must reference any State or Federal regulations which govern the disposal facilities.

(2) Clear standards identifying reclamation facilities which may safely accept lead-based paint debris. These standards must reference any State or Federal regulations which govern the reclamation facilities.

(c) *Notification and recordkeeping.* The State or Tribe must have notification and recordkeeping standards which at a minimum include the requirements found at § 745.313 or their functional equivalent.

§ 745.352 State or Tribal compliance and enforcement.

(a) *Compliance and enforcement program elements.* For the compliance and enforcement portion of a State or Tribal program to be considered adequate, a State or Indian Tribal application must demonstrate the following elements:

(1) *Authority to enter.* State or Tribal officials must be able to enter premises or facilities where lead-based paint debris management or disposal violations may occur. A State or Tribe must be able to subpoena any person who has possession of records or reports pertaining to lead-based paint debris to produce such documents; in addition, a State or Tribe must be able to compel the appearance of any person to testify concerning any matter relating to lead-based paint debris. A State or Tribe must also designate a judicial body that will have the authority to hold any person in contempt who fails or refuses to obey such a duly issued subpoena. A State or Indian Tribe should have the authority to seek a warrant if it is denied access to inspect any place or vehicle where lead-based paint is being generated or stored.

(i) State or Tribal officials must be able to enter and inspect premises, facilities, or vehicles where lead-based paint debris is generated or transported.

(ii) State or Tribal officials must be able to enter and inspect disposal and reclamation facilities.

(iii) State or Tribal officials must have authority to take samples and review records as part of the inspection process.

(2) *Flexible remedies.* A State or Tribal compliance and enforcement program must provide for a diverse and flexible array of enforcement remedies. At a minimum, the program must authorize the remedies specified at § 745.327(b)(3). Indian Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.

(3) *Training.* A State or Tribal compliance and enforcement program must include a process for training enforcement and inspection personnel. The training must include case development procedures, proper case files, and methods of conducting inspections and gathering evidence.

(4) *Compliance assistance.* A State or Tribal compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with State or Tribal requirements governing lead-based

paint debris management and disposal activities.

(5) *Sampling techniques.* A State or Tribal application for program approval must show that the State or Indian Tribe is technologically capable of conducting a lead-based paint debris management and disposal compliance and enforcement program. The State or Tribal program must have access to the facilities and equipment necessary to perform sampling and laboratory analysis as needed. This laboratory facility must be a recognized laboratory as defined at 40 CFR 745.223, or the State or Tribal program must implement a quality assurance program that ensures appropriate quality of laboratory personnel and protects the integrity of analytical data.

(6) *Tracking tips and complaints.* A State or Tribal compliance and enforcement program must include a process for reacting to tips and complaints or other information indicating a violation.

(7) *Targeting inspections.* A State or Tribal compliance and enforcement program must demonstrate the ability to target inspections to ensure compliance with the lead-based paint debris management and disposal program requirements. A State or Tribe should have the ability to conduct consensual inspections in places where records or reports are stored, but where no lead debris is present. Such consensual inspections should include the authority of State or Tribal officials to physically appear at such places or to issue a consensual Information Request Letter to gather records or reports on lead debris.

(8) *Follow up to inspection reports.* A State or Tribal compliance and enforcement program must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities. The State or Tribal program must be in a position to ensure correction of violations and, as appropriate, effectively develop and issue enforcement remedies/responses to follow up on the identification of violations.

(9) *Compliance monitoring and enforcement.* A State or Tribal compliance and enforcement program must demonstrate in its application for approval that it is in a position to implement a compliance monitoring and enforcement program. Such a program must ensure correction of violations, and encompass either planned and/or responsive inspections and development/issuance of State or

Tribal enforcement responses which are appropriate to the violations.

(b) *Memorandum of Agreement.* An Indian Tribe which obtains program approval must establish a Memorandum of Agreement with the appropriate Regional Administrator. The Memorandum of Agreement must meet the requirements at § 745.327(e).

§ 745.354 EPA review of State or Tribal program applications.

(a) EPA approval.

(1) EPA will fully review and consider all portions of a State or Tribal application.

(2) Within 180 days of receipt of a complete State or Tribal application containing all elements specified in this subpart, EPA must authorize the program or disapprove the application. EPA will authorize the program only if it finds that:

(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal provisions at §§ 745.307 through 745.319.

(ii) The State or Tribal program provides adequate enforcement.

(3) EPA will notify the State or Tribe in writing of its decision to authorize or disapprove the State or Tribal application.

(4) Upon authorization of a State or Tribal program pursuant to this subpart, it will be an unlawful act under sections 15 and 409 of TSCA for any person to fail or refuse to comply with any requirements of such program.

(b) [Reserved]

§ 745.355 Oversight and reporting requirements.

(a) *Oversight.* EPA will periodically evaluate the adequacy of a State or Indian Tribe's implementation and enforcement of its authorized program.

(b) *Reports.* Beginning 12 months after the date of program authorization, the primary agency for each State or Indian Tribe must submit a written report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. The report must be submitted at least once every 12 months for the first 3 years after program approval. If these reports demonstrate successful program implementation, the Agency will extend the reporting interval to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting until the reports demonstrate successful program implementation. The report must include the following information:

(1) Any significant changes in the content, administration, or enforcement

of the State or Tribal program implemented since the previous reporting period.

(2) A Summary on Progress and Performance which summarizes the results of implementing the State or Tribal lead-based paint debris management and disposal compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe, the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities.

§ 745.356 Withdrawal of State or Tribal Program authorization.

(a) *Withdrawal of authorization.* (1) If EPA concludes that a State or Tribe is not administering or enforcing an authorized program in compliance with the standards, regulations, and other requirements of Title IV of TSCA and this part, EPA will notify the primary agency for the State or Tribe in writing and indicate EPA's intent to withdraw authorization of the program.

(2) The Notice of Intent to Withdraw Authorization will comply with the specifications at § 745.324(i)(2).

(3) Any actions taken by EPA related to withdrawal of State or Tribal program authorization will follow the procedures specified at § 745.324(i)(3) through (i)(7).

(4) If EPA issues an order withdrawing the authorization of a State or Tribal program, EPA will establish and enforce the provisions at §§ 745.307 through 745.319 as the Federal program for that State or Indian Country. The Federal program will be established and enforced as of the effective date of the order withdrawing authorization of the State or Tribal program.

(b) [Reserved]

§ 745.358 Overfiling.

(a) *Failure to impose adequate penalty.* If EPA finds that a violator of a State or Indian Tribal lead-based paint debris management and disposal program approved under this subpart has not been adequately penalized, EPA will notify the State or Indian Tribe of this finding. If EPA finds that the penalty against the violator has not been adjusted appropriately within 30 days after such notice, EPA may issue an appropriate administrative penalty order against the violator.

(b) *Failure to penalize.* If upon receipt of any complaint or information alleging or indicating a significant violation, a State or Tribal Program has not commenced appropriate enforcement action, EPA may act upon the complaint

or information by instituting an appropriate action order against the violator.

§ 745.359 Effective dates.

States and Indian Tribes may seek authorization to administer and enforce a lead-based paint debris management and disposal program under this subpart effective on [insert date 60 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. 98-33326 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[FRL-5783-7]

RIN 2070-AC72

Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule which would suspend temporarily the applicability of the Resource Conservation and Recovery Act (RCRA) Toxicity Characteristic (TC) Rule (40 CFR 261.24) to debris generated during lead-based paint (LBP) abatements conducted at target housing; deleading projects conducted at public or commercial buildings; and renovation or remodeling and demolition activities at target housing, public buildings, or commercial buildings. Instead of being subject to the TC Rule, LBP debris resulting from the above-mentioned activities would be subject to the management and disposal standards being proposed today under Title IV of the Toxic Substances Control Act (TSCA). EPA is proposing this temporary suspension of the TC rule in accordance with RCRA sections 1006(b)(1) and 2002 to avoid duplication and inconsistent regulation of LBP debris and to allow the Agency sufficient time to assess whether any RCRA requirements, in addition to TSCA Title IV requirements, are necessary to assure proper management and disposal of such debris.

DATES: Comments on this proposed rule must be submitted on or before February 16, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, Mail Code 5305W, Docket No. F-98-LPDP-FFFFF,

U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket number F-98-LPDP-FFFFF.

Hand deliveries of comments should be made to the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F-98-LPDP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For additional information on electronic submissions refer to Unit VII. of the preamble.

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rule, contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800) 424-9346 (toll free); TDD (800) 553-7672 (hearing impaired); in Washington, DC metropolitan area the number is (703) 412-9810; TDD (703) 486-3323 (hearing impaired).

For technical information on this proposed rule, contact Ms. Rajani D. Joglekar in the Office of Solid Waste at (703) 308-8806; and for technical information on the proposed TSCA Title IV disposal and management standards, contact Tova Spector in the Office of Pollution Prevention and Toxics at (202) 260-3467. To obtain copies of the reports or other materials referred to in this proposal, contact the RCRA Docket at the telephone number or address listed above.

SUPPLEMENTARY INFORMATION: Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of Regulated Entities
Abatement Industry	Firms contracted to abate lead-based paint in target housing and public and commercial buildings where children under the age of 6 may be exposed to lead hazards.

Category	Examples of Regulated Entities
Renovation and Remodeling Industry	Firms involved in renovation and remodeling of residences and other buildings where lead-based paint debris may be generated.
Demolition Industry	Firms involved in demolition activities where demolition waste may contain lead-based paint debris.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether you are affected by this regulatory action, you should carefully examine the applicability criteria in Unit V. of this preamble. If you have any questions regarding the applicability of this section to a particular entity, consult the person listed for technical information under FOR FURTHER INFORMATION CONTACT.

I. Background

A. The Hazards of Lead-Based Paint

Lead poisoning is the most common environmental health problem affecting young children in the United States. The Centers for Disease Control has estimated that up to 900,000 children, or about 4.4% of children under the age of 6, may have unacceptably high levels of lead in their blood (Ref. 1). High levels of lead impair mental and cognitive development and physical growth, and can cause neurobehavioral disorders. Among the other risks to human health presented by LBP hazards is neonatal mortality due to the exposure of pregnant women to lead and adverse neurological effects in infants and children. 59 FR 45900-01 (September 2, 1994). There is also some indication that lead exposure contributes to high blood pressure in adults. Lead has no known use in the body and is difficult to remove from blood and bones in cases where medical intervention is necessary.

The primary route of exposure to lead in young children is the ingestion of dust, paint chips, and soil contaminated by lead from deteriorated paint surfaces of walls, doors, and windows. Although lead was banned from residential paint in 1978 (when the amount of lead in paint was above 0.06% lead by weight),

more than half the housing stock (an estimated 64 million pre-1980 homes) still contains some lead-based paint (LBP) (Ref. 2). The Lead-Based Paint Hazard Reduction and Financing Task Force estimates that between 5 and 15 million housing units contain LBP hazards (Ref. 3).

In response to health threats posed by LBP, Congress enacted the Residential Lead-Based Paint (LBP) Hazard Reduction Act of 1992 (hereafter referred to as Title X or the Act) as Title X of the Housing and Community Development Act of 1992. The Act amended TSCA by adding a new Title IV, which, among other things, provides EPA with the authority to promulgate standards to govern: (1) the training and certification of individuals engaged in LBP activities; (2) the accreditation of training programs; and (3) the process by which LBP activities, including abatements, are conducted by certified individuals (15 USC section 2682(a)(1)).

As a result of the enactment of The LBP Act of 1992, there is an increasing effort to reduce the hazards posed by LBP in residential housing and other buildings. Although there are a number of methods to reduce LBP exposure, abatements (which under TSCA Title IV involve any set of measures designed to permanently eliminate LBP hazards) are typically conducted in situations where LBP exposure has resulted in elevated blood lead levels in children. EPA expects that abatements in target housing (defined in TSCA as any housing constructed prior to 1978, except any 0-bedroom housing or dwelling for elderly or persons with disabilities (unless any child age 6 years or under resides or is expected to reside in such housing for the elderly or person with disabilities)), may increase. Abatement efforts result in the production of waste which, as explained in more detail below, would potentially be subject to overlapping regulatory controls under RCRA Subtitle C and TSCA Title IV.

The Agency has spent considerable resources working with health specialists, environmental groups, the lead abatement industry, and state and local governments to develop regulatory options to expedite the conduct of lead abatement activities so that risks to children from lead poisoning will be permanently and expeditiously eliminated. EPA believes that there is an overwhelming consensus to act as quickly as possible to reduce risks resulting from lead exposure to young children.

The Lead-Based Paint Hazard Reduction and Financing Task Force, representing the spectrum of interests

affected by lead-based paint issues, released final recommendations on evaluating and reducing lead-based paint hazards in private housing on July 11, 1995, in a report entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing* (Ref. 4). In addition, in a letter to EPA Administrator Carol Browner dated April 13, 1994, the Task Force specifically recommended that the Agency, "shift regulation of discarded architectural components from the hazardous waste regulatory program to a tailored management program under TSCA Section 402/404" (Ref. 3). The Agency has given substantial weight to these recommendations in the development of today's proposals as they are supported by a broad range of groups and interests affected by lead-based paint activities and regulations. EPA has developed a regulatory approach it believes will both speed the conduct of lead abatement and deleading activities (by lowering costs) and, at the same time, ensure that LBP debris is managed and disposed of in an environmentally safe manner.

B. Impetus for Today's Rulemaking

One of EPA's primary purposes in developing this regulatory approach for this proposed RCRA TC Rule temporary suspension, and the companion proposed TSCA management and disposal standards (issued elsewhere in today's Federal Register), is to address obstacles to the conduct of LBP abatements in target housing and child-occupied facilities, such as schools and day-care centers. The Agency's analysis of the risk of alternative disposal facilities also examined the risk of disposing LBP debris resulting from other activities. Because the Agency has concluded that the disposal of LBP debris (no matter what the origin) in certain solid waste disposal facilities, such as construction and demolition landfills, is safe, reliable, effective, and protective of human health and the environment, EPA has decided to extend the coverage of today's RCRA and TSCA proposed rules to LBP debris generated during lead-based paint abatement, deleading, demolition, renovation, and remodeling projects in all target housing, public and commercial buildings. EPA believes it is important to provide a clear and consistent regulatory environment for those who conduct these activities which generate almost identical LBP debris.

II. RCRA Subtitle C and the Toxicity Characteristic Rule

Subtitle C of RCRA, 42 U.S.C. 6921-39b, establishes a comprehensive program for the regulation of hazardous waste. In enacting RCRA, however, Congress did not set forth a list of hazardous wastes nor provide a specific test for determining whether a waste is hazardous. Instead, in RCRA section 1004(5), Congress defined "hazardous waste" broadly as a "solid waste" which "may . . . pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed." Under RCRA section 3001(a), EPA is responsible for defining which solid wastes are hazardous by either identifying the characteristics of hazardous waste or by listing particular hazardous wastes.

In response to the Congressional directive in RCRA section 3001(a), EPA adopted a two part definition for identified and listed "hazardous wastes" (45 FR 33084, May 19, 1980). First, EPA published lists of specific hazardous wastes, in which EPA described the wastes and assigned a "waste code" to each of them (40 CFR part 261, subpart D). These wastes are known as "listed" hazardous wastes and are subject to regulations under Subtitle C (See 40 CFR part 262, 264-268, and 270). Second, the Agency identified four characteristics of hazardous waste that are subject to measurement: ignitability, corrosivity, reactivity, and toxicity (See 45 FR 33121-22, May 19, 1980). Any solid waste exhibiting one or more of these characteristics is a "characteristic hazardous waste" subject to regulation under RCRA Subtitle C (See 40 CFR parts 262, 264 to 268, and 270).

To measure objectively the "toxicity" criterion for determining whether a waste exhibits the characteristic of toxicity under RCRA Subtitle C, EPA has established the Toxicity Characteristic Leaching Procedure (TCLP) test as part of the Toxicity Characteristic (TC) rule (55 FR 11798, March 29, 1990). The TC rule added 25 organic chemicals to the original list of toxic constituents of concern (primarily metals, including lead) and established regulatory levels for these organic chemicals.

Under the TC rule, a waste may be a hazardous waste if any chemicals listed in the rule, such as lead, are present in leachate from the waste (generated from use of the TCLP) at or above the specified regulatory levels (40 CFR 261.24). The overall effect of the TC rule was to subject additional solid wastes to

regulatory control under the hazardous waste provisions of Subtitle C of RCRA.

Under the TC rule, generators of solid waste must either use their knowledge or perform the TCLP test using a representative sample of the waste as generated to determine if the waste exhibits the toxicity characteristic for lead. The regulatory level for lead in the waste extract (i.e., leachate) is 5 milligrams per liter (mg/L). If under the TCLP test, the leachate extracted from waste contains lead at 5 mg/L or higher, then the waste is a "characteristic" hazardous waste, and the generator must comply with the applicable RCRA Subtitle C requirements in 40 CFR parts 262 through 266, 268, and 270.

Currently, like any other lead-containing waste, the TC rule applies to waste (including debris) from construction, demolition, and renovation activities, and waste (including debris) from LBP abatement activities. The generator of lead-containing waste must make a RCRA hazardous waste determination to identify whether it is characteristically hazardous and, thus, whether management as a hazardous waste is required.

III. The TSCA Title IV Proposed Rule

As explained in detail in the companion proposal published elsewhere in today's **Federal Register**, Title IV of TSCA provides EPA with the authority to promulgate regulations which address the management and disposal of LBP debris. In accordance with that authority, EPA is proposing a rule under TSCA sections 402 and 404 which would establish management and disposal standards for "LBP architectural component debris" from abatement, deleading, renovation, and remodeling, and "demolition debris" from target housing, and public and commercial buildings (collectively referred to as "LBP debris"). Under the TSCA Title IV rule, EPA is specifying that such LBP debris must be disposed of in: (1) Construction and demolition landfills as defined at proposed § 745.303; (2) a landfill subject to the requirements in 40 CFR part 257, subpart B, applicable to non-municipal, non-hazardous waste disposal units receiving conditionally exempt small quantity generator waste (as defined in 40 CFR 261.5); (3) a hazardous waste disposal facility that is permitted under 40 CFR part 270; (4) a hazardous waste disposal facility authorized to manage hazardous waste by a State that has a hazardous waste management program approved under 40 CFR part 271; or (5) a hazardous waste treatment, storage, and disposal facility that has qualified

for interim status to manage hazardous waste under RCRA section 3005(e). For a number of reasons discussed in the preamble of the TSCA proposed rule (see Unit V. "Analytical Basis for Landfill Disposal Options" for details), EPA believes that these disposal options for LBP debris are safe, reliable, and effective as required under TSCA section 402(a)(1). (The preamble to the TSCA Title IV proposal also requests comment on the appropriateness of disposing LBP debris in Municipal Solid Waste Landfills operated in compliance with 40 CFR part 258 requirements.)

EPA has included, in the TSCA Title IV proposed rule, the following prohibitions: (1) No application of LBP debris as mulch, ground cover, or fill material (e.g., after shredding or grinding) without first removing the LBP such that the remaining material contains no visible signs/traces of paint; (2) no transfer for reuse of LBP debris with a specified level of deteriorating paint (e.g., as a building or structural component or artifact) unless the LBP is encapsulated or removed such that the remaining material does not pose a LBP hazard; (3) no transport of LBP debris in open, uncovered vehicles; (4) no storage of LBP debris prior to disposal for any period exceeding 180 days, and after 72 hours following waste generation such storage must include use of an access limitation, such as a receptacle, covered dumpster, barrier, or fence; (5) notification and recordkeeping requirements; and (6) no reclamation or burning of LBP debris for lead or for energy except at facilities meeting specified Clean Air Act standards. EPA believes that these prohibitions and management standards are appropriate because they are protective of human health and the environment, and they ensure that management and disposal of LBP debris are conducted in a safe, reliable, and effective manner. For further information about the management and disposal standards EPA is proposing, see the companion TSCA proposed rule in today's **Federal Register**.

IV. Basis for the Temporary Suspension of the TC Rule

A. Purpose of the Proposed Temporary Suspension

The purpose of today's proposed temporary suspension of the TC rule for LBP debris is to ensure that abatements, deleading, remodeling and renovation, and demolition activities where LBP is present are conducted expeditiously and that management and disposal of LBP debris from these activities are

governed by appropriate standards. Since enactment of the Lead-Based Paint Poisoning Prevention Act, as amended by the McKinney Homeless Assistance Act, 42 U.S.C. 4822, and TSCA Title IV, as part of the LBP Act of 1992, there has been a significant increase in abatement activities in public housing and target housing. These activities result in the production of large amounts of solid waste containing LBP.

Based on a 1992 study of LBP waste, EPA concluded that because of the high lead content in some paint used in residences built before 1978, certain LBP waste components (including painted architectural debris) may sometimes be a RCRA hazardous characteristic waste, and that additional confirmatory analysis would be necessary (Ref. 5). To comply with RCRA Subtitle C regulations, contractors conducting abatements at Housing and Urban Development (HUD) housing units reportedly have been TCLP testing LBP waste and, if the waste "fails" the TCLP, have managed it according to the RCRA hazardous waste management requirements.

HUD, State public housing authorities (e.g., Maryland and Massachusetts), and advocacy groups (e.g., Alliance to End Childhood Lead Poisoning and the National Center for Lead Safe Housing), have argued against the applicability of the TC rule (and all of the RCRA Subtitle C hazardous waste requirements which flow from a "failure" of the TCLP test) to LBP waste. They argue that the applicability of RCRA Subtitle C requirements results in significant interference with abatement activities in target housing, and that such interference is contrary to the intent of Congress in enacting Title X of the Housing and Community Development Act of 1992 (which amended TSCA by adding a new Title IV).

The stakeholders mentioned above have provided a variety of reasons explaining why applicability of the TC rule and RCRA Subtitle C interferes with LBP abatement efforts. Among the reasons are: (1) Technical difficulties in sampling of certain types of LBP debris, e.g., doors, windows, and other structural components; (2) uncertainty about conducting the TCLP test on LBP waste and about reproducibility of test results; and (3) the high cost of compliance with RCRA hazardous waste standards in cases where the LBP debris fails the TCLP test. The result is that certain LBP abatement and deleading projects do not occur or are delayed due to the lack of sufficient funds. EPA

addresses each of these issues in Unit IV.B. of this preamble.

B. Available Information on the Scope of the Problem and Impacts of RCRA Subtitle C

1. *Difficulties in conducting the TCLP test.* EPA has received comments indicating difficulties in obtaining a representative sample of heterogeneous waste material such as LBP debris (made up of painted doors and windows, plaster boards, and other painted architectural components) from abatement, renovation and remodeling, or demolition activities and conducting the TCLP test. The sampling methods described in EPA's laboratory testing method manual, SW-846, largely focus on homogeneous waste materials, and are not well suited for sampling LBP debris such as door frames, windows, shelves, and banisters. EPA has received several inquiries concerning how to obtain a representative sample of LBP architectural component debris. Because of the difficulty in sampling heterogeneous waste and the lack of a standardized sampling methodology, stakeholders argue that TCLP results for such waste are inconsistent and not reproducible.

EPA acknowledges the difficulties that may arise in attempting to prepare a sample to conduct the TCLP test on LBP architectural component waste. To address some of these difficulties, EPA completed a residential LBP architectural component debris study. The intent was threefold: (1) To develop heterogeneous waste sampling and TCLP sample preparation protocols; (2) to obtain additional TC analysis data to substantiate earlier EPA study results; and (3) to subject waste samples to both the TCLP (which simulates leaching when waste is disposed of in a municipal landfill) and the Synthetic Precipitation Leaching Procedure (which simulates leaching when waste is disposed of in landfills other than a municipal landfill, such as construction and demolition--"C&D" landfills) (Ref. 6).

A 1992 EPA study identified three major categories of waste produced during abatements: filtered wash water, solid architectural debris, and plastic sheets and tape used to cover floors and other surfaces (Ref. 5). The study concluded that filtered wash water is generally nonhazardous. The results for solid architectural debris demonstrated that debris tended to fail the TCLP when the lead in the paint, as measured by Atomic Absorption Spectrometry (AAS) exceeds 4 mg/cm². (Note: TCLP failure in the study was not well-correlated with results of on-site testing of lead

levels in paint using an XRF device.) Generators often experience difficulties when sampling and conducting the TCLP test on solid architectural debris waste. The study's failure rate for plastic sheeting tended to depend on the abatement method. For example, removal and replacement tended to generate nonhazardous plastic sheeting, but use of a heat gun tended to result in the sheeting failing the TCLP. Such material can properly be decontaminated (e.g., vacuuming of dust and/or washing) prior to disposal. The study also noted that other categories of waste, such as sludges and LBP chips, often exceed the RCRA TC rule regulatory limit.

As discussed in Unit IV.D, of the companion proposal titled "Management and Disposal of Lead-Based Paint Debris" published elsewhere in today's **Federal Register**, the TCLP results for LBP debris are not reproducible primarily due to difficulties in obtaining a representative sample. Also, even if a representative sample is taken, difficulties exist when preparing and obtaining a sample for the TCLP analysis. These difficulties may be creating disincentives to LBP abatement and other lead hazard reduction activities that generate LBP debris.

EPA intends to study these sampling and analytical difficulties further and assess whether questions concerning the consistency and validity of TCLP results on LBP architectural components can be resolved during the pendency of the temporary suspension.

2. *Economic impacts of Subtitle C regulation on LBP abatements.* It is clear that RCRA Subtitle C regulation of LBP debris resulting from abatements, deleading, renovation, remodeling, and demolition can potentially increase the costs of conducting such activities. The primary sources of these increased costs are the RCRA Subtitle C treatment and disposal requirements that apply if LBP debris fails the TCLP. (In addition, waste sampling and analysis costs are approximately \$100 per sample for TCLP analysis.) For waste which is determined to be hazardous, the cost of treatment and disposal (including transportation) can be quite high (EPA estimates approximately \$316 per ton), assuming full compliance (Ref. 7). Individuals undertaking abatements and deleadings do not necessarily know when beginning a project if the waste will require management as a hazardous waste, but they must account for this possibility in their cost estimates. These RCRA Subtitle C testing, treatment, and disposal costs may contribute to the decision not to conduct an abatement project (Ref. 7).

Among abatement waste categories, LBP architectural components are the main source of large-volume waste. Other abatement wastes (such as LBP chips and dust, treatment residues and waste water, and worker equipment and clothing) are generally generated in smaller quantities. Moreover, these other types of abatement wastes are relatively easy to sample and analyze (with reproducible results), and, even if hazardous, generators can manage the wastes without excessive costs (because of smaller volumes).

As noted above, RCRA Subtitle C treatment and disposal costs are approximately \$316 per ton (of this total, approximately \$86 per ton is for transportation) as compared with an estimated cost of \$37.20 per ton based on new United States Forest Service C&D tipping fees survey, to dispose of LBP debris in a construction and demolition landfill (a solid, nonhazardous waste landfill defined in today's TSCA proposal that generally accepts construction wastes), including compliance with the management controls in today's proposal. Thus, for the disposal of 100 tons of debris from a LBP abatement, Subtitle C requirements would cost \$31,600 as opposed to the \$3,720 it would require to dispose of the waste in a construction and demolition facility in compliance with today's proposed standards (Ref. 7).

EPA believes that the higher costs associated with RCRA Subtitle C may hinder LBP abatements and deleadings from being conducted. The Agency has received submissions from members of the public, including a number of State governments, indicating that the cost of complying with RCRA Subtitle C hazardous waste regulations interferes with or in many cases halts the conduct of LBP abatements (Ref. 7).

3. Conclusions and areas for further consideration. Given the demonstrated risks that LBP poses and the clear Congressional intent for risks from LBP hazards to be reduced, the Agency believes that it is appropriate to assess the adverse impacts that RCRA Subtitle C regulations may have on LBP abatement, deleading, renovation, remodeling, and demolition activities and decide what (if any) RCRA Subtitle C regulation is necessary once the TSCA Title IV regulations take effect. Because indications are that the applicability of the TC rule and all other Subtitle C requirements may interfere with lead hazard reduction activities and may not be necessary to protect human health and the environment from LBP debris disposal, EPA is proposing this temporary suspension.

Moreover, under current RCRA requirements, all LBP debris (if not derived from a household) is not treated equally. Some LBP debris, specifically, debris which fails the TCLP for lead, is subject to the strict and costly requirements of RCRA Subtitle C. At the same time, LBP debris (if not derived from a household) which passes the TCLP or, using generator's knowledge has been determined to be nonhazardous, remains non-hazardous solid waste and generally may be disposed of in any solid waste disposal facility which meets the requirements in the open dumping criteria which EPA promulgated in 1979 (40 CFR part 257, subpart A).

However, any LBP debris which passes the TCLP test (i.e., which is identified as nonhazardous) is not currently subject to any management standards under RCRA Subtitle D similar to that being proposed under TSCA today. These new TSCA management standards (e.g., access control during debris storage, covering of trucks used in shipping debris for recycling or disposal) take into account the risks that LBP debris may pose to humans, particularly children, even if the debris passes the TCLP test.

During the development of this proposal, it has become clear to the Agency that the unequal management and disposal standards for LBP debris under RCRA are inappropriate. In cases where LBP debris is determined to be hazardous, the Agency now believes that RCRA Subtitle C management and disposal requirements for LBP debris are unnecessarily strict and costly. On the other hand, LBP debris that is found to be nonhazardous is not subject to the RCRA Subtitle C management requirements (i.e., land disposal restrictions requiring treatment and disposal as a RCRA hazardous waste). Thus, in cases where LBP debris passes the TCLP or is determined through knowledge to be nonhazardous, management and disposal occurs according to solid waste management regulations and disposal occurs at solid waste landfills accepting such waste for disposal.

The TSCA standards being proposed today represent a common sense approach to management and disposal of LBP debris which addresses the problems associated with RCRA regulation of LBP debris. This proposal to suspend the TC rule, combined with the TSCA proposal issued today, would afford equal and appropriate management and disposal standards for all LBP debris.

Although EPA believes there is sufficient information to propose this

temporary suspension of the TC rule for LBP debris, the Agency plans to proceed to analyze in greater detail the concerns that members of the public, including States, have raised concerning the degree to which RCRA Subtitle C requirements may impede or frustrate LBP abatements in target housing, public and commercial buildings. While the temporary TC suspension is in effect, EPA will study further related issues such as: (1) are LBP abatements and deleading projects occurring on a more frequent and expeditious basis because LBP debris is temporarily not subject to RCRA hazardous waste requirements; and (2) whether any RCRA Subtitle C requirements are needed to supplement the TSCA Title IV standards.

As indicated in the Agency's proposed Hazardous Waste Identification Rule (HWIR), EPA is considering reevaluation of the TC regulatory level for lead (see 60 FR 66406, December 21, 1995). Since promulgation of the TC rule, EPA has become aware of a number of factors which have prompted the Agency to consider initiating a re-evaluation of the 5 mg/L TC level for lead. First, the human health risk evaluation for lead has changed since EPA promulgated the TC rule, resulting in the action level (on which the TC is based) for lead being reduced from 50 parts per billion (ppb) to 15 ppb. Second, EPA has developed a constituent-specific Dilution Attenuation Factor ("DAF") of 5,000 for lead leaching under different disposal scenarios (suggesting that lead generally moves slowly in the subsurface environment except in specific hydrogeologic situations) which differs from the generic DAF of 100 used in the TC rule (See Unit V. of the TSCA proposed rule preamble published elsewhere in today's **Federal Register** for a discussion of the lead DAF). Third, EPA has developed a multi-pathway, multi-media exposure risk assessment model that allows consideration of exposure pathways in addition to ground water contamination (which was the pathway considered in the TC rule). (Available data suggest that some of the other pathways may be more riskier than the ground water exposure pathway.)

EPA recognizes that the TC level for lead is a matter of considerable interest to the public and has initiated efforts to review management of lead-bearing waste and other related studies (e.g., lead leaching). In the meantime, given the other factors discussed above, EPA has decided to propose a temporary suspension of the TC rule for LBP debris

and new standards under TSCA for the management and disposal of LBP debris.

C. Alternative Approaches

Instead of a temporary suspension of the TC rule, EPA is considering and seeking comment on a permanent approach under RCRA for addressing LBP debris that is subject to the proposed TSCA Title IV requirements. Like the proposed temporary TC suspension, a permanent rule would eliminate the dual regulation of LBP debris under two separate environmental statutes and remove obstacles hindering lead abatement and deleading activities.

Such a rule could be framed as a permanent suspension of the TC for LBP debris that is subject to the proposed TSCA Title IV requirements. Under such an approach, EPA would determine that the proposed TSCA Title IV standards for managing and disposing of LBP debris are safe, reliable, and effective in protecting human health and the environment. As discussed in Unit V.B. of this preamble, the statutory basis for such an approach would be RCRA sections 1006(b)(2) and 2002(a), which require the Agency to integrate the provisions of RCRA with other environmental statutes. In addition, a permanent rule could be issued as a "conditional exemption" from RCRA subtitle C for LBP debris regulated under the TSCA Title IV management and disposal standards. See *Military Toxics Project v. EPA*, D.C. Cir. No. 97-1343 (June 30, 1998) (EPA has the authority under RCRA subtitle C to conditionally exempt a hazardous waste from subtitle C regulation where an alternative regulatory scheme provides adequate protection). EPA requests comment on the merits of such a permanent RCRA LBP rule.

V. Explanation of Today's Proposed Rule

A. Introduction

Today's proposal would suspend temporarily the applicability of the TC rule to LBP debris (i.e., LBP architectural component debris resulting from LBP abatements, deleadings, renovation and remodeling, and LBP debris from demolitions) generated at target housing, public and commercial buildings, for which management and disposal standards are being proposed today under TSCA Title IV. If promulgated, the proposed rule would mean that generators of LBP debris resulting from these activities would not have to conduct the TCLP test on LBP debris or use their knowledge to determine whether LBP

debris is a hazardous waste. Nor would generators of LBP debris be required to comply with any treatment, storage, or disposal requirements under RCRA Subtitle C. Instead, generators of LBP debris would be required to comply with the management and disposal standards to be promulgated under TSCA Title IV (unless and until the Agency decides that some additional RCRA regulation should also apply to LBP debris).

EPA is proposing this temporary suspension of the TC rule as an exclusion from the definition of "hazardous waste" in 40 CFR 261.4(b). The temporary suspension would amend the definition of hazardous waste to exclude LBP debris resulting from: (1) Lead-based paint abatements conducted at target housing; (2) deleading projects conducted at public buildings or commercial buildings; and (3) renovation or remodeling activities conducted at target housing, public buildings, or commercial buildings. The temporary suspension would also amend the definition of hazardous waste to exclude LBP debris resulting from demolitions of target housing, public, or commercial buildings. If, however, such LBP debris, is hazardous for reasons other than failing the TCLP for lead, (e.g., the debris contains a listed hazardous waste or any other TC or other hazardous waste characteristic constituent), the exclusion from the definition of hazardous waste would not apply.

The Agency is proposing this suspension in 40 CFR 261.4, rather than as part of the TC rule in 40 CFR 261.24, because it has been a consistent practice for EPA to list all of the exclusions from both the solid waste and hazardous waste regulatory schemes in 40 CFR 261.4, and the regulated community is more likely to be familiar with this approach. This exclusion from the definition of hazardous waste, and thus from any TC rule requirements, would be temporary pending EPA's conduct of studies and analyses of the issues as described in Unit IV.B.3. of this preamble.

B. Statutory Basis for the Temporary Suspension

EPA is proposing this temporary suspension of the TC rule for LBP architectural components under the authority of RCRA sections 1006(b)(2) and 2002(a). RCRA section 1006(b)(1) states that EPA:

shall integrate all provisions of [RCRA] for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of . . . such other Acts of Congress

as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in [RCRA] and in the other acts referred to in this subsection. 42 USC section 6905(b)(1).

As discussed in the proposed TSCA rule, EPA has authority under TSCA Title IV to promulgate regulations governing LBP activities, including the establishment of standards governing the management and disposal of waste resulting from abatements, deleading, renovation and remodeling, and demolition activities (15 U.S.C. 2681(1) and 2682(a)(1) and (b)). Pursuant to this authority, EPA is simultaneously proposing elsewhere in today's **Federal Register** specific regulations which govern the management and disposal of LBP debris resulting from these activities. EPA believes that the TSCA rules being proposed today for LBP debris are consistent with the central objective and policy of RCRA: Protecting human health and the environment.

The legislative history shows clearly that by enacting TSCA Title IV, Congress wanted to "remove all major obstacles to progress, making important changes in approach and laying the foundation for more cost-effective and widespread activities for reducing lead-based paint hazards" (S. Rep. No. 102-332, 102nd Cong., 2nd Sess. 111 (1992)). As the Senate Committee on Banking, Housing and Urban Affairs stated, ". . . by establishing realistic, cost-effective procedures for achieving hazard reduction, [The LBP Act of 1992] will speed the clean-up of lead paint hazards in housing and greatly decrease the incidence of childhood lead poisoning." (Id. at 112.)

Thus, in enacting TSCA Title IV, Congress wanted to ensure that obstacles to lead abatements and deleading activities, including high costs, would be minimized and that LBP hazards would be reduced. In authorizing EPA under TSCA Title IV to promulgate management and disposal standards for LBP waste, however, Congress did not address the conflict that would arise concerning the overlapping jurisdiction of the RCRA TC rule and the TSCA disposal standards. Nor did Congress clearly address the obstacles to the conduct of lead abatements and deleading activities that can result if LBP debris is determined to be hazardous and subject to the resultant costs of RCRA Subtitle C. To resolve the duplication inherent in the statutory schemes and the potential adverse impacts if both RCRA and TSCA regulatory schemes were to apply

to LBP debris, EPA believes it is appropriate to resolve this conflict of overlapping jurisdiction by proposing to suspend temporarily the applicability of the TC rule to such LBP debris as authorized under RCRA section 1006(b)(1). See *Edison Electric Institute v. EPA*, 2 F.3d 438, 452 (D.C. Cir. 1993) (because Congress did not clearly address the interaction between RCRA Subtitles C and I, EPA's temporary deferral of the TC rule for underground storage tank waste under RCRA section 1006(b)(1) was permissible). The temporary suspension of the TC rule proposed today would also work to integrate the regulatory provisions promulgated under the Clean Air Act pertaining to municipal waste combustors and smelters with RCRA and TSCA Title IV regulatory requirements.

EPA believes that the TSCA rule being proposed today for LBP debris will protect the core value of RCRA of protecting human health and the environment. See 42 U.S.C. 6902. While EPA further studies various issues described in this proposal, e.g., the difficulty of conducting the TCLP test on LBP debris and whether the TC regulatory level for lead should be modified, the Agency believes that the management, notification, transportation, and disposal standards being proposed today under TSCA Title IV are consistent with the goals and policies of RCRA. Suspending the applicability of the TC rule to LBP debris on a temporary basis, while requiring that disposal of such LBP debris comply with regulations promulgated under TSCA Title IV and the Clean Air Act, would give EPA the necessary time to study the Title IV regulatory scheme and to assess whether any additional RCRA regulation is necessary.

The Agency also believes that it has the authority to promulgate the TC temporary suspension for LBP debris as a conditional exemption under RCRA section 3001(a). See *Military Toxics Project v. EPA*, D.C. Cir. No. 97-1343 (June 30, 1998) (EPA has the authority under RCRA subtitle C to conditionally exempt a hazardous waste from Subtitle C regulation where an alternative regulatory scheme provides protection.) See 62 FR 6622, 6636-38; February 12, 1997.

It is important to note that the proposed temporary TC suspension would not alter a person's potential CERCLA liability. The rule would only suspend the TC rule for LBP debris managed under the proposed TSCA Title IV requirements. Even if a lead regulatory level was changed or lead

was entirely removed from regulations as a RCRA hazardous waste, lead would remain a CERCLA hazardous substance because it is listed under the Clean Air Act and the Clean Water Act. Therefore, persons who arrange for the disposal of, or are otherwise connected with, LBP debris would remain potentially subject to liability under CERCLA section 107(a) even after promulgation of the rule. Nevertheless, the rule is intended to facilitate lead abatement and deleading activities by eliminating the barriers posed by RCRA's hazardous waste rules when the LBP is properly managed in accordance with the TSCA Title IV rules.

C. Scope of the Temporary Suspension

1. *Types of waste covered.* The temporary suspension of the TC rule would apply to LBP architectural component debris and LBP demolition debris which is subject to the disposal and management standards promulgated under TSCA section 402(a). EPA is proposing to define "LBP architectural component debris" in the RCRA regulation, in the same manner proposed in today's TSCA proposed rule (see § 745.301 of the TSCA proposed rule regulatory text). The definition of LBP architectural component debris provides a generic definition of architectural components, i.e., "elements or fixtures, or portions thereof, of commercial buildings, public buildings, or target housing that are coated wholly or in part with or adhered to by lead-based paint." The definition also includes a non-exclusive list of specific examples of structural elements or fixtures that would fall within the definition.

Under this definition of "lead-based paint architectural component debris," EPA has specified that other types of LBP wastes that may result from activities at any of the identified structures are not covered by the scope of the proposed temporary suspension of the TC rule. The other LBP wastes excluded from coverage under this proposed TC suspension include paint chips and dust, sludges and filtercake, wash water, and contaminated and decontaminated protective clothing and equipment.

For a number of reasons, EPA is not proposing to include these other LBP wastes (except when they are part of LBP demolition debris) within the scope of the temporary suspension of the TC rule. First, these types of LBP waste are generally produced in much smaller quantities and their bulk is considerably less than that of LBP debris. Thus, the costs involved in treating and disposing of these wastes as hazardous are far less

than the costs would be for the large volume of LBP debris which frequently result from abatement, deleading, demolition, and renovation and remodeling activities.

Second, certain of these LBP wastes, e.g., paint chips and dust, sludge and filter cakes, are homogenous in physical characteristics, are easy to sample using the existing EPA sampling methods, are easily recognizable, can be easily segregated from LBP architectural component debris resulting from abatements or renovation or remodeling, and contain high levels of lead in a concentrated form. Unlike LBP architectural component debris, they are more likely to fail the 5 mg/L TCLP regulatory level for lead routinely, and the TCLP test results can reliably be reproduced. In some cases, the lead content is so high that the waste could possibly be sent to lead smelters for the metal recovery. Thus, these other lead-based paint wastes will remain subject to RCRA hazardous waste determination requirements, including the provisions of the TC rule.

EPA is proposing to define "LBP demolition debris" to include any solid material which results from the demolition of target housing, public buildings, or commercial buildings which are coated wholly or in part with or adhered to by lead-based paint at the time of demolition. Thus, LBP demolition debris includes dust, paint chips, and other solid wastes from demolition activities which are not covered under today's proposal if they are generated during other LBP activities such as "abatement," "deleading," "renovation" etc. EPA expects that such LBP waste would normally represent only a small percentage of the large volume of the total solid waste generated during demolitions. Moreover, separation of dust and paint chips from other demolition waste is virtually impossible. (Nevertheless, to the extent practicable, EPA encourages separation of LBP debris and LBP non-debris waste (paint chips and dust), and proper management.) Since some LBP non-debris waste is impractical to separate, EPA is proposing that all solid waste, including any LBP dust, paint chips, or other particulate matter, generated during demolitions are covered by today's proposal to suspend the TC.

LBP demolition debris under the Agency's proposal, however, would not include any solid waste resulting from a demolition which fails the toxicity characteristics regulatory level for any hazardous constituent other than lead as contained in the TC rule (40 CFR 261.24). Thus, if a generator of LBP

demolition debris has not separated hazardous waste (other than LBP) from the building prior to the demolition, he or she remains subject to the RCRA hazardous waste determination requirement for TC hazardous constituents and must determine whether any of the regulatory levels for the TC hazardous constituents (other than lead) are met or exceeded.

2. *Activities and structures covered.* Under this proposal and the TSCA proposal being published today, "lead-based paint" would be defined in the same manner it is defined in the TSCA rule applicable to worker certification and training requirements (see 61 FR 45815, August 29, 1996). Under the TSCA definition, the term would mean paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight measured using the appropriate lead detection instruments. (This is a TSCA LBP hazard determination requirement.) The discussion below describes activities and structures from which LBP debris is generated.

EPA is proposing to apply the temporary suspension of the TC rule to exclude LBP architectural component debris resulting from: Lead-based paint abatements conducted at target housing; deleading projects conducted at public buildings or commercial buildings; and renovation or remodeling activities conducted at target housing, public buildings, or commercial buildings. The temporary suspension would also apply to LBP debris resulting from demolitions of target housing, public buildings, or commercial buildings. What follows is a discussion of each of these categories of activities.

i. *Abatements at target housing.* EPA is trying to ensure that abatements at target housing occur (when needed) in an expeditious and cost-effective manner through publication of the proposed rules today. In both proposals, EPA is defining the term "abatement" as the term is defined in the worker certification and training rule that the Agency promulgated under TSCA section 402 and 404 (see 61 FR 45813, August 29, 1996). Both the statutory definition in TSCA section 401(1) and this regulatory definition tie the term "abatement" closely to a permanent elimination of LBP hazards.

EPA proposes to define "target housing" in the same way Congress defined the term in TSCA section 401(17), i.e., all housing constructed prior to 1978 (with certain exceptions as specified in the definition). LBP was used frequently prior to 1978 in the construction and re-painting of housing in the United States. As such, under

TSCA Title IV and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), target housing was specifically intended to be the subject of LBP abatement activity (15 U.S.C. 2682(a)(1) and 42 U.S.C. 4851 - 4852).

ii. *Deleading at public buildings and commercial buildings, renovation and remodeling, and demolition.* EPA originally planned to limit the scope of the TSCA proposed rule and the proposed TC suspension to LBP architectural components debris resulting from abatements at target housing and child-occupied facilities. However, a number of stakeholders, including State governments, argued that the scope of the proposed rules should be broadened to include architectural component debris from deleading activities at public and commercial buildings and from renovation and remodeling activities. For example, EPA received a letter from the California Department of Health Services suggesting that EPA expand the scope of this temporary TC suspension proposal to include LBP waste from public buildings such as libraries and buildings owned by State and local municipalities. Stakeholders argue that LBP architectural component debris is essentially the same waste no matter what its origin; thus, its disposal should be controlled in the same manner. Moreover, States also raised questions about their ability to enforce two different sets of rules (the TSCA Title IV rule and the RCRA Subtitle C regulations) for the same type of waste that will "look alike" despite having different points of generation, e.g., target housing versus public buildings, or resulting from different activities, e.g., LBP abatement versus renovation projects that include removal of architectural components or demolition of target housing, public buildings, or commercial buildings.

EPA agrees with these concerns and is including within the scope of the proposed rules being published today LBP architectural component debris resulting from deleading activities at public buildings and commercial buildings. EPA is also proposing to make the rules applicable to LBP architectural component debris from renovation and remodeling activities and LBP debris from demolitions of target housing, public buildings, and commercial buildings. EPA agrees with the stakeholders' comments and believes that broadening the scope of the proposed rules provides a common sense regulatory framework that would not have resulted if the same waste from different structures or activities remained subject to two different

regulatory regimes. In addition, including LBP debris resulting from deleading, renovation, remodeling, and demolition of public and commercial buildings within the scope of the proposed TSCA rule and the proposed TC suspension would allow the establishment of management and transportation standards for LBP debris to protect human health which otherwise would not exist under RCRA Subtitle D if the debris does not fail the TCLP.

EPA has proposed the definitions for the following terms at 40 CFR 745.301, in the companion TSCA proposal published today. "Deleading" as the term is defined under TSCA section 402(b)(2)--"activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities" in public buildings or commercial buildings (15 U.S.C. 2682(b)(2)). EPA is proposing to define "public building" to mean "any building constructed prior to 1978, [except target housing], which is generally open to the public or occupied or visited by the public, including but not limited to schools, day care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers, and government buildings." The proposed definition of "public building" would also include any "child-occupied facility" as defined in the LBP worker certification and training rule. In addition, EPA proposes to define "commercial building" to mean any building used primarily for commercial or industrial activity including: manufacturing, service, repair, or storage.

The Agency is proposing to define "renovation" to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term renovation includes but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement. The term "remodeling" is defined to encompass any construction-related work on an existing property intended to either maintain or improve the property that results in the disturbance of painted surfaces.

EPA is proposing to define the term "demolition" to include the act of wrecking, razing, or destroying any

building or significant element thereof using a method that generates undifferentiated solid waste.

3. *Lead-contaminated soil.* Lead-contaminated soil is not included in the scope of the TSCA lead-based paint debris proposal nor in the proposed temporary suspension of the TC with respect to LBP debris (see the companion TSCA LBP debris proposal for further discussion). EPA requests comment on whether there is a sound technical basis for reducing the Subtitle C requirements that might apply to some soil removed from residences, the importance of addressing this issue, and possible options for doing so. EPA will consider whether there is a need and a basis for addressing that issue in a separate rulemaking in the future.

D. Other Exclusions from RCRA Subtitle C

1. *Household waste exclusion.* One issue that has arisen during the course of preparing this proposed rule is whether the existing household waste exclusion would apply to LBP waste that results from a resident's actions to renovate, remodel, or abate a LBP-contaminated home. This household waste provision in the RCRA Subtitle C regulations excludes certain types of household hazardous waste from the requirements of RCRA Subtitle C (40 CFR 261.4(b)(1)). EPA promulgated this household waste exclusion as part of the Agency's initial phase of implementing RCRA section 3001, which required the Agency to establish criteria for identifying hazardous waste characteristics and listing specific hazardous wastes (42 U.S.C. 6921; 45 FR 33084, 33098-99, 33120, May 19, 1980).

In that 1980 regulation, EPA excluded "household waste" from being identified as hazardous waste. This exclusion implements Congressional intent as expressed in the legislative history of RCRA as enacted in 1976. See S. Rep. No. 94-988, 94th Cong., 2nd Sess., at 16 (hazardous waste program is "not to be used either to control the disposal of substances used in households or to extend control over general municipal wastes based on the presence of such substances."). In promulgating the exclusion in 1980, EPA defined "household waste" to include "any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels)" (see 45 FR 33120, May 19, 1980). In 1984, the Agency expanded the scope of the household waste definition to include wastes from bunkhouses, ranger stations, crew quarters, campgrounds,

picnic grounds, and day-use recreation areas (49 FR 44978, November 13, 1984).

Although the definition of household waste does not indicate whether a waste is household waste as a result of the place of generation (e.g., a residence), or as a result of who generated it (e.g., a resident of a household), EPA has limited the exclusion's application to those wastes which meet the following two criteria: (1) The waste must be generated by individuals on the premises of a household and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978). If a waste satisfies both criteria, then it would fall within the household waste exclusion and not be subject to RCRA Subtitle C regulation. Id.

EPA has previously taken the position that the household waste exclusion should not be extended to debris resulting from building construction, renovation, or demolition in houses, or other residences, because EPA did not consider the debris from such operations to be of a type similar to that routinely generated by a consumer in a home (49 FR 44978). (Although this interpretation did not address waste resulting from remodeling or abatement conducted at residences, these activities can be similar in many ways to those addressed in the 1984 **Federal Register** notice, i.e., renovation, construction, and demolition). EPA has re-evaluated this position in the context of this proposed temporary suspension of the TC rule for contractor-generated LBP debris and the TSCA rulemaking also being proposed today.

For the reasons discussed below, EPA has reconsidered the matter and now interprets the household waste exclusion in 40 CFR 261.4(b)(1) to apply to all LBP waste (i.e., LBP debris, LBP chips and dust, etc.) generated as a result of actions by residents of households to renovate, remodel, or abate their homes on their own. EPA invites comment on this interpretation.

i. *Residential renovation and remodeling.* EPA has previously taken the position that lead-contaminated paint chips resulting from stripping and re-painting of residential walls would be part of the household waste stream and not subject to RCRA Subtitle C regulation (Ref. 8). The Agency believed then and continues to believe that such re-painting efforts within a residence are routine maintenance and that any LBP waste resulting from these activities should fall within the household exclusion. EPA now believes that LBP waste resulting from renovation or remodeling efforts by residents of

households or "do-it-yourselfers," should also fall within the household waste exclusion.

Although the Agency stated in 1984 that waste from renovation should not be covered by the household waste exclusion (because the waste was not composed primarily of materials routinely generated by consumers in a home), it has become evident that more and more residents are engaging in renovation or remodeling of their homes. This is strongly suggested by the greatly increased number of building permits that have been issued throughout the country for renovation of residences. EPA believes that, although many renovation and remodeling efforts are conducted by professional contractors, more and more are done by residents on their own. This may be shown, in part, by the widespread openings of home improvement stores throughout the United States which cater to do-it-yourselfers. It is also evident from: (a) The doubling of retail sales of lumber and other materials to consumers over the last 10 years from \$45 to \$89 billion; (b) steady increases of approximately 25% in hardware sales every 5 years; (c) the increase in consumers' purchase of home improvement products from \$38 to \$90 billion between 1980 and 1995; and (d) the projected increase in sales of home improvement products to consumers to almost \$115 billion by the year 2000 (Ref. 9). Thus, EPA now believes that LBP waste resulting from renovation or remodeling efforts conducted by residents of households does meet the two criteria for the household exclusion outlined above (i.e., the waste is generated by individuals in a household and it is of the type that consumers generate routinely in their homes).

ii. *Residential abatements.* EPA has decided to include within the scope of the household waste exclusion LBP waste resulting from a do-it-yourselfer abatement conducted in homes. (EPA recommends that homeowners/residents do not try to remove lead paint or painted architectural components from older, pre-1978 homes without adequate understanding of the lead risks, especially to children, and proper ways to minimize the risks of exposure to dust and paint when removing and storing painted doors, windows, and other architectural components.) Although such abatements are less routine than renovation or remodeling activities, the Agency believes such LBP abatement waste should be covered by the household waste exclusion to avoid the incongruities that would result from the fact that the TSCA disposal and management standards being proposed

today do not apply to homeowners. The TSCA proposal applies to persons (i.e., properly trained and certified LBP abatement contractors) who generate, store, transport, reuse, reclaim and/or dispose of LBP debris resulting from target housing abatements, deleading of public or commercial buildings, and renovation, remodeling and demolition of target housing, residential, public, and commercial buildings. However, the TSCA proposed rule does not apply to residents of households who conduct any of these activities within a target house that they own (unless people other than immediate family members are occupying the target house). See § 745.300(a) and (b) of the regulatory text of the TSCA proposed rule.

If EPA chose to interpret the household exclusion not to apply to LBP waste resulting from residential renovation and remodeling or abatements done by households, the result would be that contractors conducting residential abatements, remodeling or renovation of LBP-contaminated residences would be subject to the TSCA standards (and not RCRA Subtitle C); however, residents conducting their own remodeling or renovation or LBP abatements would be subject to RCRA Subtitle C requirements (unless the Conditionally Exempt Small Quantity Generator exemption discussed below were to apply). Thus, residents/homeowners, but not contractors, would be required to determine whether the resulting LBP waste was hazardous. If the waste was hazardous, i.e., failed the TCLP regulatory level for lead, the resident would be required to comply with RCRA Subtitle C requirements. The Agency does not believe it is appropriate to apply RCRA Subtitle C requirements to LBP waste resulting from a resident's own renovation or remodeling or abatement actions, while allowing contractors generating the same type of LBP waste through the same activities at residences to comply with the less burdensome TSCA standards being proposed today.

EPA does not intend that its interpretation to exclude LBP waste generated by do-it-yourselfer abatements at homes from Subtitle C to be taken as a sign that EPA is encouraging people to conduct their own LBP abatements. Rather, the Agency believes that in situations where LBP in a residence presents risks to human health, trained and certified abatement contractors should conduct the LBP abatement.

iii. *Management of LBP waste generated by "do-it-yourselfer" households.* Identification of the waste as falling within the household waste

exclusion, however, does not make exposure to LBP less hazardous, and the LBP waste should be managed properly. EPA, therefore, recommends that residents/households generating LBP waste take the following steps for proper handling and disposal of LBP waste:

- Collect paint chips and dust, and dirt and rubble in plastic trash bags for disposal.
- Store larger LBP architectural debris pieces in containers until ready for disposal.
- Consider renting a covered mobile dumpster for storage of LBP debris until the job is done.
- Contact local municipalities or county offices to determine where and how LBP debris can be disposed. These precautionary measures would minimize generation of lead dust, and limit access to stored debris.

2. *Conditionally exempt small quantity generator waste.* LBP waste that does not fall within the scope of the TSCA LBP debris disposal standards and complimentary temporary TC deferral proposed today (i.e., paint chips and dust, sludges and filtercake, and contaminated clothing and equipment) may still be conditionally exempt from substantive RCRA hazardous waste management regulations, as explained below.

If LBP waste is produced in small quantities (no more than 100 kilograms per month (approximately 220 pounds)), the waste may fall within the conditionally exempt small quantity generator (CESQG) waste exemption from RCRA hazardous waste regulation (40 CFR 261.5). The CESQG rule generally exempts generators who produce hazardous waste in such small quantities from having to comply with the RCRA Subtitle C requirements. However, EPA has promulgated disposal requirements for CESQG waste (see 61 FR 34252, July 1, 1996). Generators of CESQG waste are required to dispose of such waste in solid waste disposal facilities which meet location, ground water monitoring, and corrective action standards promulgated in accordance with RCRA section 4010(c) (40 CFR part 257, subpart B), in permitted RCRA Subtitle C facilities, or in interim status RCRA Subtitle C facilities. Id.

3. *Scrap metal.* RCRA Subtitle C regulations exempt scrap metal being reclaimed from hazardous waste management requirements (40 CFR 261.6(a)(3)(ii)). Additionally, non-consumer scrap metal (e.g., home, prompt and processed scrap metal) being recycled have been excluded from the definition of solid waste and therefore, not regulated under RCRA (40

CFR 261.4(a)(13)). Home scrap is scrap metal generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings. Prompt scrap, also known as industrial or new scrap is scrap metal generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punching, and borings. Processed scrap metal is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Under both the exemption and exclusion, recyclable materials such as steel beams and other metal components being sent for reclamation are not subject to the RCRA C regulations (40 CFR parts 262–266, 268, 270, and 124). Generators of these materials are not subject to the notification requirements of section 3010 of RCRA.

VI. State Authorization Considerations

A. *Applicability of Rules in States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA Subtitle C program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements promulgated under RCRA Subtitle C did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do

so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in the authorized State in the interim.

Today's proposed suspension of the TC is less stringent than the current RCRA program. Therefore, although the suspension is proposed under section 3001(g) of RCRA, a provision added by HSWA, States are not required to adopt it when promulgated. Nonetheless, EPA strongly encourages States to adopt the TC suspension for the reasons set out in this proposal. (It should be noted, however, that the TSCA management and disposal standards, once finalized, would apply to LBP debris even if it does not fail the TCLP test).

B. The TC Suspension in States Which Have Adequate TSCA Title IV Programs

EPA is proposing to allow the temporary suspension of the RCRA TC rule to take effect in those States where there is an effective TSCA Title IV program addressing the management and disposal of LBP debris. Therefore, a prerequisite for the temporary TC suspension, in the first 2 years, is a State TSCA Title IV program has been approved by EPA, or, after 2 years, EPA is implementing the Federal TSCA Title IV program for the management and disposal of LBP debris because the State has not been approved for the program under the requirements of TSCA section 404. This limitation applies to all States, regardless of whether they have been authorized for the RCRA hazardous waste program.

1. *Approval of States for the TSCA Title IV Program concerning the management and disposal of LBP debris.* Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 402 or 406 of TSCA may submit an application to EPA for approval of such TSCA program. TSCA section 404(b) states that EPA may approve such an application only after finding that the State TSCA program is at least as protective of human health and the environment as the Federal program established under section 402 or 404 and that it provides adequate enforcement.

There are two ways by which States may be approved for a TSCA Title IV program. Under the first method, when a State submits an application for LBP debris management and disposal program approval, the State may certify that it has such program, and that the program meets the requirements of TSCA sections 404(b)(1) and 404(b)(2). The TSCA certification must take the form of a letter from either the Governor

or the State Attorney General to the Administrator. It must include a description demonstrating that the State's TSCA program is at least as protective as the Federal program and provides for adequate enforcement. If this certification, or certificate of compliance, is contained in a State's application, the State program shall be deemed to be approved by EPA under TSCA section 404, until such time as the Administrator withdraws the approval (see § 745.312 of the regulatory text of today's TSCA proposed rule).

Under the second approval method, if the application does not contain such a certification, the State LBP debris management and disposal program would be considered approved only after EPA reviews and approves the State application (see § 745.315 of the regulatory text of today's TSCA proposal).

During the development of today's proposed rule, EPA considered restricting the proposed temporary suspension of the TC rule to only those States which had submitted applications and obtained actual approval of their TSCA section 404 programs under the second method described above. However, limiting the temporary exemption in this way might unnecessarily delay implementation of the State program because of the time it takes to approve or disapprove a State program. See 15 U.S.C. 2684(b). Because LBP abatements and deleading activities may be postponed until the TC suspension goes into effect, this delay may be detrimental to human health and the environment.

Thus, although the Agency will review the State TSCA program applications to ensure that the statutory standards for State programs under TSCA section 404 are met, EPA believes that it is appropriate to allow the temporary TC suspension to be applicable in States which submit certification Statements in conformance with § 745.312 of the regulatory text of today's TSCA proposed rule. Such a certification must assure EPA that the State TSCA program provides for adequate enforcement and is at least as protective of human health and the environment as the Federal program to be established for LBP debris under TSCA section 402. Therefore, the Agency believes that protection of human health and the environment will not be compromised by allowing LBP debris to be subject to the management and disposal requirements of the relevant State program.

Procedures for State or Tribal applications for TSCA program authorization are discussed in Unit VII.

of the TSCA proposed rule preamble published elsewhere in today's **Federal Register**. EPA has promulgated procedures for the submission and approval of State LBP worker training and certification programs developed under section 404, as well as a model State program (see 61 FR 45825-45827, August 29, 1996). For the purposes of the disposal standards developed pursuant to TSCA section 402, the requirements found in that TSCA rule will serve as the model State program (see 61 FR 45825-30, August 29, 1996).

2. *Federal implementation of the TSCA Title IV Program concerning the management and disposal of LBP debris.* EPA is required to enforce these TSCA Title IV regulations in any State which has not adopted a program to carry out the Federal requirements 2 years after promulgation of today's proposed TSCA Title IV regulations (see TSCA section 404(h)). Thus, today EPA is proposing to make the TC temporary suspension applicable once the Federal TSCA Title IV program for LBP disposal and management becomes federally enforceable in any State that has not adopted an approved TSCA program. EPA plans to issue a notice[s] in the **Federal Register** 2 years after the LBP TSCA regulations and TC temporary suspension are promulgated which provides a list of States that have not adopted a TSCA program. The notice will announce that the Agency intends to enforce the Federal TSCA program for LBP debris disposal and management in those States which have not been approved for the TSCA program.

C. Applicability of TC Suspension in States Without a TSCA Title IV Program

Under TSCA section 404(h), the Administrator of EPA is authorized to enforce TSCA Title IV regulations 2 years after the regulations have been promulgated in any State which has not adopted a program to carry out the Federal requirements. Thus, in addition to authorizing States for the temporary suspension of the TC rule once they have obtained approval of their TSCA program or submitted the requisite certification, EPA is also proposing to make the TC temporary suspension effective once the Federal TSCA Title IV program for LBP debris management and disposal becomes federally enforceable in any State that has not adopted an approved TSCA program. [EPA plans to issue a notice as discussed in section B above.]

D. Effect of Today's Proposed Rule in States Where EPA Implements RCRA Hazardous Waste Regulations

Under today's proposal, LBP debris would not be hazardous waste in those States without RCRA base program authorization, at the time those States have been approved for the TSCA Title IV program, or when EPA's implementation of such program becomes effective.

E. Effect of Today's Proposed Rule in States That Are Authorized for RCRA Subtitle C

1. *States that are not authorized for the toxicity characteristic.* In States that are not authorized for the TC regulation, EPA implements the TC regulation and would implement this suspension of the TC regulation for LBP debris in States which have approved TSCA Title IV programs, or where EPA implements the Federal TSCA Title IV program.

One important factor that States with base RCRA authorization should consider is the operation of their Extraction Procedure (EP) toxicity characteristic under State law. The EP procedure was part of the base State authorized program for those States authorized for RCRA before 1991. When the TCLP was promulgated by EPA, this more stringent procedure superseded the EP procedure. However, some States may still be implementing the EP under State law, even though the more stringent TCLP is in effect under RCRA. (At the time this proposal was written, 35 of the 49 authorized States and Territories were authorized for the TC rule.) Because LBP debris could also be considered hazardous under the EP, States may have to suspend or waive the operation of the EP under State law to allow this waste to be regulated exclusively under the TSCA Title IV program. Therefore, States that submit and certify (or simply submit) their TSCA Title IV program applications to EPA should also determine whether the EP toxicity characteristic is still in effect and take appropriate action. States should note that any such action to suspend or waive the EP would not require approval from EPA since this solely is a matter of State law.

2. *States that are authorized for the toxicity characteristic.* States that are authorized for both the RCRA-base program and the TC would need to revise their hazardous waste programs to adopt a suspension similar to the Federal TC suspension. If a State amends its RCRA and TC regulations, the new State RCRA regulations must be no less stringent than the Federal TC temporary suspension. If State TC

regulations are changed in a manner that is less stringent than this temporary suspension (e.g., the State suspension is permanent rather than temporary or addresses other types of LBP debris, e.g., LBP dust, LBP chips or blast media), EPA will not authorize the change and will enforce the more stringent Federally-authorized State TC rule provisions pursuant to section 3008 of RCRA. Some States may choose to use a State waiver authority to lift the TC requirements for LBP debris instead of amending their regulations. Use of such waiver authority would also have to be in a manner no less stringent than the Federal TC suspension.

On the other hand, States that have RCRA-base programs and are TC-authorized, and which choose not to change their RCRA regulations or use a State waiver authority to lift TC requirements for LBP debris, or do not have an approved TSCA Title IV program, would still administer and enforce their existing TC authorized requirements for LBP debris. In this circumstance, non-hazardous LBP debris would be regulated exclusively under a State or Federal TSCA program. Hazardous LBP debris would technically be subject to both the State RCRA program and the State or Federal TSCA program; however, compliance with both sets of requirements could be satisfied only by treating the LBP debris as a hazardous waste.

F. Procedure for Authorizing States for the TC Temporary Suspension

As discussed previously, in order for the TC temporary suspension to be effective in any State, the State must be approved for the TSCA Title IV program or be a State where EPA implements the Federal TSCA Title IV program. In States with the Federal TSCA Title IV program, EPA will take action to make the TC suspension effective.

For States that are authorized for the TC rule, EPA is prepared to expedite the review and approval of TC rule revision applications. EPA further encourages States which are in the process of applying for TC authorization to suspend or waive the operation of the TC for LBP debris as part of their TC application.

EPA requests comment regarding the use of the abbreviated authorization procedure proposed on August 22, 1995 (see 60 FR 43688) for the authorization of TC suspension. This proposed procedure, designated as Category 1, would abbreviate the contents of a State application regarding applicable rules, and shorten the length of time allocated for EPA review and determination. The abbreviated application required by the

proposed Category 1 procedures should also cite and reference the State's approved TSCA Title IV program. EPA believes that today's proposed rule may be appropriate for the use of this procedure due to the minor effect of today's rule on an overall TC program, its environmental benefit, and the straight-forward nature of today's proposed amendments to the RCRA regulations. EPA believes that the proposed application procedure will encourage States to adopt the TC suspension and become authorized for it.

Under TSCA Title IV, Indian Tribes may apply for approval of lead-based paint programs (see 61 FR 45805-45808, August 29, 1996). Thus, EPA is proposing in the accompanying TSCA proposal for LBP management and disposal standards, that Indian Tribes may apply for approval of management and disposal of LBP debris management and disposal programs. However, in an opinion issued by the U.S. Court of Appeals for the District of Columbia, the Court held that EPA does not have authority under RCRA Subtitle D to approve tribal solid waste permit programs. *Backcountry Against Dumps v. EPA*, 100 F.3d. 147 (D.C. Cir. 1996). Partly, as a result of this decision, EPA expects that it will not be authorizing tribal hazardous waste programs under RCRA Subtitle C. Thus, after consulting with Tribes, EPA expects to implement and enforce this temporary suspension of the TC rule for LBP debris in Indian Country when a TSCA Title IV program (either Tribal or Federal is operable in the Tribe's jurisdiction).

VII. Public Docket and Electronic Submissions

The complete record for this proposed rule is contained in the RCRA Docket office at the following address: Environmental Protection Agency, RCRA Docket, Crystal Gateway, North #1, 1235 Jefferson Davis Highway, First Floor, Arlington, VA and is available for viewing 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. Copies may be made at a cost of \$ 0.15 per page. Charges under \$25.00 are waived.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comment received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the record maintained at the address in the beginning of this document. EPA

responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposal. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

VIII. References

The following books, articles, reports and sources were used in preparing this notice and were cited in this proposal by the number indicated below:

1. U.S. Department of Health and Human Services, Center for Disease Control. Update: Blood Lead Levels-United States, 1991-1994, Morbidity and Mortality Weekly Report. Vol. 46, No. 7. February 21, 1997.
2. HUD. Department of Housing and Urban Development, "National Housing Survey." Washington, DC. 1994.
3. Task Force on Lead-Based Paint Hazard Reduction and Financing, Letter to Honorable Carol Browner, Administrator, USEPA, Washington, DC, April 13, 1994.
4. HUD. Lead-Based Paint Hazard Reduction and Financing Task Force, Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing. HUD-1547-LBP. July 1995.
5. Science Applications International Corporation (SAIC). Analytical Results of Lead in Construction Debris. May 1992.
6. SAIC. Background Document on Lead Abatement Waste Study (Interim Draft). Prepared for USEPA, Office of Solid Waste. September 1994.
7. USEPA. TSCA Title IV, Sections 402/404: Lead-Based Paint Debris Management and Disposal Standards Proposed Rule Economic Analysis. Office of Pollution Prevention and Toxics. September 24, 1998.
8. USEPA. RCRA/Superfund Hotline Summary - RCRA Question No. 6 (March 1990).
9. USEPA. Table 1: Home Improvement Products Market 1980 to 2000 and Table 2: Retail Sales for Lumber and Other Building Materials and Hardware - 1980 to 1995. June 1997.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the

requirements of the Executive Order. A significant regulatory action is defined as an action 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 Executive Order 12866.

Pursuant to the terms of the Executive Order, EPA has determined that today's proposed rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations are documented in the public record.

In addition, EPA has prepared an economic analysis of the impact of this action and the companion TSCA rule, which is contained in a document entitled, "TSCA Title IV, §§ 402/404: Lead-Based Paint Debris Management and Disposal Proposed Rule: Economic Analysis," which is available in the public record for this proposal.

The proposed TSCA and RCRA rules will result in an estimated cost savings of \$119 million annually after the first year. The cost savings results from reduced disposal costs minus new compliance costs. Compliance costs of these two rules, due primarily to recordkeeping and notification, are \$30.86 million annually after the first year. States are expected to incur \$0.95 million in the first year to apply for EPA approval and then 0.06 million in the second and third years and biennially thereafter to submit reports.

The public housing sector will benefit from reduced costs of disposal of LBP debris. Decreased disposal costs should lead to a decrease in the costs of abatements, saving the public housing authorities \$17.13 million per year. This money, earmarked specifically for abatement activity, will allow an increase in the number of abatements in public housing conducted per year, thus eliminating the stock of public housing containing LBP 1 year earlier than

predicted in the absence of these proposed rules.

Please refer to the companion TSCA proposal for a further discussion of the costs and benefits of this and the TSCA proposal.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-12, as amended by the Small Business Regulatory Enforcement and Fairness Act, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, under the Regulatory Flexibility Act, an agency is not required to prepare a regulatory flexibility analysis for a proposed rule if the agency head certifies that the proposal will not have a significant adverse economic impact on a substantial number of small entities.

This proposed rule will generally provide regulatory relief to small and medium entities that are involved in lead abatement, renovation, remodeling, deleading, and demolition. For this reason, I certify that this proposed rule will not have a significant adverse impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. The proposed rule will offer cost savings to homeowners and public/private property owners of target housing and public or commercial buildings faced with LBP abatements, deleadings, renovations, and demolitions. For further discussion of the cost savings associated with this proposed suspension of the TC rule, see the Economic Analysis prepared for the TSCA LBP debris management and disposal standards (Ref. 7).

C. Paperwork Reduction Act

Today's proposed rule, which would temporarily suspend the TC rule for specified LBP debris, does not add any new burden as defined by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The existing RCRA information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 2050-0041 (EPA ICR No. 969). This proposed rule would temporarily suspend the RCRA TC requirements for specified LBP debris, which would be replaced by TSCA Title IV requirements which are proposed elsewhere in today's **Federal Register**. As indicated

in the TSCA Title IV proposed rule entitled "Lead; Management and Disposal of Lead-Based Paint Debris," an Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1822.01) and submitted to OMB in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and the procedures at 5 CFR 1320.11. For information on the TSCA requirements and the accompanying ICR, please refer to the TSCA Title IV proposed rule. A copy of the ICR can be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to, "farmer.sandy@epa.gov." An electronic copy of the ICR has also been posted with the **Federal Register** notice on EPA's Homepage at "http://www.epa.gov/icr." The RCRA temporary suspension and the new information requirements contained in the TSCA proposal are not effective until promulgation. An agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to OMB approval under PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations after initial publication in the final rule, are maintained in a list at 40 CFR part 9.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and Tribal governments in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the

development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that adoption of the proposed temporary suspension of the TC rule for LBP debris is voluntary; therefore, there is no unfunded mandate. The proposed rule would relieve generators, including States, local or Tribal governments, and the private sector, of their obligation to comply with the TC rule, which may lead to significant cost savings from both not having to sample and conduct the TCLP on LBP debris but, more importantly, from not having to manage LBP debris as a RCRA hazardous waste if the waste is determined to be hazardous. EPA has estimated that the cost savings to the private sector from this temporary suspension of the TC rule would be approximately \$120 million annually.

Moreover, the Act generally excludes from the definition of a "Federal intergovernmental mandate" (in sections 202, 203, and 205) duties that arise from participation in a voluntary Federal program. Adoption by States of this proposed temporary TC suspension is voluntary and imposes no Federal intergovernmental mandate within the meaning of the Act. Rather, States may continue to impose more strict standards for LBP debris by choosing to maintain the TC rule in their authorized State programs. The only costs to States which choose to adopt the temporary TC suspension would be that cost of certifying that it has a State TSCA Title IV LBP debris management and disposal program at least as protective as the Federal program. EPA estimates that it may cost States \$0.40 million to provide a certification to EPA (Ref. 7).

In response to section 203 of the Act, EPA has determined that the proposed rule will not significantly or uniquely affect small governments, including Tribal governments. As indicated above, if small governments, such as small municipalities or Tribes, are generators of LBP debris, then they would save the costs of complying with the TC rule and any of the costs of complying with the RCRA Subtitle C hazardous waste standards if the debris failed the TCLP and a temporary suspension of the TC rule had not been promulgated. Under this proposed rule, small governments, including Tribal governments, are not being treated in a unique way.

EPA has, however, worked closely with States and small governments in the development of the temporary suspension of the TC rule. EPA held a

stakeholder meeting in the fall of 1994 and sent a stakeholder mailing in the summer of 1996 to discuss a temporary suspension of the TC for lead abatement waste and new TSCA management and disposal standards. Among the attendees/recipients were representatives from State governments, environmental groups, labor organizations, professional organizations representing the building and waste management trades, and private LBP abatement contractors. EPA has also transmitted a draft proposed rule to a number of State government regulatory agencies which act as co-regulators under RCRA and TSCA Title IV.

In working with these various States and other organizations, EPA has provided notice to small governments of the potential regulatory relief provided by the temporary TC suspension; obtained meaningful and timely input from them; and informed, educated, and advised small governments on how to comply with the requirements of the proposed rule. Thus, any applicable requirements of the Act have been met.

E. Executive Order 12898

Pursuant to Executive Order 12898 entitled "Environmental Justice Considerations" (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this proposed action on the environmental and health conditions in low-income and minority communities. This examination shows that existing LBP hazards are a risk to all segments of the population living in pre-1978 housing. However, literature indicates that some segments of our society are at relatively greater risk than others.

A recent study by the National Health and Nutrition Examination Survey (NHANES) indicates that children of urban, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), or low-income families, or who live in older housing, continue to be most vulnerable to lead poisoning and elevated blood-lead levels. The February 21, 1997 Center for Disease Control's Morbidity and Mortality Weekly Report states that: "Despite the recent and large declines in BLLs [blood lead levels], the risk for lead exposure remains disproportionately high for some groups, including children who are poor, non-Hispanic black, Mexican American, living in large metropolitan areas, or living in older housing" (Ref. 1).

Although the baseline risks from lead-based paint fall disproportionately on

poorer sub-populations, it may be more likely that abatements will take place in residential dwellings occupied by mid-to upper-level income households.

Abatements are voluntary, and wealthier households are more likely to have the financial resources to abate an existing problem in their home, or to avoid LBP hazards by not moving into a residential dwelling with LBP. Even though a national strategy of eliminating LBP hazards targets a problem affecting a greater share of poor households and minorities, the impact of income on the ability to undertake voluntary abatements may result in an inequitable distribution of LBP risks.

By making abatements more affordable, today's proposal helps to address this situation. To the extent that the proposal results in additional abatements, renovation and remodeling, and demolitions that reduce LBP hazards, there is a likelihood that poor and minority populations will benefit the most from risk reductions. This potential will likely be realized to the greatest extent in the case of public housing units with LBP hazards. The decrease in the cost of abatements in public housing will lead to an increase in abatement activity in public housing and a subsequent acceleration in the depletion of public housing with LBP hazards. The occupants of these public housing units are disproportionately lower income and minority populations. As the price of abatements is lowered as a result of cost savings associated with today's proposed rule, more low-income families will be able to afford to make the decision to remove LBP hazards from their homes.

EPA also determined that the potential impact on minority-owned businesses in industries affected by the proposed rule would be minimal. Available information suggests that minority-owned business would not particularly benefit from this proposed rule, since minority ownership rates for firms that generate LBP debris are no higher than average.

F. Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this proposal is not an economically significant regulatory action as defined by E.O. 12866. The environmental health or safety risks addressed by this action have a beneficial effect on children. This proposal will benefit children by allowing less costly management and disposal of lead-based paint therefore

lessening the cost of abatements. Reducing the costs of abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs will increase the amount of private homes undergoing abatements. By reducing costs associated with management and disposal of LBP debris, the Agency believes that the number of abatements will increase thus resulting in a reduction of children exposed to LBP. Children are the primary beneficiaries of this proposed rule.

G. 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., material 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 effective. The Act requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards.

EPA is not proposing any new test methods or other technical standards as part of today's proposed temporary suspension of the TC rule for LBP debris. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule. EPA invites comments on this analysis.

H. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to 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."

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

I. Executive Order 13084

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

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 9, 1998.

Carol M. Browner,
Administrator.

Therefore, it is proposed that chapter I of 40 CFR be amended as follows:

PART 260—[AMENDED]

1. In part 260:

a. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

b. Section 260.10 is amended by alphabetically adding the following definitions to read as follows:

§ 260.10 Definitions.

* * * * *

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility [target housing] that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with § 745.226 of this chapter, unless such projects are covered by paragraph (4) of this definition.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards (at target housing), that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

* * * * *

Commercial building means any building which is used primarily for commercial or industrial activity including but not limited to: manufacturing, service, repair, or storage.

* * * * *

Deleading means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities in public buildings or commercial buildings.

Demolition means the wrecking, razing, or destroying any building or significant element thereof using a method that generates undifferentiated rubble.

* * * * *

Lead-based paint (LBP) means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per centimeter squared or more than 0.5% by weight.

Lead-based paint architectural component debris (LBPACD) means:

(1) Elements or fixtures, or portions thereof, of commercial buildings, public buildings, or target housing that are coated wholly or in part with or adhered to by LBP. These include, but are not limited to interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim, including sashes, window heads, jambs, sills, stools and troughs, built-in cabinets, columns, beams, bathroom vanities, and counter tops; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors,

joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes, and wells.

(2) LBPACD is generated when an architectural component which is coated wholly or in part with or adhered to by LBP is displaced and separated from commercial buildings, public buildings, or target housing as a result of abatement, deleading, renovation or remodeling activities.

(3) LBPACD does not include other types of LBP waste such as paint chips, paint dust, sludges, solvents, vacuum filter materials, wash water, contaminated and decontaminated protective clothing and equipment except that paint chips and dust which are created after LBP debris is placed in a container or vehicle for transport to a disposal or reclamation facility specified in 40 CFR 745.309 is considered LBPACD.

(4) LBPACD which is reused in compliance with 40 CFR 745.311 is no longer LBPACD.

Lead-based paint debris (LBP debris) means lead-based paint architectural component debris (LBPACD) or lead-based paint demolition debris.

Lead-based paint demolition debris means any solid material which results from the demolition of target housing, public buildings, or commercial buildings which are coated wholly or in part with or adhered to by LBP at the time of demolition.

* * * * *

Public building means any building constructed prior to 1978, which is generally open to the public or occupied or visited by the public, including but not limited to schools, day care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers, and government buildings. Note: "child-occupied facilities" as defined in 40 CFR 745.223 of this chapter are included in the definition of public building.

* * * * *

Remodeling means any construction-related work on an existing property intended to either maintain or improve the property.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in this part. The term renovation includes but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such

activities that may generate paint dust); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

* * * * *

Reuse means to use again for any purpose other than reclamation or disposal. Examples of reuse include moving doors, windows, or other components from one structure to another to be put to similar use.

* * * * *

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age or under resides or is expected to reside in such housing for the elderly or person with disabilities) or any 0-bedroom dwelling.

* * * * *

PART 261—[AMENDED]

2. In part 261:

a. The authority section for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

b. Section 261.4 is amended by adding (b)(15) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(15)(i) Lead-based paint architectural component debris subject to the management and disposal standards under part 745, subpart P of this chapter which results from abatements conducted at target housing; deleading activities conducted at public buildings or commercial buildings; or renovation or remodeling activities conducted at target housing, public buildings, or commercial buildings. This exclusion does not apply if the LBP architectural component debris is hazardous for any other reason than failure of the Toxicity Characteristic (§ 261.24) for lead (Hazardous Waste Code D008),

(ii) Lead-based paint demolition debris resulting from demolition(s) conducted at target housing, public building(s), or commercial building(s)

which is subject to the management and disposal standards under part 745, subpart P of this chapter. This exclusion does not apply if the LBP architectural component debris is hazardous for any other reason than failure of the Toxicity Characteristic (§ 261.24) for lead (Hazardous Waste Code D008).

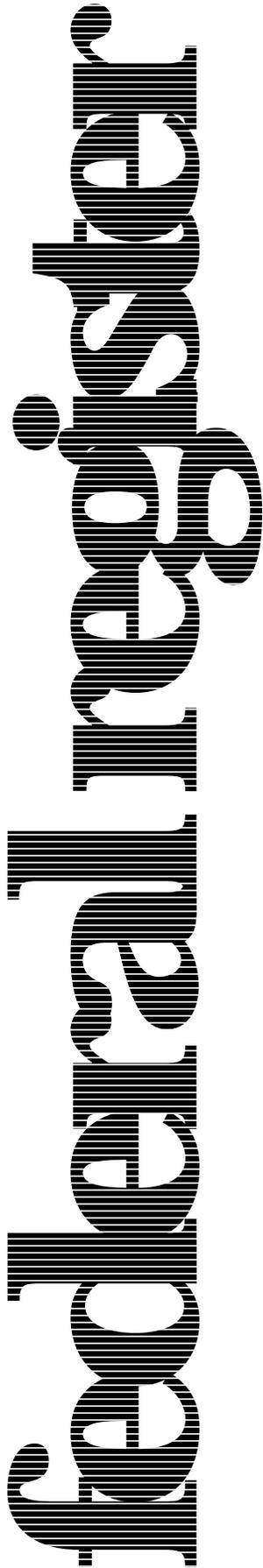
(iii) The exclusions set forth in paragraph (b)(15)(i) and (ii) of this section shall apply in any State which has an EPA authorized program for management and disposal of LBP debris under TSCA Title IV; or in any State in which the Federal TSCA Title IV program has become effective.

(iv) If the Administrator determines that the State satisfies the standards in paragraph (b)(15)(iii) of this section, the Administrator shall publish a notice in the **Federal Register** to suspend the TC in that State. The suspension shall be effective immediately upon publication of the **Federal Register** notice.

* * * * *

[FR Doc. 98-33327 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-F



Friday
December 18, 1998

Part III

**Department of
Education**

**Federal Perkins Loan, Federal Work-
Study, and Federal Supplemental
Educational Opportunity Grant Programs;
Notice**

DEPARTMENT OF EDUCATION**Office of Postsecondary Education**

[CFDA No.: 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs**AGENCY:** Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Approval to Participate in Federal Student Financial Aid Programs" (ED Form E40-34P, OMB #1840-0098) to participate in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs (known collectively as the campus-based programs) for the 1999-2000 award year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646-1) in one or more of the "campus-based programs" for the 1999-2000 award year to submit to the Secretary an "Application for Approval to Participate" and all required supporting documents for an eligibility and certification determination.

The campus-based programs are the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965, as amended. The 1999-2000 award year is July 1, 1999, through June 30, 2000.

CLOSING DATE: To participate in the campus-based programs in the 1999-2000 award year, a currently ineligible institution must mail or hand-deliver its "Application for Approval to Participate" on or before January 15, 1999. The application, along with all required supporting documents for an eligibility and certification determination, must be submitted to the Institutional Participation Division at one of the addresses indicated below.

ADDRESSES: *Applications and Required Documents Delivered by Mail.* The "application for approval to participate" and required supporting documents delivered by mail must be addressed to the U.S. Department of Education, Institutional Participation Division, Room 3108A, Regional Office Building 3, 400 Maryland Avenue, SW, Washington, DC 20202-5323.

An applicant must show proof of mailing consisting of one of the

following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use certified or at least first class mail. Institutions that submit "applications for approval to participate" and required supporting documents after the closing date will not be considered for funding under the campus-based programs for award year 1999-2000.

Applications and Required Documents Delivered by Hand. An "application for approval to participate" and required supporting documents delivered by hand must be taken to the U.S. Department of Education, Institutional Participation Division, Room 3108A, Regional Office Building 3, (GSA Building), 7th and D Streets, SW, Washington, DC 20407.

We will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An "application for approval to participate" for the 1999-2000 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1999-2000 to any currently ineligible institution unless the institution files its "Application for Approval to Participate in Federal Student Financial Aid Programs" and other required supporting documents by the closing date. If the institution submits its "application for approval to participate" or other required supporting documents after the January 15, 1999 closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 2000-2001 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary but has previously filed a FISAP; or

(2) An additional location of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution but has been included in the institution's 1999-2000 FISAP.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Approval to Participate in Federal Student Financial Aid Programs," should not be confused with the FISAP form which institutions were required to submit electronically as of October 1, 1998, in order to be considered for funds under the campus-based programs for the 1999-2000 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

- (1) Student Assistance General Provisions, 34 CFR Part 668.
- (2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.
- (3) Federal Perkins Loan Program, 34 CFR Part 674.
- (4) Federal Work-Study Program, 34 CFR Part 675.
- (5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.
- (6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.
- (7) New Restrictions on Lobbying, 34 CFR Part 82.
- (8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.
- (9) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact: Liz Neverson or John Frohlicher, Institutional Participation Division, Initial Participation Branch, U.S. Department of Education, Room 3108A, Regional Office Building 3, 400 Maryland Avenue, SW, Washington, DC 20202-5343. Telephone: (202) 260-3270.

For technical assistance concerning the FISAP or other operational procedures of the campus-based programs, contact: Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, DC 20026-0781. Telephone: (202) 708-9751.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access To This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable

document format (pdf) on the World Wide Web at either of the following sites:

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

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office 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. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

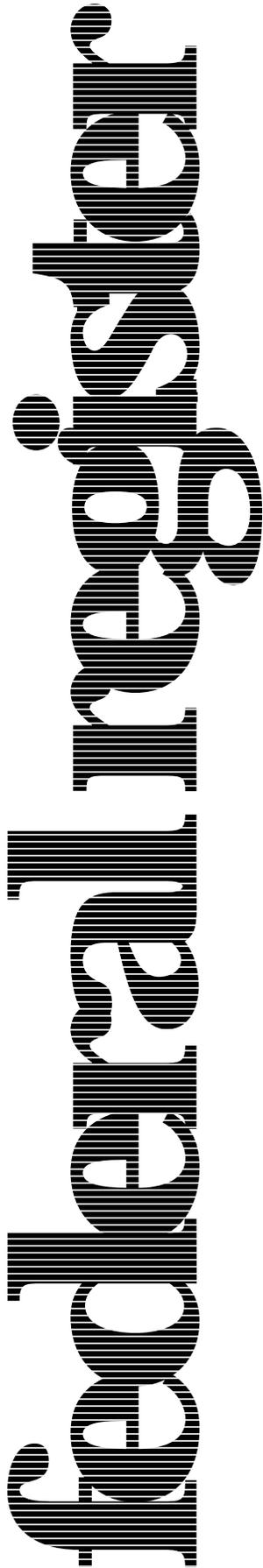
Dated: December 14, 1998.

Gerard A. Russomano,

Acting Chief Operating Officer, Office of Student Financial Assistance Programs.

[FR Doc. 98-33508 Filed 12-17-98; 8:45 am]

BILLING CODE 4000-01-P



Friday
December 18, 1998

Part IV

**Department of
Housing and Urban
Development**

**Fair Housing Enforcement—Occupancy
Standards Statement of Policy; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4405-N-01]

**Fair Housing Enforcement—
Occupancy Standards Notice of
Statement of Policy**

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of statement of policy.

SUMMARY: This statement of policy advises the public of the factors that HUD will consider when evaluating a housing provider's occupancy policies to determine whether actions under the provider's policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status (the presence of children in a family). Publication of this notice meets the requirements of the Quality Housing and Work Responsibility Act of 1998.

DATES: Effective date: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Sara Pratt, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2290 (not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339 (toll-free).

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

Section 589 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998, "QHWRA") requires HUD to publish a notice in the **Federal Register** that advises the public of the occupancy standards that HUD uses for enforcement purposes under the Fair Housing Act (42 U.S.C. 3601-3619). Section 589 requires HUD to publish this notice within 60 days of enactment of the QHWRA, and states that the notice will be effective upon publication. Specifically, section 589 states, in relevant part, that:

[T]he specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of [HUD] to all Regional Counsel shall be the policy of [HUD] with respect to complaints of discrimination under the Fair Housing Act . . . on the basis of familial status which involve an occupancy standard established by a housing provider.

The Fair Housing Act prohibits discrimination in any aspect of the sale,

rental, financing or advertising of dwellings on the basis of race, color, religion, national origin, sex or familial status (the presence of children in the family). The Fair Housing Act also provides that nothing in the Act "limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The Fair Housing Act gave HUD responsibility for implementation and enforcement of the Act's requirements. The Fair Housing Act authorizes HUD to receive complaints alleging discrimination in violation of the Act, to investigate these complaints, and to engage in efforts to resolve informally matters raised in the complaint. In cases where the complaint is not resolved, the Fair Housing Act authorizes HUD to make a determination of whether or not there is reasonable cause to believe that discrimination has occurred. HUD's regulations, implementing the Fair Housing Act (42 U.S.C. 3614) are found in 24 CFR part 100.

In 1991, HUD's General Counsel, Frank Keating, determined that some confusion existed because of the absence of more detailed guidance regarding what occupancy restrictions are reasonable under the Act. To address this confusion, General Counsel Keating issued internal guidance to HUD Regional Counsel on factors that they should consider when examining complaints filed with HUD under the Fair Housing Act, to determine whether or not there is reasonable cause to believe discrimination has occurred.

This Notice

Through this notice HUD implements section 589 of the QHWRA by adopting as its policy on occupancy standards, for purposes of enforcement actions under the Fair Housing Act, the standards provided in the Memorandum of General Counsel Frank Keating to Regional Counsel dated March 20, 1991, attached as Appendix A.

Authority: 42 U.S.C. 3535(d), 112 Stat. 2461.

Dated: December 14, 1998.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A.

March 20, 1991.

MEMORANDUM FOR: All Regional Counsel
FROM: Frank Keating, G
SUBJECT: Fair Housing Enforcement Policy:
Occupancy Cases

On February 21, 1991, I issued a memorandum designed to facilitate your review of cases involving occupancy policies under the Fair Housing Act. The

memorandum was based on my review of a significant number of such cases and was intended to constitute internal guidance to be used by Regional Counsel in reviewing cases involving occupancy restrictions. It was not intended to create a definitive test for whether a landlord or manager would be liable in a particular case, nor was it intended to establish occupancy policies or requirements for any particular type of housing.

However, in discussions within the Department, and with the Department of Justice and the public, it is clear that the February 21 memorandum has resulted in a significant misunderstanding of the Department's position on the question of occupancy policies which would be reasonable under the Fair Housing Act. In this respect, many people mistakenly viewed the February 21 memorandum as indicating that the Department was establishing an occupancy policy which it would consider reasonable in any fair housing case, rather than providing guidance to Regional Counsel on the evaluation of evidence in familial status cases which involve the use of an occupancy policy adopted by a housing provider.

For example, there is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. See Handbook 7465.1 REV-2, Public Housing Occupancy Handbook: Admission, revised section 5-1 (issued February 12, 1991). While that Handbook provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.

As you know, assuring Fair Housing for all is one of Secretary Kemp's top priorities. Prompt and vigorous enforcement of all the provisions of the Fair Housing Act, including the protections in the Act for families with children, is a critical responsibility of mine and every person in the Office of General Counsel. I expect Headquarters and Regional Office staff to continue their vigilant efforts to proceed to formal enforcement in all cases in which there is reasonable cause to believe that a discriminatory housing practice under the Act has occurred or is about to occur. This is particularly important in cases where occupancy restrictions are used to exclude families with children or to unreasonably limit the ability of families with children to obtain housing.

In order to assure that the Department's position in the area of occupancy policies is fully understood, I believe that it is imperative to articulate more fully the Department's position on reasonable occupancy policies and to describe the approach that the Department takes in its review of occupancy cases.

Specifically, the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. The Department of Justice has advised us that this is the

general policy it has incorporated in consent decrees and proposed orders, and such a general policy also is consistent with the guidance provided to housing providers in the HUD handbook referenced above.

However, the reasonableness of any occupancy policy is rebuttable, and neither the February 21 memorandum nor this memorandum implies that the Department will determine compliance with the Fair Housing Act based *solely* on the number of people permitted in each bedroom. Indeed, as we stated in the final rule implementing the Fair Housing Amendments Act of 1988, the Department's position is as follows:

[T]here is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code. * * *

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

24 C.F.R. Chapter I, Subchapter A, Appendix I at 566-67 (1990).

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

Size of bedrooms and unit

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a "two people per bedroom" policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on

which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home of two people.

Age of children

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrate this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

Configuration of unit

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two people per bedroom" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

Other physical limitations of housing

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

State and local law

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

Other relevant factors

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) taken other steps to discourage families with children from living in its housing; or (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an "adults only" development would militate in favor of issuing a charge. This is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

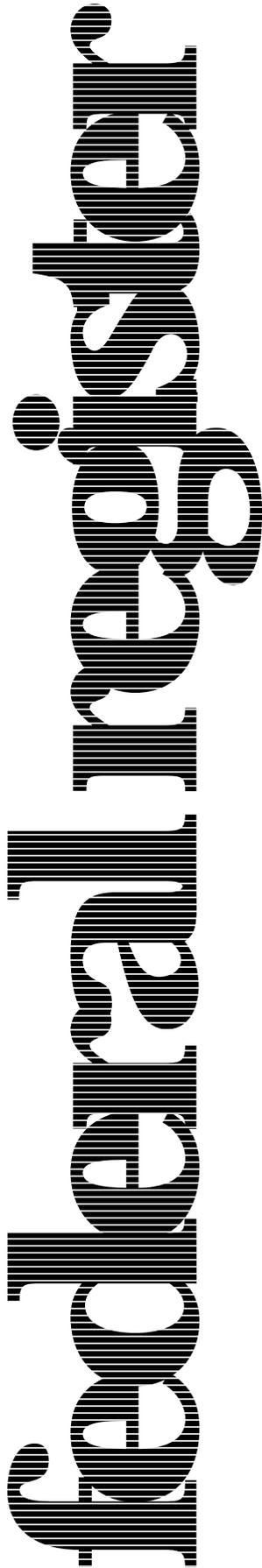
An occupancy policy which limits the number of *children* per unit is less likely to be reasonable than one which limits the number of *people* per unit.

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because twenty of the thirty units already are occupied by families with children, a reasonable cause recommendation would be warranted.

If your review of the evidence indicates that these or other special circumstances are present, making application of a "two people per bedroom" policy unreasonably restrictive, you should prepare a reasonable cause determination. The Executive Summary should explain the special circumstances which support your recommendation.

[FR Doc. 98-33568 Filed 12-17-98; 8:45 am]

BILLING CODE 4210-28-M



Friday
December 18, 1998

Part V

Department of Labor

Office of the Secretary

**29 CFR Part 44
Process for Electing State Agency
Representatives for Consultations With
Department of Labor Relating to
Nationwide Employment Statistics
System; Interim Rule**

DEPARTMENT OF LABOR**Office of the Secretary****29 CFR Part 44**

RIN 1290-AA19

Process for Electing State Agency Representatives for Consultations with Department of Labor Relating to Nationwide Employment Statistics System**AGENCY:** Office of the Secretary, Labor.**ACTION:** Interim final rule with request for comments.

SUMMARY: The Department of Labor is establishing a process for the election of representatives of the States to participate in formal consultations with the Department relating to the development of an annual employment statistics plan and to address other employment statistics issues. Section 15(d)(2) of the Wagner-Peyser Act, as recently amended by section 309 of the Workforce Investment Act of 1998, requires the Secretary to establish a process for the election of representatives of each of the 10 Federal regions of the Department. This provision requires that the representatives be elected by and from the employment statistics directors affiliated with State agencies designated to carry out employment statistics responsibilities under section 15 of the Wagner-Peyser Act. The interim final rule addresses the election cycles, the tenure of the representatives, the process for the distribution and tabulation of ballots, tie-breaking procedures, methods of transmitting ballots and votes, and the filling of vacancies.

DATES: Effective Date: This interim final rule is effective January 19, 1999.**Comments:** Comments are due on or before March 18, 1999.**ADDRESSES:** Send comments to Cheryl Kerr, Office of the Commissioner of the Bureau of Labor Statistics, Room 4044, Postal Square Building, 2 Massachusetts Avenue, NE Washington, DC 20212.**FOR FURTHER INFORMATION CONTACT:** Cheryl Kerr, Office of the Commissioner of the Bureau of Labor Statistics, Department of Labor, telephone 202-606-7808, FAX 202-606-7797.**SUPPLEMENTARY INFORMATION.****I. Background**

On August 7, 1998, the President signed into law the Workforce Investment Act of 1998. Section 309 of that Act amends section 15 of the Wagner-Peyser Act and assigns the

Secretary of Labor the responsibility to oversee the development, maintenance and continuous improvement of a nationwide system of employment statistics. The revised section 15(d) of the Wagner-Peyser Act specifies that, among other activities, the Secretary of Labor, working through the Bureau of Labor Statistics and in cooperation with the States, is to develop an annual employment statistics plan and address other employment statistics issues by holding formal consultations at least once each quarter. The consultations are to relate to the products and administration of the employment statistics system and are to be held with representatives from each of the 10 Federal regions of the Department elected (pursuant to a process established by the Secretary) by and from the directors of the State employment statistics agencies designated under the Wagner-Peyser Act.

II. Analysis of Regulations

Section 44.1 describes the purpose and scope of the regulations. These regulations pertain only to the process for electing the representatives of the States to conduct formal consultations with the Department of Labor. The regulations do not address the consultations themselves. In addition, this section identifies the statutory basis for the election process.

Section 44.2 describes the election cycle and tenure of the State agency representatives. The Department will hold the first election within 30 days after the effective date of these regulations. This section identifies five regions where the initial representatives will be elected for a term ending January 1, 2000 and where subsequent elections for representatives of those regions (beginning in the last quarter of 1999) will be for two-year terms. Those subsequent elections will be held biennially in the last quarter of the year. The representatives elected from the other five regions in the first election will be elected for a two-year term with subsequent elections (beginning in the last quarter 2000) held biennially in the last quarter of the year. The effect of these election cycles is to stagger the terms of the representatives. The purpose of staggered terms is to ensure that at least one-half of the representatives will have the benefit of, and expertise resulting from, the previous year's consultations. This will provide important continuity to the consultation process while also allowing for appropriate turnover. The five regions identified in each category were selected to ensure that all turnover

does not occur in the same part of the country at the same time.

This section also provides that the terms of the representatives elected in the first election will commence immediately so as to facilitate the earliest possible consultation. Subsequently, the terms will commence January 1 of the year following the scheduled election. The section defines both the commencement of a term and the length of the two-year term by referring to the preceding "scheduled" election. Delays which prevent the election process from being completed in the last calendar quarter will not mean that those elected will serve any longer than if the election were completed within that quarter. No matter how long the election process may last, the election is deemed to be "scheduled" within the last calendar quarter, as provided in the regulations. Finally, this section provides that representatives may serve for an unlimited number of terms, thereby providing maximum discretion to the directors in each region in electing their representative.

Section 44.3 establishes the process by which the election will be conducted. The Commissioner of the Bureau of Labor Statistics (hereafter "the Commissioner") or his or her designee will conduct the election, consistent with the requirement of section 15(d)(2) of the Wagner-Peyser Act that the Secretary of Labor work through the Bureau of Labor Statistics in coordinating these employment statistics activities. The Commissioner will provide a ballot to each employment statistics agency director containing the names of all the agency directors in the appropriate region. If a State has failed to designate an agency pursuant to section 15(e) of the Wagner-Peyser Act, or has not provided the name of the employment statistics director to the Commissioner, the State will not be able to participate in the election. This section also provides that the Commissioner will establish a time period within which the votes are to be cast and that such time period will not be less than one week. The Commissioner then will tally all the votes received within the prescribed period and the director receiving the most votes will be the representative for the region. A plurality of votes will therefore be sufficient for election. If there is a tie after the first round of votes is counted, the Commissioner will carry out an additional round of voting using ballots containing only the names of the directors that tied with the most number of votes. If the tie remains after the second round, additional rounds of

voting will be repeated until a representative is elected.

This section also provides that the Commissioner may distribute ballots through electronic mail or other appropriate methods and may also specify the methods through which the directors are to cast their votes. Finally, this section provides that if a representative does not complete the term, the Commissioner will fill the vacancy by conducting an election using the voting process described above.

The Department believes that these regulations address the key issues relating to the election process. After the first elections and consultations are conducted, and after taking into consideration the comments received pursuant to this notice, the Department will consider whether these rules need to be modified or any additional rules need to be established.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553 (b)(3)(B), that good cause exists for waiving the public comment on this rule. Publication of a proposed rule is unnecessary since section 506(c)(1) of the Workforce Investment Act of 1998 (20 U.S.C. 9276(c)(1)) requires the Secretary to issue interim final regulations implementing the provisions of the Act.

Statutory Authority

The Department of Labor is publishing these rules under the authority provided in section 506(c)(1) of the Workforce Investment Act of 1998 (20 U.S.C. 9276(c)(1)). That section requires that the Secretary develop and publish in the **Federal Register** interim final regulations relating to the implementation of the Workforce Investment Act not later than 180 days after the date of enactment.

Regulatory Flexibility Act

The Department of Labor, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule relates only to State Agency representatives and therefore does not affect businesses, large or small, or any other small entities as defined under the Act. The Secretary has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 and Congressional Notification

The Department has determined that this interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). 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 United States-based companies to compete with foreign-based companies in domestic and export markets. The Department will submit to each House of Congress and to the Comptroller General a report regarding the issuance of this interim final rule prior to the effective date of the rule that will note that this rule does not constitute a "major rule" for purposes of the Act.

List of Subjects in 29 CFR Part 44

Economic Statistics, Employment.

Signed on this 14th day of December, 1998.

Alexis M. Herman,
Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor hereby amends subtitle A of title 29 of the Code of Federal Regulations by adding a new part 44 to read as follows:

PART 44—PROCESS FOR ELECTING STATE EMPLOYMENT STATISTICS AGENCY REPRESENTATIVES FOR CONSULTATIONS WITH DEPARTMENT OF LABOR.

Sec.

44.1 Purpose and scope.

44.2 Election cycle and tenure of representatives.

44.3 Election process.

Authority: 5 U.S.C. 301; 20 U.S.C. 9276(c); 29 U.S.C. 49 I-2.

§ 44.1 Purpose and scope.

This part contains the regulations of the U.S. Department of Labor establishing a process for the election of representatives of the States to participate in formal consultations with the Department of Labor for purposes of the development of an annual employment statistics plan and to address other employment statistics issues. The representatives are to be elected by and from the State employment statistics directors affiliated with the State agencies designated to carry out the employment statistics responsibilities under the revised section 15 of the Wagner-Peyser Act (29 U.S.C. 49 I-2), as amended by section 309 of the Workforce Investment Act of 1998. The revised section 15(d)(2) of the Wagner-Peyser Act requires the Secretary to establish a process for the election of such representatives from each of the 10 Federal regions of the Department of Labor.

§ 44.2 Election cycle and tenure of representatives.

(a) *Election cycle.* The States located within each Federal region, as defined herein, shall elect one representative in accordance with the procedures specified in these regulations. The initial election for representatives of the States from all 10 Federal regions will be held within 30 days after the effective date of these regulations. For purposes of this section, the Federal regions shall be the Standard Federal regions identified in former OMB Circular A-105 (issued April 4, 1974). For the representatives elected from the Federal regions where the principal office is located in New York City, Atlanta, Kansas City, Denver or Seattle, the initial term shall terminate on January 1, 2000. Subsequent elections for representatives from such regions shall be held in the last quarter of 1999 and thereafter biennially within the last calendar quarter of the year. For the representatives from the Federal regions where the principal office is located in Boston, Philadelphia, Dallas, Chicago and San Francisco, the initial term shall terminate on January 1, 2001.

Subsequent elections for representatives from such regions shall be held within the last calendar quarter of 2000 and thereafter, biennially within the last calendar quarter of the year. After the initial election, the terms of all representatives shall terminate on January 1 of the third calendar year after the preceding scheduled election.

(b) *Tenure.* The terms of the representatives elected in the first election shall commence upon election. The terms of representatives elected in subsequent elections shall commence January 1 of the year following the scheduled election. Representatives may serve for an unlimited number of terms.

§ 44.3 Election process.

(a) *Process.* The Commissioner of the Bureau of Labor Statistics of the U.S. Department of Labor (hereafter referred to as "the Commissioner") or his or her designee shall conduct the elections. The Commissioner shall provide a ballot containing the names of the employment statistics directors in the

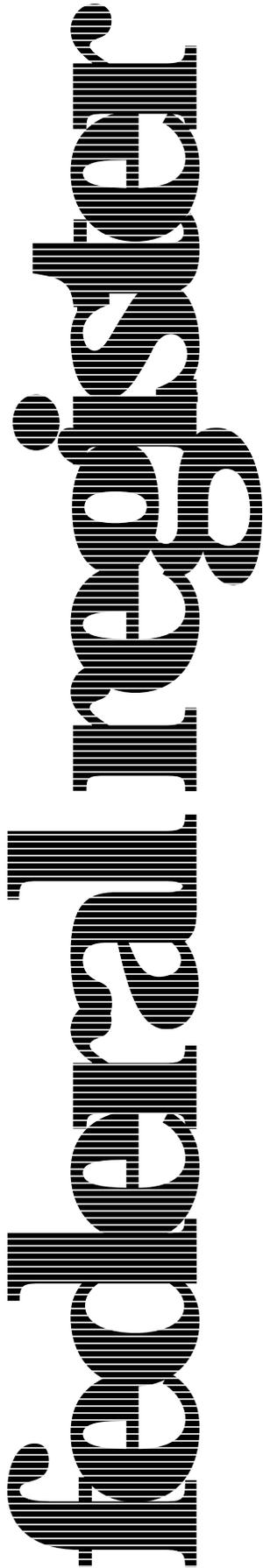
appropriate region to the employment statistics director in each State who is affiliated with the State agency designated pursuant to section 15(e) of the Wagner-Peyser Act. If a State has not designated an agency, or has not provided the name of the employment statistics director to the Commissioner, the State shall not participate in the election process. Each director may vote for one director to be the regional representative. The Commissioner shall prescribe a time limit that will not be less than one week for the directors to mark and return the ballots. Only votes received by the Commissioner within the prescribed time limit will be counted. The Commissioner will tally the votes from the ballots received within the prescribed time limit and the director receiving the most votes in the region will be the representative for that region. If there is a tie after the first round of votes are counted, the Commissioner shall conduct additional rounds of voting using a ballot containing the names of the directors

who tied with the most votes in the previous round until a representative is elected. The Commissioner will prescribe a time limit of not less than one week for each additional round of voting and will tally the votes received within the prescribed time limit. The director with the most votes will be the representative.

(b) *Method of transmission.* The Commissioner may distribute the ballots relating to the election under this part by electronic mail or other methods the Commissioner determines to be appropriate and may specify the methods through which votes are to be cast.

(c) *Vacancies.* If a representative does not complete the term, the Commissioner shall conduct an election to elect a replacement for the remainder of the term using the procedures described in paragraph (a) and (b) of this section.

[FR Doc. 98-33536 Filed 12-17-98; 8:45 am]
BILLING CODE 4510-24-P



Friday
December 18, 1998

Part VI

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Chapter 1 et al.
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97-10; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-10. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-10 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

SUPPLEMENTARY INFORMATION:

Item	Subject	FAR case	Analyst
I	Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (Interim).	97-307	Moss.
II	Limits for Indefinite-Quantity Contracts	98-016	DeStefano.
III	Office of Federal Contract Compliance Programs National Pre-Award Registry	98-607	O'Neill.
IV	Limitation on Allowability of Compensation for Certain Contractor Personnel	97-303	Nelson.
V	Contractor Purchasing System Review Exclusions	97-016	Klein.
VI	Contract Quality Requirements	96-009	Klein.
VII	Mandatory Government Source Inspection	97-027	Klein.
VIII	No-Cost Value Engineering Change Proposals	96-011	Klein.
IX	Evidence of Shipment in Electronic Data Interchange Transactions	97-011	Nelson.
X	Technical Amendments.		

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program

[FAR Case 97-307]

This interim rule amends FAR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 to implement the Small Business Administration Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

Item II—Limits for Indefinite-Quantity Contracts

[FAR Case 98-016]

This final rule amends FAR 16.504(a) to clarify that maximum and minimum limits for indefinite-quantity contracts may be expressed as a number of units or dollar value.

Item III—Office of Federal Contract Compliance Programs National Pre-Award Registry

[FAR Case 98-607]

This final rule amends FAR part 22 and related clauses at part 52 to (1) inform the procurement community of the availability of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) National Pre-Award Registry (Registry), accessible through the Internet, that contains contractor establishments who have received a preaward clearance within the preceding 24 months, and the option to use the information in the Registry in lieu of submitting a written request for a preaward clearance; and (2) implement revised Department of Labor (DoL) regulations pertaining to equal employment opportunity and affirmative action requirements for Federal contractors and subcontractors.

Item IV—Limitation on Allowability of Compensation for Certain Contractor Personnel

[FAR Case 97-303]

The interim rule published as Item XIII of FAC 97-04 is converted to a final rule with minor clarifying amendments at FAR 31.205-6(p)(2). The rule implements Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 808 limits allowable compensation costs for senior executives of contractors to the benchmark year by the Administrator, Office of Federal Procurement Policy (OFPP). The benchmark compensation amount is \$340,650 for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP.

Item V—Contractor Purchasing System Review Exclusions

[FAR Case 97-016]

This final rule amends FAR 44.302 and 44.303 to exclude competitively awarded firm-fixed-price and competitively awarded fixed-price contracts with economic price adjustment, and sales of commercial items pursuant to FAR part 12, from the dollar amount used to determine if a contractor's level of sales to the Government warrants the conduct of a CPSR; and to exclude subcontracts awarded by a contractor exclusively in

support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to FAR part 12, from evaluation during a CPSR.

Item VI—Contract Quality Requirements

[FAR Case 96-009]

This final rule amends FAR 46.202-4, 46.311, and 52.246-11 to replace references to Government specifications with references to commercial quality standards as examples of higher-level contract quality requirements; to require the contracting officer to indicate in the solicitation which higher-level quality standards will satisfy the Government's requirement; and, if more than one standard is listed in the solicitation, to require the offeror to indicate its selection by checking a block.

Item VII—Mandatory Government Source Inspection

[FAR Case 97-027]

This final rule amends FAR 46.402 to facilitate the elimination of unnecessary requirements for Government contract quality assurance at source. This rule deletes the mandatory requirements for Government contract quality assurance at source on all contracts that include a higher-level contract quality requirement, and for supplies requiring inspection that are destined for overseas shipment.

Item VIII—No-Cost Value Engineering Change Proposals

[FAR Case 96-011]

The interim rule published as Item X of FAC 97-05 is converted to a final rule without change. The rule revises FAR 48.104-3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Item IX—Evidence of Shipment in Electronic Data Interchange (EDI) Transactions

[FAR Case 97-011]

This final rule revises the clause at FAR 52.247-48 to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased on a free on board (f.o.b.) destination basis with inspection and acceptance at origin.

Item X—Technical Amendments

Amendments are being made at FAR 1.106, 19.102, 19.502-5, 32.908, 37.602-3, 42.203, 52.212-5, 52.219-9, 52.222-37, 53.228 and 53.301 in order to update references and make editorial changes.

Dated: December 14, 1998.

Ralph DeStafano,

Acting Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

FAC 97-10

Federal Acquisition Circular (FAC) 97-10 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-10 are effective February 16, 1999, except for Item VIII which is effective December 18, 1998, and Items I and X which are effective January 4, 1999.

Dated: December 14, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: December 11, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

Dated: December 11, 1998.

[FR Doc. 98-33512 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

[FAC 97-10; FAR Case 97-307; Item I]

RIN 9000-AI20

Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations covering the Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (hereinafter referred to as the HUBZone Program).

EFFECTIVE DATE: January 4, 1999.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 16, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-307@gsa.gov

Please cite FAC 97-10, FAR case 97-307 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-10, FAR case 97-307.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 to comply with the SBA's HUBZone Program regulations contained in 13 CFR parts 121, 125, and 126 (63 FR 31896, June 11, 1998). The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in distressed communities in an effort to increase employment opportunities, investment, and economic development in these communities. The Program provides for set-asides for firms that meet the definition of a HUBZone small business concern (SBC), sole source awards to HUBZone SBCs, and price evaluation preferences for HUBZone SBCs in acquisitions conducted using full and open competition; and establishes a Governmentwide goal for HUBZone awards. Until September 30, 2000, ten Government agencies are required to comply with the prime contract HUBZone Program. After that date, the Program will apply to all Federal

agencies employing one or more contracting officers.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these zones. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

It is anticipated that the HUBZone Program will benefit small business concerns by increasing the number of Government contracts awarded to them. There is a statutory goal for Government HUBZone small business concerns to receive 3 percent of contract dollars by fiscal year 2003. The HUBZone Act of 1997, Title VI of Public Law 105-135, 111 Stat. 2592 (December 2, 1997), created the HUBZone Program and directed the Administrator of the Small Business Administration (SBA) to promulgate regulations to implement it. This rule further implements the SBA rule. The small entities affected by this rule are those that fit within the definition of a small business concern, as defined by SBA in 13 CFR part 121 and new part 126, and that participate in Government contracting. Because the program is new, we cannot estimate precisely the number or classes of small entities that this rule will affect. However, the SBA estimated that more than 30,000 small businesses will apply for certification as qualified HUBZone small business concerns. This rule requires that a firm be listed on SBA's list of eligible HUBZone small business concerns in order to receive a contracting preference. That requirement is addressed in SBAs rule. This FAR rule requires that Government prime contractors with contracts that require subcontracting plans seek out HUBZone small business concerns as subcontractors as well as maintain records and report on those subcontracts awarded to HUBZone small business concerns. These requirements do not apply to small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. In general, the drafters of this rule modeled its procurement mechanisms, to the extent permitted by the SBA rule, on those already in use within the Federal Government. This approach should make the requirements of the rule immediately familiar to many small businesses that already have extensive experience in dealing with Government contracting offices. Moreover, each

individual mechanism was structured to strike an appropriate balance between the interests of HUBZone and non-HUBZone small businesses, and to minimize the overall burden of compliance on small business.

A copy of the analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite FAR case 97-307 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the interim rule contains information collection requirements. The interim rule increases the collection requirements currently approved under OMB Control Numbers 9000-0006 and 9000-0007.

OMB Control No. 9000-0006 burden hours have increased from 428,035 to 640,837 to reflect the additional burden of planning, maintaining and reporting subcontract award data on HUBZone small businesses. In addition, burden inappropriately attached to OMB Control No. 9000-0007 that related to planning and maintaining data was transferred to this clearance. OMB Control No. 9000-0007 burden hours have been adjusted to remove hours inappropriately included in this clearance and to add hours to reflect the additional burden associated with reporting HUBZone data. The net difference is an increase, from 90,924 to 91,570 hours. The appropriate paperwork has been forwarded to OMB.

D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under ADDRESSES. Please cite the corresponding OMB Clearance Number in all correspondence related to the estimate.

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made in 13 CFR parts 121, 125, and 126 on June 11, 1998, pertaining to the Small Business Administration (SBA) HUBZone Program. The SBA final rule became effective on September 9, 1998. Section 605 of the Small Business Reauthorization Act of 1997 (Title VI of Public Law 105-135) requires that, 180 days after the SBA issues its final regulations to carry out the HUBZone Program, conforming amendments must be made to the Federal Acquisition Regulation (December 8, 1998). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by revising paragraph (d) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business set-aside or a HUBZone small business set-aside, the appropriate CBD Numbered Note will be cited.

* * * * *

PART 6—COMPETITION REQUIREMENTS

3. Section 6.205 is added to read as follows:

6.205 Set-asides for HUBZone small business concerns.

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 (15 U.S.C. 631 note), contracting officers in participating agencies (see 19.1302) may set aside solicitations to allow only qualified HUBZone small business concerns to compete (see 19.1305).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for qualified HUBZone small business concerns.

4. Section 6.302-5 is amended by adding paragraph (b)(6) to read as follows:

6.302-5 Authorized or required by statute.

* * * * *

(b) * * *

(6) Sole source awards under the HUBZone Act of 1997—15 U.S.C. 657a (see 19.1306).

* * * * *

PART 7—ACQUISITION PLANNING

5. Section 7.105 is amended by revising the third sentence of paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action*—(1) *Sources*. * * * Include consideration of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19). * * *

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Section 8.404 is amended by revising the first sentence of paragraph (a) to read as follows:

8.404 Using schedules.

(a) *General*. When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of part 13, the small business set-aside provisions of subpart 19.5, and the HUBZone program of subpart 19.13 do not apply, except for the provision at 13.303-2(c)(3). * * *

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

7. Section 9.104-3 is amended by revising the last sentence of paragraph (b) to read as follows:

9.104-3 Application of standards.

* * * * *

(b) * * * If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

8. Section 12.301 is amended at the end of paragraph (b)(2) by removing the semicolon and adding a period; and adding a sentence to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(2) * * * Use the provision with its Alternate III in solicitations issued by Federal agencies subject to the requirements of the HUBZone Act of 1997 (see 19.1302);

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

9. Section 13.003 is amended by redesignating paragraph (b)(2) as (b)(3) and adding a new paragraph (b)(2) to read as follows:

13.003 Policy.

* * * * *

(b) * * *

(2) The contracting officer may set aside for HUBZone small business concerns (see 19.1305) an acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding the simplified acquisition threshold. The contracting officer's decision not to set aside an acquisition for HUBZone participation below the simplified acquisition threshold is not subject to review under subpart 19.4.

* * * * *

10. Section 13.005 is amended by adding paragraph (a)(9) to read as follows:

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) * * *

(9) 15 U.S.C. 631 note (HUBZone Act of 1997), except for 15 U.S.C. 657a(b)(2)(B), which is optional for the agencies subject to the requirements of the Act.

* * * * *

PART 14—SEALED BIDDING

14.206 [Reserved]

11. Section 14.206 is removed and reserved.

12. Section 14.502 is amended by redesignating paragraph (b)(5) as (b)(6) and adding a new paragraph (b)(5) to read as follows:

14.502 Conditions for use.

* * * * *

(b) * * *

(5) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see subpart 19.13).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

13. Section 15.503 is amended by revising paragraph (a)(2) to read as follows:

15.503 Notifications to unsuccessful offerors.

(a) * * *

(2) *Preward notices for small business programs*. (i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award, upon completion of negotiations, determinations of responsibility, and, if necessary, the process in 19.304(d)—

(A) When using a small business set-aside (see subpart 19.5);

(B) When a small disadvantaged business concern receives a benefit based on its disadvantaged status (see subpart 19.11 and 19.1202) and is the apparently successful offeror; or

(C) When using the HUBZone procedures in 19.1305 or 19.1307.

(ii) The notice shall state—

(A) The name and address of the apparently successful offeror;

(B) That the Government will not consider subsequent revisions of the offeror's proposal; and

(C) That no response is required unless a basis exists to challenge the small business size status, disadvantaged status, or HUBZone status of the apparently successful offeror.

(iii) The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered

into under the 8(a) program (see 19.805-2).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

14. Section 19.000 is amended by revising paragraphs (a)(3) and (a)(8) to read as follows:

19.000 Scope of part.

(a) * * *

(3) Setting acquisitions aside for exclusive competitive participation by small business concerns and HUBZone small business concerns, and sole source awards to HUBZone small business concerns;

* * * * *

(8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns; and

* * * * *

15. Section 19.001 is amended by adding, in alphabetical order, the definitions "HUBZone" and "HUBZone small business concern" to read as follows:

19.001 Definitions.

* * * * *

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA.

* * * * *

16. Section 19.201 is amended by revising the first sentence of paragraph (a); in paragraph (c) by removing the words "small, small disadvantaged and women-owned"; and revising paragraphs (d)(4), (d)(6), (d)(7)(ii), (d)(8), and (d)(9) to read as follows:

19.201 General policy.

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

* * * * *

(d) * * *

(4) Be responsible for the agency carrying out the functions and duties in

sections 8, 15, and 31 of the Small Business Act.

* * * * *

(6) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15, and 31 of the Small Business Act.

(7) * * *

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8, 15, and 31 of the Small Business Act;

(8) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8, 15, and 31 of the Small Business Act;

(9) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart 19.5 as a small business set-aside, under subpart 19.8 as a Section 8(a) award, or under subpart 19.13 as a HUBZone set-aside.

* * * * *

19.202 [Amended]

17. Section 19.202 is amended in the first sentence by removing "Subpart 19.5 or 19.8" and adding "subpart 19.5, 19.8, or 19.13."

18. Section 19.202-2 is amended by revising the introductory paragraph; and in paragraph (a) by adding "and HUBZones" after the word "areas". The revised text reads as follows:

19.202-2 Locating small business sources.

The contracting officer shall, to the extent practicable, encourage maximum participation by small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in acquisitions by taking the following actions:

* * * * *

19. Section 19.202-4 is amended by revising the introductory paragraph to read as follows:

19.202-4 Solicitation.

The contracting officer shall encourage maximum response to solicitations by small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by taking the following actions:

* * * * *

20. Section 19.202-5 is amended by revising paragraphs (a) and (b) to read as follows:

19.202-5 Data collection and reporting requirements.

* * * * *

(a) Require each prospective contractor to represent whether it is a small business, HUBZone small business, small disadvantaged business, or women-owned small business concern (see the provision at 52.219-1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see subpart 4.6).

21. Section 19.202-6 is amended by removing the introductory text and revising paragraph (a) to read as follows:

19.202-6 Determination of fair market price.

(a) The fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404-1(b) for—

(1) Total and partial small business set-asides (see subpart 19.5);

(2) HUBZone set-asides (see subpart 19.13);

(3) Contracts utilizing the price evaluation adjustment for small disadvantaged business concerns (see subpart 19.11); and

(4) Contracts utilizing the price evaluation preference for HUBZone small business concerns (see subpart 19.13).

* * * * *

Subpart 19.3—Determination of Status as a Small Business, HUBZone Small Business, or Small Disadvantaged Business Concern

22. The heading of Subpart 19.3 is revised to read as set forth above.

23. Section 19.301 is amended by revising the first sentence of paragraph (d) to read as follows:

19.301 Representation by the offeror.

* * * * *

(d) If the SBA determines that the status of a concern as a small business, HUBZone small business, small disadvantaged business, or women-owned small business has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of

Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Section 16(d) of the Act. * * *

24. Section 19.306 is redesignated as 19.307; and a new 19.306 is added to read as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

(a) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone small business status. For all other acquisitions, an offeror, the contracting officer, or the SBA may protest the apparently successful offeror's HUBZone small business concern status.

(b) Protests relating to whether a HUBZone small business concern is a small business for purposes of any Federal program are subject to the procedures of subpart 19.3. Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

(c) All protests shall be in writing and shall state all specific grounds for the protest. Assertions that a protested concern is not a HUBZone small business concern, without setting forth specific facts or allegations, is insufficient. An offeror shall submit its protest to the contracting officer. The contracting officer and the SBA shall submit their protests to SBA's Associate Administrator for the HUBZone Program (AA/HUB).

(d) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(e) Except for premature protests, the contracting officer shall forward any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely, to: AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

(f) SBA will determine the HUBZone status of the protested HUBZone small business concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the

apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(g) SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Deputy Administrator for Government Contracting and 8(a) Business Development (ADA/GC&8(a)BD).

(h) The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's ADA/GC&8(a)BD. The ADA/GC&8(a)BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the 5-day period.

(i) The appeal must be in writing. The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the AA/HUB failed to consider.

(j) The party appealing the decision must provide notice of the appeal to the contracting officer and either the protested HUBZone small business concern or the original protester, as appropriate. SBA will not consider additional information or changed circumstances that were not disclosed at the time of the AA/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(k) The ADA/GC&8(a)BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The ADA/GC&8(a)BD's decision is the final decision.

24a. In newly redesignated 19.307, the section heading and paragraph (a) are revised to read as follows:

19.307 Solicitation provision.

(a)(1) The contracting officer shall insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United

States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(2) The provision shall be used with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a).

(3)(i) The provision shall be used with its Alternate II in solicitations issued by the following agencies on or before September 30, 2000:

- (A) Department of Agriculture.
- (B) Department of Defense.
- (C) Department of Energy.
- (D) Department of Health and Human Services.
- (E) Department of Housing and Urban Development.
- (F) Department of Transportation.
- (G) Department of Veterans Affairs.
- (H) Environmental Protection Agency.
- (I) General Services Administration.
- (J) National Aeronautics and Space Administration.

(ii) The provision shall be used with its Alternate II in solicitations issued by all Federal agencies after September 30, 2000.

* * * * *

25. Section 19.402 is amended by revising paragraph (c)(1) to read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(1) Reviewing proposed acquisitions to recommend—

(i) The setting aside of selected acquisitions not unilaterally set aside by the contracting officer.

(ii) New qualified small, HUBZone small, small disadvantaged, and women-owned small business sources, and

(iii) Breakout of components for competitive acquisitions.

* * * * *

26. Section 19.501 is amended—

(a) In the third and fourth sentences of paragraph (a) by adding "small business" after the word "A" in each instance;

(b) In the first sentence of paragraph (b) by adding "small business" after the word "a"; and in the second and third sentences by removing the word "which" and adding "that" in each instance; and

(c) By redesignating paragraphs (c) through (g) as (d) through (h), respectively; adding a new paragraph (c); and by revising newly designated paragraphs (d) and (h) to read as follows:

19.501 General.

* * * * *

(c) For acquisitions exceeding the simplified acquisition threshold, the requirement to set aside an acquisition for HUBZone small business concerns (see 19.1305) takes priority over the requirement to set aside the acquisition for small business concerns.

(d) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency's small business programs. The contracting officer shall document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless a HUBZone small business set-aside or HUBZone small business sole source award is anticipated. If the acquisition is set aside for small business based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.

* * * * *

(h) Except as authorized by law, a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price.

27. Section 19.502-1 is revised to read as follows:

19.502-1 Requirements for setting aside acquisitions.

(a) The contracting officer shall set aside an individual acquisition or class of acquisitions for competition among small businesses when—

(1) It is determined to be in the interest of maintaining or mobilizing the Nations full productive capacity, war or national defense programs; or

(2) Assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns; and the circumstances described in 19.502-2 or 19.502-3(a) exist.

(b) This requirement does not apply to purchases of \$2,500 or less, or purchases from required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely disabled, and Federal Supply Schedule contracts).

28. Section 19.502-2 is amended by revising the section heading; in the first sentence of paragraph (a) by adding "for small business" after the word "aside"; and revising the last sentence; in the first sentence of paragraph (c) by adding "small business" after the word "For", and removing the word "which" and

adding "that"; and in paragraph (d) by adding "small business" after the word "when". The revised text reads as follows:

19.502-2 Total small business set-asides.

(a) * * * The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under Subpart 19.8, Contracting with the Small Business Administration, under 19.1006(c), Emerging small business set-aside, or under 19.1305, HUBZone set-aside procedures.

* * * * *

19.502-4 [Amended]

29. Section 19.502-4 is amended in the first sentence of paragraph (a) by adding "small business" after the word "Total".

19.502-5 [Amended]

30. Section 19.502-5 is amended in the second sentences of paragraphs (b) and (c) by adding "small business" after the word "total" in each instance; and in paragraph (g) by adding "small business" after the word "class".

31. Section 19.503 is amended by revising the section heading to read as set forth below; in the second sentence of paragraph (a) by adding "small business" after the word "class"; in paragraph (b) by adding "for small business" after the word "acquisitions"; in paragraph (c) introductory text by adding "small business" after the word "class"; and in the first sentence of paragraph (d) by adding "small business" after the word "class" both times it appears.

19.503 Setting aside a class of acquisitions for small business.

32. Section 19.506 is amended by revising the section heading, paragraph (a), the last sentence of paragraph (b), and paragraph (c) to read as follows:

19.506 Withdrawing or modifying small business set-asides.

(a) If, before award of a contract involving a small business set-aside, the contracting officer considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the small business set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual small business set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class

small business set-aside to withdraw one or more individual acquisitions.

(b) * * * However, the procedures are not applicable to automatic dissolutions of small business set-asides (see 19.507) or dissolution of small business set-asides under \$100,000.

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a small business set-aside and include it in the contract file.

33. Section 19.507 is amended by revising the section heading to read as set forth below; and in the first sentence of paragraph (a) by adding "small business" after the word "a".

19.507 Automatic dissolution of a small business set-aside.**Subpart 19.7—The Small Business Subcontracting Program**

34. The heading of Subpart 19.7 is revised to read as set forth above.

35. Section 19.702 is amended by revising the introductory paragraph and (b)(4) to read as follows:

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold shall agree in the contract that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

* * * * *

(b) * * *

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8, Utilization of Small Business Concerns (or equivalent prior clauses; e.g., contracts awarded before the enactment of Public Law 95-507).

* * * * *

36. Section 19.703 is amended by revising the introductory text of paragraph (a) and (a)(1); in paragraph (b) by revising the first sentence and adding a sentence to the end of the paragraph to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must

represent itself as a small business, HUBZone small business, small disadvantaged business, or woman-owned small business concern.

(1) To represent itself as a small business, HUBZone small business, or women-owned small business concern, a concern must meet the appropriate definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, HUBZone small business, or women-owned small business concern. * * * Protests challenging HUBZone small business concern status shall be filed in accordance with 13 CFR 126.800.

37. Section 19.704 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(6), (a)(8), (a)(9), (a)(11), and the first sentence of paragraph (b) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors;

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

* * * * *

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

* * * * *

(8) A description of the efforts the offeror will make to ensure that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts;

(9) Assurances that the offeror will include the clause at 52.219-8,

Utilization of Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan (see 19.708(b));

* * * * *

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see 19.701) that contains all the elements required by the clause at 52.219-9, Small Business Subcontracting Plan, except goals. * * *

* * * * *

38. Section 19.705-2 is amended by revising the last sentence of paragraph (d) to read as follows:

19.705-2 Determining the need for a subcontracting plan.

* * * * *

(d) * * * In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns to participate, and the burden placed on offerors.

39. Section 19.705-4 is amended by revising the last sentence of paragraph (b), the second and last sentences of paragraph (c), the first sentence of paragraph (d)(1), (d)(5), and the first sentence of paragraph (d)(6) to read as follows:

19.705-4 Reviewing the subcontracting plan.

* * * * *

(b) * * * If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small Business Concerns, the contracting officer may find the bidder nonresponsive.

(c) * * * Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors to the maximum practicable extent. * * * An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small business, HUBZone small business, or women-owned small business concerns.

(d) * * *

(1) Obtain information available from the cognizant contract administration office, as provided for in 19.706(a), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. * * *

* * * * *

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(6) Advise the offeror of available sources of information on potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. * * *

* * * * *

40. Section 19.705-6 is amended by revising paragraphs (a) and (b) to read as follows:

19.705-6 Postaward responsibilities of the contracting officer.

* * * * *

(a) Notifying the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA area office where the contract will be performed.

(b) Forwarding a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA

area office where the contractor's headquarters is located.

* * * * *

41. Section 19.705-7 is amended in the first sentence of paragraph (a), and in the third and fourth sentences of paragraph (d) by removing the words "small, small disadvantaged" and adding "small business, HUBZone small business, small disadvantaged business," in each instance; and revising the introductory text of paragraph (f) to read as follows:

19.705-7 Liquidated damages.

* * * * *

(f) With respect to commercial plans approved under the clause at 52.219-9, Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

* * * * *

42. Section 19.706 is amended by revising paragraphs (b) and (c) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

* * * * *

(b) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

(c) Information on whether the contractor's efforts to ensure the participation of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns are in accordance with its subcontracting plan;

* * * * *

43. Section 19.708 is amended by revising the section heading; in the introductory text of paragraph (a) by removing the words "Small, Small Disadvantaged and Women-Owned"; by revising paragraph (b); and in paragraphs (c)(1), (c)(2), and (c)(3) by adding "business, HUBZone small business," after the word "small" the first time it is used. The revised text reads as follows:

19.708 Contract clauses.

* * * * *

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns, unless the acquisition is set aside or is

to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I. When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small Business Subcontracting Plan, or the clause with its Alternate I or II.

* * * * *

44. Section 19.800 is amended by adding paragraph (d) to read as follows:

19.800 General.

* * * * *

(d) Before deciding to set aside an acquisition in accordance with subpart 19.5 or 19.13, the contracting officer should review the acquisition for offering under the 8(a) Program. In making this decision, contracting officers in participating agencies (see 19.1302) are advised that SBA will give first priority to HUBZone 8(a) concerns.

19.803 [Amended]

45. Section 19.803 is amended at the end of paragraph (c) by removing the period and adding "(but see 19.800(d))."

46. Section 19.804-2 is amended by revising paragraph (a)(12) to read as follows:

19.804-2 Agency offering.

(a) * * *
(12) Identification of all known 8(a) concerns, including HUBZone 8(a) concerns, that have expressed an interest in this specific requirement as a result of self-marketing, response to sources sought, or publication of advanced acquisition requirements.

* * * * *

47. Section 19.1006 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

19.1006 Procedures.

* * * * *

(b) *Designated industry groups.* (1) * * * Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) Program (see subpart 19.8) and the HUBZone Program (see subpart 19.13).

* * * * *

48. Section 19.1102 is amended by revising paragraph (b) to read as follows:

19.1102 Applicability.

* * * * *

(b) The price evaluation adjustment shall not be used in acquisitions that—

- (1) Are less than or equal to the simplified acquisition threshold;
- (2) Are awarded pursuant to the 8(a) Program;
- (3) Are set aside for small business concerns; or
- (4) Are set aside for HUBZone small business concerns.

49. Section 19.1202-2 is amended by revising paragraph (b)(1) to read as follows:

19.1202-2 Applicability.

* * * * *

(b) * * *

(1) Small business set-asides (see subpart 19.5) and HUBZone set-asides (see subpart 19.13);

* * * * *

50. Subpart 19.13, consisting of sections 19.1301 through 19.1308, is added to read as follows:

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

Sec.

- | | |
|---------|--|
| 19.1301 | General. |
| 19.1302 | Applicability. |
| 19.1303 | Status as a qualified HUBZone small business concern. |
| 19.1304 | Exclusions. |
| 19.1305 | HUBZone set-aside procedures. |
| 19.1306 | HUBZone sole source awards. |
| 19.1307 | Price evaluation preference for HUBZone small business concerns. |
| 19.1308 | Contract clauses. |

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the "HUBZone Empowerment Contracting Program").

(b) The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

19.1302 Applicability.

(a) Until September 30, 2000, the procedures in this subpart apply only to acquisitions made by the following Federal agencies:

- (1) Department of Agriculture.
- (2) Department of Defense.

- (3) Department of Energy.
- (4) Department of Health and Human Services.
- (5) Department of Housing and Urban Development.
- (6) Department of Transportation.
- (7) Department of Veterans Affairs.
- (8) Environmental Protection Agency.
- (9) General Services Administration.
- (10) National Aeronautics and Space Administration.

(b) On or after September 30, 2000, the procedures in this subpart will apply to all Federal agencies that employ one or more contracting officers.

19.1303 Status as a qualified HUBZone small business concern.

(a) Status as a qualified HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR part 126.

(b) If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at <http://www.sba.gov/hubzone>. The concern must appear on the list to be a HUBZone small business concern.

(c) A joint venture (see 19.101) may be considered a HUBZone small business if the business entity meets all the criteria in 13 CFR 126.616.

(d) Except for construction or services, any HUBZone small business concern (nonmanufacturer) proposing to furnish a product that it did not itself manufacture must furnish the product of a HUBZone small business concern manufacturer to receive a benefit under this subpart.

19.1304 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see subpart 8.6); or

(2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see subpart 8.7);

(b) Orders under indefinite delivery contracts (see subpart 16.5);

(c) Orders against Federal Supply Schedules (see subpart 8.4);

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(e) Requirements that do not exceed the micro-purchase threshold; or

(f) Requirements for commissary or exchange resale items.

19.1305 HUBZone set-aside procedures.

(a) A participating agency contracting officer shall set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306) or small business set-asides (see subpart 19.5).

(b) To set aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

(c) A participating agency may set aside acquisitions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

(d) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see subpart 19.5).

(e) The procedures at 19.202-1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section. When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and

compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

19.1306 HUBZone sole source awards.

(a) A participating agency contracting officer may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides (see subpart 19.5), provided—

(1) Only one HUBZone small business concern can satisfy the requirement;

(2) The anticipated price of the contract, including options, will not exceed—

(i) \$5,000,000 for a requirement within the Standard Industrial Classification (SIC) codes for manufacturing; or

(ii) \$3,000,000 for a requirement within any other SIC code;

(3) The requirement is not currently being performed by a non-HUBZone small business concern;

(4) The acquisition is greater than the simplified acquisition threshold (see part 13);

(5) The HUBZone small business concern has been determined to be a responsible contractor with respect to performance; and

(6) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a HUBZone sole source award.

19.1307 Price evaluation preference for HUBZone small business concerns.

(a) The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used—

(1) In acquisitions expected to be less than or equal to the simplified acquisition threshold;

(2) Where price is not a selection factor so that a price evaluation preference would not be considered (e.g., Architect/Engineer acquisitions);

(3) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).

(b) The contracting officer shall give offers from HUBZone small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except—

(1) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(2) Otherwise successful offers from small business concerns;

(3) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.402; and

(4) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government (see agency supplement).

(c) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors, such as transportation costs or rent-free use of Government facilities, shall be added to the offer to establish the base offer before adding the factor of 10 percent.

(d) A concern that is both a HUBZone small business concern and a small disadvantaged business concern shall receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see subpart 19.11). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference and adjustment amounts shall both be added to the base offer to arrive at the total evaluated price for that offer.

19.1308 Contract clauses.

(a) The contracting officer shall insert the clause 52.219-3, Notice of Total HUBZone Set-Aside, in solicitations and contracts for acquisitions that are set aside for HUBZone small business concerns under 19.1305 or 19.1306.

(b) The contracting officer shall insert the clause at 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition. The clause shall not be used in acquisitions that do not exceed the simplified acquisition threshold.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.104 [Amended]

51. Section 26.104 is amended in paragraph (a) by removing the words "Small, Small Disadvantaged and Women-Owned".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52. Section 52.212-3 is amended by adding Alternate III following Alternate II to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Alternate III (Jan 1999). As prescribed in 12.301(b)(2), add the following paragraph (c)(9) to the basic provision:

(9) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(9)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:* _____.] Each

HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

53. Section 52.212-5 is amended in the clause by revising (b)(3) and (b)(4); redesignating (b)(9) through (b)(20) as (b)(12) through (b)(23), respectively; and adding new paragraphs (b)(9), (b)(10), and (b)(11) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jan. 1999)

* * * * *

(b) * * *

— (3) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

— (4) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4)).

* * * * *

— (9) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999).

— (10) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

— (11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

* * * * *

54. Section 52.219-1 is amended by revising the introductory paragraph; in the introductory text of Alternate I by revising "19.306(a)(1)" to read "19.307(a)(1)"; and adding Alternate II following Alternate I to read as follows:

52.219-1 Small Business Program Representations.

As prescribed in 19.307(a)(1), insert the following provision:

* * * * *

Alternate II (Jan 1999). As prescribed in 19.307(a)(3), add the following paragraph (b)(5) to the basic provision:

(5) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:* _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

52.219-2 [Amended]

55. Section 52.219-2 is amended in the introductory text by revising "19.306(c)" to read "19.307(c)".

56. Sections 52.219-3 and 52.219-4 are added to read as follows:

52.219-3 Notice of total HUBZone set-aside.

As prescribed in 19.1308(a), insert the following clause:

Notice of Total HUBZone Set-Aside (Jan 1999)

(a) *Definition.* *HUBZone small business concern*, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause will be performed by the HUBZone small business participant or participants.

(e) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.219-4 Notice of price evaluation preference for HUBZone small business concerns.

As prescribed in 19.1308(b), insert the following clause:

Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999)

(a) *Definition.* *HUBZone small business concern*, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other

evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

□ Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

57. Section 52.219-8 is revised to read as follows:

52.219-8 Utilization of small business concerns.

As prescribed in 19.708(a), insert the following clause:

Utilization of Small Business Concerns (Jan 1999)

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract

(1) *Small business concern* means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) *HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) *Small business concern owned and controlled by socially and economically disadvantaged individuals* means an offeror that represents, as part of its offer, that—

(i) It is a small business under the size standard applicable to the acquisition;

(ii) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(iii) No material change in disadvantaged ownership and control has occurred since its certification;

(iv) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(v) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration.

(4) *Small business concern owned and controlled by women* means a small business concern—

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women; and

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.
(End of clause)

58. Section 52.219-9 is amended—

a. By revising the section and clause headings;

b. By revising the first and second sentences of paragraph (c);

c. By revising the first sentence of paragraph (d)(1);

d. By redesignating (d)(2)(iii) and (d)(2)(iv) as (d)(2)(iv) and (d)(2)(v) and adding a new (d)(2)(iii);

e. By revising paragraph (d)(3);

f. In the first sentence of paragraph (d)(5) by adding "HUBZone small," after the words "or small,";

g. By revising paragraph (d)(6);

h. In paragraph (d)(8) by adding "business, HUBZone small business," after the words "that small"; and adding "business," after "small disadvantaged";

i. In paragraph (d)(9) by removing the word "in" the first time it is used and adding "of" in its place; and removing the words "Small, Small Disadvantaged and Women-Owned";

j. By revising paragraph (d)(11);

k. By revising paragraphs (e)(1), (e)(2), (e)(3), and (e)(4);

l. In paragraph (i)(1) by removing the words "Small, Small Disadvantaged and Women-Owned"; and

m. By revising Alternates I and II to read as follows:

52.219-9 Small business subcontracting plan.

* * * * *

Small Business Subcontracting Plan (Jan 1999)

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). * * *

(d) * * *

(1) Goals, expressed in terms of percentages of total planned subcontracting

dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors.

* * *

(2) * * *

(iii) Total dollars planned to be subcontracted to HUBZone small business concerns;

* * * * *

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

* * * * *

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

* * * * *

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether HUBZone small business concerns were solicited and, if not, why not;

(C) Whether small disadvantaged business concerns were solicited and, if not, why not;

(D) Whether women-owned small business concerns were solicited and, if not, why not; and

(E) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through—
(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) * * *

(1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

Alternate I (Jan 1999). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make

the bidder ineligible for the award of a contract.

Alternate II (Jan 1999). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

59. Section 52.219-10 is amended by revising paragraph (a) of the clause; and in the first sentence of paragraph (b) by removing "concerns" the first time it is used and adding "HUBZone small

business," in its place. The revised text reads as follows:

52.219-10 Incentive Subcontracting Program.

* * * * *

Incentive Subcontracting Program (Jan 1999)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

* * * * *

52.219-16 [Amended]

60. Section 52.219-16 is amended by revising the date of the clause to read "(JAN 1999)"; and in paragraph (a) and the second sentence of paragraph (b) of the clause by removing the words "Small, Small Disadvantaged and Women-Owned".

52.219-22 [Amended]

61. Section 52.219-22 is amended in the introductory paragraph by revising "19.306(b)" to read "19.307(b)".

52.226-1 [Amended]

62. Section 52.226-1 is amended by revising the date of the clause to read "(JAN 1999)"; and in paragraph (a) of the clause by removing the words "Small, Small Disadvantaged and Women-Owned".

PART 53—FORMS

63. Section 53.219 is amended by revising paragraph (a); and in paragraph (b) by revising the revision date of the form to read "(Rev. 12/98)".

53.219 Small business programs.

* * * * *

(a) *SF 294 (Rev. 12/98), Subcontracting Report for Individual Contracts.* (See 19.704(a)(10).) SF 294 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the loose-leaf edition of the FAR.

* * * * *

64. Sections 53.301-294 and 53.301-295 are revised to read as follows:

53.301-294 Subcontracting Report for Individual Contracts.

BILLING CODE 6820-EP-P

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

 OMB No.: 9000-0006
 Expires: 04/30/2001

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30 YEAR		
b. STREET ADDRESS					
c. CITY	d. STATE	e. ZIP CODE	5. TYPE OF REPORT		
2. CONTRACTOR IDENTIFICATION NUMBER			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>					
<input type="checkbox"/> ARMY		<input type="checkbox"/> GSA		<input type="checkbox"/> NASA	
<input type="checkbox"/> NAVY		<input type="checkbox"/> DOE		<input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i>	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> DEFENSE LOGISTICS AGENCY			
7. REPORT SUBMITTED AS <i>(Check one and provide appropriate number)</i>			8. AGENCY OR CONTRACTOR AWARDING CONTRACT		
<input type="checkbox"/> PRIME CONTRACTOR			a. AGENCY'S OR CONTRACTOR'S NAME		
<input type="checkbox"/> SUBCONTRACTOR			b. STREET ADDRESS		
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS: <input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS			c. CITY		e. ZIP CODE
			d. STATE		

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB) (Dollar Amount and Percent of 10c.)</i>				
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
10c. TOTAL <i>(Sum of 10a and 10b.)</i>		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS <i>(Include HBCU/MI) (Dollar Amount and Percent of 10c.)</i>				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable) (Dollar Amount and Percent of 10c.)</i>				
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				

15. REMARKS

16a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN		16b. TELEPHONE NUMBER	
		AREA CODE	NUMBER

 AUTHORIZED FOR LOCAL REPRODUCTION
 Previous edition is not usable

 STANDARD FORM 294 (REV. 12-98)
 Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 14: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract

modifications, enter the original goals in Block 15. The amounts entered in Blocks 10a through 14 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 through 14: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs and HUBZone SBs owned by women).

BLOCK 13 (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned and SDB HUBZone SBs).

BLOCK 15: Enter a short narrative explanation if (a) SB, SDB, WOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.

2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is **NOT** necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

53.301-295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT <i>(See instructions on reverse)</i>				OMB No.: 9000-0007 Expires: 06/30/2000	
Public reporting burden for this collection of information is estimated to average 12.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.					
1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD: YEAR		
b. STREET ADDRESS					
c. CITY		d. STATE	e. ZIP CODE	<input type="checkbox"/> OCT 1 - MAR 31 <input type="checkbox"/> OCT 1 - SEPT 30	
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT		
			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>					
<input type="checkbox"/> ARMY		<input type="checkbox"/> DEFENSE LOGISTICS AGENCY		<input type="checkbox"/> DOE	
<input type="checkbox"/> NAVY		<input type="checkbox"/> NASA		<input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i>	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> GSA			
7. REPORT SUBMITTED AS <i>(Check one)</i>			8. TYPE OF PLAN		
<input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> BOTH			<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> COMMERCIAL		
<input type="checkbox"/> SUBCONTRACTOR			IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶		
9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES					
a		c			
b		d			
CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS <i>(Report cumulative figures for reporting period in Block 4)</i>					
TYPE			WHOLE DOLLARS	PERCENT (To nearest tenth of a %)	
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB)</i> <i>(Dollar Amount and Percent of 10c.)</i>					
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
10c. TOTAL <i>(Sum of 10a and 10b.)</i>				100.0%	
11. SMALL DISADVANTAGED (SDB) CONCERNS <i>(Include HBCU/MI)</i> <i>(Dollar Amount and Percent of 10c.)</i>					
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable)</i> <i>(Dollar Amount and Percent of 10c.)</i>					
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
15. REMARKS					
16. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM					
a. NAME		b. TITLE		c. TELEPHONE NUMBER	
				AREA CODE	NUMBER
17. CHIEF EXECUTIVE OFFICER					
a. NAME			c. SIGNATURE		
b. TITLE			d. DATE		

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.
2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.
5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)
6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.
8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.
10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 14 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 14: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 14: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs and HUBZone SBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned and SDB HUBZone SBs).

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.
2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.
3. Enter in Blocks 10a through 14 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.
2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.
4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
5. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 12-98) BACK

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 16

[FAC 97-10; FAR Case 98-016; Item II]

RIN 9000-A118

Federal Acquisition Regulation; Limits for Indefinite-Quantity Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify guidance regarding how limits on indefinite-quantity contracts are expressed.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-10, FAR case 98-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 16.504(a) to clarify that maximum and minimum limits for indefinite-quantity contracts may be expressed as a number of units or dollar value.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-10, FAR case 98-016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 16 is amended as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 16.504 is amended at the end of paragraph (a) by adding a sentence; in paragraph (a)(1) by revising the first sentence and adding a new second sentence; and by revising paragraph (a)(4)(ii). The revised text reads as follows:

16.504 Indefinite-quantity contracts.

(a) * * * Quantity limits may be expressed in terms of numbers of units or as dollar values.

(1) The contract shall require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor shall furnish any additional quantities, not to exceed the stated maximum. * * *

* * * * *

(4) * * *

(ii) Specify the total minimum and maximum quantity of supplies or services to be acquired under the contract;

* * * * *

[FR Doc. 98-33514 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 22 and 52

[FAC 97-10; FAR Case 98-607; Item III]

RIN 9000-A115

Federal Acquisition Regulation; Office of Federal Contract Compliance Programs National Pre-Award Registry

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to inform the procurement community of the availability of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) National Pre-Award Registry (Registry), accessible through the Internet, that contains contractor establishments that have been reviewed within the preceding 24 months and found in compliance with the equal opportunity laws enforced by OFCCP, and the option to use the information in the Registry in lieu of submitting a written request for a preaward clearance; and implement revised Department of Labor (DoL) regulations pertaining to equal employment opportunity and affirmative action requirements for Federal contractors and subcontractors.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-10, FAR case 98-607.

SUPPLEMENTARY INFORMATION:

A. Background

Section 60-1.29 of Title 41 of the Code of Federal Regulations provides that agencies shall not enter into contracts or approve the entry into contracts or subcontracts for \$10 million or more with any bidder, prospective prime contractor, or proposed subcontractor until a preaward compliance evaluation has been conducted and the Deputy Assistant

Secretary or his designee has approved a determination that the bidder, prospective prime contractor, or proposed subcontractor will be able to comply with the provisions of the equal employment opportunity regulations.

To streamline the process for obtaining preaward clearance, the Office of Federal Contract Compliance Programs (OFCCP) has developed and implemented the OFCCP National Pre-Award Registry which contains contractor establishments that have been evaluated within the past 24 months and found to be in compliance with its Equal Employment Opportunity regulations.

Since April 15, 1998, agencies who have inquired have been verbally advised by OFCCP that they may review the Registry to search for prospective contractor establishments to whom they intend to award contracts of \$10 million or more. If the specific contractor establishment receiving the contract is listed on the Registry, the agency is not required to request a written preaward clearance from OFCCP. The use of the Registry will reduce the number of requests from the contracting agencies to OFCCP and responses back from OFCCP to the agency. Thus, use of the Registry will reduce the administrative burden of paperwork for both agencies.

Also, this final rule amends FAR subpart 22.8 and the provisions and clauses at FAR 52.212-3, 52.222-21 through 52.222-24, and 52.222-26 through 52.222-29, to implement revised Department of Labor (DoL) regulations, published as a final rule in the **Federal Register** at 62 FR 44173, August 19, 1997. The DoL rule increased, from \$1 million to \$10 million, the threshold for obtaining preaward compliance clearance from OFCCP, and amended administrative procedures for obtaining such clearances; eliminated the requirement for OFCCP clearance of subcontracts after award of the prime contract; and eliminated the requirement to obtain a certification of nonsegregated facilities from prospective contractors.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5

U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-10, FAR case 98-607), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.800 [Amended]

2. Section 22.800 is amended by removing "Government."

3. Section 22.801 is revised to read as follows:

22.801 Definitions.

As used in this subpart—

Affirmative action program means a contractor's program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

Compliance evaluation means any one or combination of actions that the Office of Federal Contract Compliance Programs (OFCCP) may take to examine a Federal contractor's compliance with one or more of the requirements of E.O. 11246.

Contractor includes the terms "prime contractor" and "subcontractor."

Deputy Assistant Secretary means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

Equal Opportunity clause means the clause at 52.222-26, Equal Opportunity, as prescribed in 22.810(e).

E.O. 11246 means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive order amending or superseding this order (see 22.802). This term

specifically includes the Equal Opportunity clause at 52.222-26, and the rules, regulations, and orders issued pursuant to E.O. 11246 by the Secretary of Labor or a designee.

Prime contractor means any person who holds, or has held, a Government contract subject to E.O. 11246.

Recruiting and training agency means any person who refers workers to any contractor or provides or supervises apprenticeship or training for employment by any contractor.

Site of construction means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee)—

(1) For the purchase, sale, or use of personal property or nonpersonal services that, in whole or in part, are necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

Subcontractor means any person who holds, or has held, a subcontract subject to E.O. 11246. The term *first-tier subcontractor* means a subcontractor holding a subcontract with a prime contractor.

United States means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

22.802 [Amended]

4. Section 22.802 is amended in paragraph (a) by removing "Government contracting" and "Government prime"; and in paragraph (b) by removing "Director" and adding "Deputy Assistant Secretary".

5. Section 22.803 is amended in paragraph (b) by removing "Director" and adding "Deputy Assistant Secretary"; and by revising paragraph (d) to read as follows:

22.803 Responsibilities.

* * * * *

(d) In the event the applicability of E.O. 11246 and implementing

regulations is questioned, the contracting officer shall forward the matter to the Deputy Assistant Secretary, through agency channels, for resolution.

6. Section 22.804-1 is revised to read as follows:

22.804-1 Nonconstruction.

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and either a contract or subcontract of \$50,000 or more, or Government bills of lading that in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments. Each contractor and subcontractor shall develop its written affirmative action programs within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

22.804-2 [Amended]

7. Section 22.804-2 is amended in the first sentence of paragraph (b) by removing "contracting".

8. Section 22.805 is amended by revising the introductory text of paragraph (a); revising paragraphs (a)(1), (a)(2), and (a)(3); by redesignating paragraphs (a)(4) thru (a)(8) as (a)(5) thru (a)(9), respectively, and adding a new paragraph (a)(4); by revising the introductory text of the newly designated paragraph (a)(5); revising newly designated paragraphs (a)(5)(ii) and (v); (a)(6), (a)(7), (a)(8), and (a)(9); and in paragraph (b) by adding "Employment" after "Equal". The revised text reads as follows:

22.805 Procedures.

(a) *Preaward clearances for contracts and subcontracts of \$10 million or more (excluding construction).* (1) Except as provided in paragraphs (a)(4) and (a)(8) of this section, if the estimated amount of the contract or subcontract is \$10 million or more, the contracting officer shall request clearance from the appropriate OFCCP regional office before—

- (i) Award of any contract, including any indefinite delivery contract or letter contract; or
- (ii) Modification of an existing contract for new effort that would constitute a contract award.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of \$10 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed by letter or facsimile transmission.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward clearance to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward clearance request action should be based on the location of the recruiting and training agency in the United States.

(4) The contracting officer does not need to request a preaward clearance if—

(i) The specific proposed contractor is listed in OFCCP's National Preaward Registry via the Internet at <http://www.dol-esa.gov/preaward/>;

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The contracting officer documents the Registry review in the contract file.

(5) The contracting officer shall include the following information in the preaward clearance request:

* * * * *

(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at \$10 million or more.

* * * * *

(v) Place or places of performance of the prime contract and first-tier subcontracts estimated at \$10 million or more, if known.

* * * * *

(6) The contracting officer shall allow as much time as feasible before award for the conduct of necessary compliance evaluation by OFCCP. As soon as the apparently successful offeror can be determined, the contracting officer shall process a preaward clearance request in accordance with agency procedures, assuring, if possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 days before the proposed award date.

(7) Within 15 days of the clearance request, OFCCP will inform the awarding agency of its intention to conduct a preaward compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a preaward compliance evaluation, clearance shall

be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a preaward compliance evaluation, OFCCP shall be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance shall be presumed and the awarding agency is authorized to proceed with the award.

(8) If the procedures specified in paragraphs (a)(6) and (a)(7) of this section would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward evaluation cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward evaluation from the OFCCP regional office.

(9) If, under the provisions of paragraph (a)(8) of this section, a postaward evaluation determines the contractor to be in noncompliance with E.O. 11246, the Deputy Assistant Secretary may authorize the use of the enforcement procedures at 22.809 against the noncomplying contractor.

* * * * *

9. Section 22.806 is revised to read as follows:

22.806 Inquiries.

(a) An inquiry from a contractor regarding status of its compliance with E.O. 11246, or rights of appeal to any of the actions in 22.809, shall be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with E.O. 11246 shall be referred to the Deputy Assistant Secretary.

10. Section 22.807 is amended—

a. In paragraph (a)(1) by removing "Director" and adding "Deputy Assistant Secretary";

b. By revising paragraph (a)(2);

c. In the second sentence of paragraph (b)(1) by removing "or subcontractor";

d. In paragraph (b)(3) by adding a comma following "instrumentality" the second time it appears;

e. By revising paragraph (b)(5);

f. In paragraph (b)(6) by adding a hyphen between "Indefinite quantity" (both times it appears);

g. By revising paragraph (c);

h. By revising the introductory text of (d); and

i. In paragraph (d)(2) by removing "calendar".

The revised text read as follows:

22.807 Exemptions.

(a) * * *

(2) *Specific contracts.* The Deputy Assistant Secretary may exempt an agency from requiring the inclusion of one or more of the requirements of E.O. 11246 in any contract if the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Deputy Assistant Secretary finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of E.O. 11246.

(b) * * *

(5) *Facilities not connected with contracts.* The Deputy Assistant Secretary may exempt from the requirements of E.O. 11246 any of a contractor's facilities that the Deputy Assistant Secretary finds to be in all respects separate and distinct from activities of the contractor related to performing the contract, provided, that the Deputy Assistant Secretary also finds that the exemption will not interfere with, or impede the effectiveness of, E.O. 11246.

* * * * *

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the contracting officer shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O. 11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the Deputy Assistant Secretary for approval.

(d) The Deputy Assistant Secretary may withdraw the exemption for a specific contract, or group of contracts, if the Deputy Assistant Secretary deems that such action is necessary and appropriate to achieve the purposes of E.O. 11246. Such withdrawal shall not apply—

* * * * *

22.809 [Amended]

11. Section 22.809 is amended in the introductory text by removing

"Director" and adding "Deputy Assistant Secretary"; in paragraph (a) by removing "their" and adding "its"; and in paragraph (d) by removing Director and adding "Deputy Assistant Secretary".

12. Section 22.810 is amended—

a. By revising paragraph (a);

b. In paragraph (b) by adding "for Construction" after "Opportunity" the first time it appears;

c. By revising paragraph (c);

d. By revising paragraph (e),

e. In paragraph (f) by removing "and" the second time it appears and adding "when";

f. By removing paragraph (g); and

g. By redesignating paragraph (h) as (g).

The revised paragraphs read as follows:

22.810 Solicitation provisions and contract clauses.

(a) When a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, the contracting officer shall insert—

(1) The clause at 52.222-21, Prohibition of Segregated Facilities, in the solicitation and contract; and

(2) The provision at 52.222-22, Previous Contracts and Compliance Reports, in the solicitation.

* * * * *

(c) The contracting officer shall insert the provision at 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation, in solicitations other than those for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected be \$10 million or more.

* * * * *

(e) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless the contract is exempt from all of the requirements of E.O. 11246 (see 22.807(a)). If the contract is exempt from one or more, but not all, of the requirements of E.O. 11246, the contracting officer shall use the clause with its Alternate I.

* * * * *

22.802, 22.803, 22.807, 22.808, 22.809 [Amended]

13. In addition to the amendments set forth above, subpart 22.8 is also amended by removing "EO" and adding "E.O." in the following places:

a. Section 22.802 (b), and (c);

b. Section 22.803 (a)(1), (a)(2) and (b);

c. Section 22.807 (a) introductory text (twice), (b)(2), (b)(3), and (b)(4) (twice);

d. Section 22.808; and

e. Section 22.809 introductory text, (c), and (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.212-3 is amended by revising the provision date; by removing (d)(1); and redesignating paragraphs (d)(2) and (d)(3) as (d)(1) and (d)(2) respectively; by revising the newly designated (d)(1); and in the newly redesignated paragraph (d)(2)(i) by removing "Subparts" and adding "parts". The revised text reads as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Feb 1999)

* * * * *

(d) *Certifications and representations required to implement provisions of Executive Order 11246—*(1) Previous contracts and compliance. The offeror represents that—

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It has, has not filed all required compliance reports.

* * * * *

15. Section 52.222-21 is revised to read as follows:

52.222-21 Prohibition of segregated facilities.

As prescribed in 22.810(a)(1), insert the following clause:

Prohibition of Segregated Facilities (Feb 1999)

(a) *Segregated facilities*, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that

is subject to the Equal Opportunity clause of this contract.
(End of clause)

16. Section 52.222-22 is amended by revising the introductory text, the date of the provision, and paragraph (a) to read as follows:

52.222-22 Previous Contracts and Compliance Reports.

As prescribed in 22.810(a)(2), insert the following provision:

Previous Contracts and Compliance Reports (Feb 1999)

* * * * *

(a) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

* * * * *

17. Section 52.222-23 is amended by revising the section heading, the introductory text, the provision heading, and the introductory text of paragraph (d) to read as follows:

52.222-23 Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction.

As prescribed in 22.810(b), insert the following provision:

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction (Feb 1999)

* * * * *

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the —

* * * * *

18. Section 52.222-24 is revised to read as follows:

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.

As prescribed in 22.810(c), insert the following provision:

Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.
(End of provision)

19. Section 52.222-25 is amended by revising the introductory text to read as follows:

52.222-25 Affirmative Action Compliance.

As prescribed in 22.810(d), insert the following provision:

* * * * *

20. Section 52.222-26 is amended—
a. By revising the introductory text and the clause date;

b. In paragraph (a) by removing “below” and adding “of this clause”;

c. By revising paragraphs (b) introductory text and (b)(1);

d. In paragraph (b)(4) by adding “s” to “advertisement”;

e. By revising paragraphs (b)(7), (b)(8), and the last sentence of (b)(9);

f. In paragraph (b)(10) by adding “s” to “subparagraph”;

g. In paragraph (b)(11) by removing “contracting agency” and adding “contracting officer”; and

h. By revising the introductory text of Alternate I.

The revised text reads as follows:

52.222-26 Equal Opportunity.

As prescribed in 22.810(e), insert the following clause:

Equal Opportunity (Feb 1999)

* * * * *

(b) During performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

* * * * *

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) * * * In addition, sanctions may be imposed and remedies invoked against the

Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

* * * * *

Alternate I (Feb 1999). As prescribed in 22.810(e), add the following as a preamble to the clause:

* * * * *

21. Section 52.222-27 is amended—
a. By revising the introductory text and the date of the clause;

b. In paragraph (a) by removing the definition of “Director” and adding “Deputy Assistant Secretary”;

(c) In paragraph (g)(4) by removing “Director” and adding “Deputy Assistant Secretary”;

d. In paragraph (g)(5) by removing “above” and adding “of this clause”;

e. In paragraph (g)(7) by removing “onsite” and adding “on-site” in its place;

f. By revising paragraph (g)(14);

g. In paragraph (h) by adding “of this clause” after “(16)” (both times it appears); and

h. In paragraph (m) by removing “above” and “Director” and adding “of this clause” and “Deputy Assistant Secretary”, respectively.

The revised text reads as follows:

52.222-27 Affirmative Action Compliance Requirements for Construction.

As prescribed in 22.810(f), insert the following clause:

Affirmative Action Compliance Requirements for Construction (Feb 1999)

(a) * * *

Deputy Assistant Secretary, as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

* * * * *

(g) * * *

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

* * * * *

52.222-28 [Reserved]

22. Section 52.222-28 is removed and reserved.

23. Section 52.222-29 is revised to read as follows:

52.222-29 Notification of visa denial.

As prescribed in 22.810(g), insert the following clause:

Notification of Visa Denial (Feb 1999)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual’s race, color,

religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 7325, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

[FR Doc. 98-33515 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

[FAC 97-10; FAR Case 97-303; Item IV]

RIN 9000-AH90

Federal Acquisition Regulation; Limitation on Allowability of Compensation for Certain Contractor Personnel

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 63 FR 9066, February 23, 1998, as Item XIII of Federal Acquisition Circular 97-04. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) by limiting the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202)

501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-10, FAR case 97-303.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) limits allowable compensation costs of senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP). Section 808 requires OFPP to review commercially available surveys of executive compensation and, on the basis of the results of the review, determine the benchmark compensation amount for each fiscal year. This determination shall be made in consultation with the Defense Contract Audit Agency and other executive agencies as the Administrator deems appropriate.

On February 23, 1998, a notice was published in the **Federal Register** (63 FR 8981) that indicated the Acting Administrator of OFPP had determined the benchmark compensation amount to be \$340,650. The notice further indicated that this amount is to be used as the benchmark amount for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP. To date, OFPP has not revised the amount.

An interim FAR rule was published in the **Federal Register** on February 23, 1998 (63 FR 9066). Public comments were received from five sources. All comments were considered in developing the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 63 FR 9066, February 23, 1998, is adopted as a final rule with the following changes:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-6 is amended in paragraph (k) by revising the heading; and by revising paragraphs (p)(2)(ii) and adding (p)(2)(iv) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(k) *Deferred compensation other than pensions.* * * *

* * * * *

(p) * * *

(2) * * *

* * * * *

(ii) *Senior executive* means—

(A) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(B) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(C) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

* * * * *

(iv) *Contractor's headquarters* means the highest organizational level from

which executive compensation costs are allocated to Government contracts.

[FR Doc. 98-33516 Filed 12-16-98; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

[FAC 97-10; FAR Case 97-016; Item V]

RIN 9000-AH82

Federal Acquisition Regulation; Contractor Purchasing System Review Exclusions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to eliminate unnecessary contractor purchasing system reviews (CPSRs).

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 97-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends—

(1) FAR 44.302 to exclude competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts, and sales of commercial items pursuant to FAR Part 12, from the dollar amount used to determine if a contractor's level of sales to the Government warrants the conduct of a CPSR; and

(2) FAR 44.303 to exclude subcontracts awarded by a contractor exclusively in support of Government contracts that are competitively

awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to FAR Part 12, from evaluation during a CPSR.

A proposed rule was published in the **Federal Register** at 63 FR 649, January 6, 1998. Two respondents submitted comments on the proposed rule. All comments were considered in the development of the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contractors with sales to the Government (excluding competitively awarded firm fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to FAR Part 12) that are expected to exceed \$25 million during the next 12 months, and no small entities meet this criterion.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 44

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 44 is amended as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 44 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 44.302 is revised to read as follows:

44.302 Requirements.

(a) The ACO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. If a contractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to Part 12) are expected to exceed \$25 million during the next 12 months, perform a review to determine if a CPSR is needed. Sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if it is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every three years the ACO shall determine whether a purchasing system review is necessary. If necessary, the cognizant contract administration office will conduct a purchasing system review.

3. Section 44.303 is amended by revising the introductory text to read as follows:

44.303 Extent of review.

A CPSR requires an evaluation of the contractor's purchasing system. Unless segregation of subcontracts is impracticable, this evaluation shall not include subcontracts awarded by the contractor exclusively in support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to part 12. The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to—

* * * * *

[FR Doc. 98-33517 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 46 and 52

[FAC 97-10; FAR Case 96-009; Item VI]

RIN 9000-AH61

**Federal Acquisition Regulation;
Contract Quality Requirements**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect a preference for commercial contract quality requirements, rather than Federal or military specifications, and to permit greater flexibility in specifying higher-level contract quality requirements.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 96-009.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** at 62 FR 35891, July 2, 1997. The revisions in the final rule are based on the analysis of public comments and further clarification of the rule. The rule revises FAR 46.202-4, 46.311, and the clause at 52.246-11 to replace references to Government specifications with references to commercial quality standards as examples of higher-level contract quality requirements; to require the contracting officer to indicate in the

solicitation which higher-level quality standards will satisfy the Government's requirement; and, if more than one standard is listed in the solicitation, to require the offeror to indicate its selection by checking a block.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies procedures for, and permits greater flexibility in, specifying higher-level quality requirements in Government contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 46 and 52

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 46 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 46 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 46—QUALITY ASSURANCE

2. Section 46.202-4 is revised to read as follows:

46.202-4 Higher-level contract quality requirements.

(a) Requiring compliance with higher-level quality standards is appropriate in solicitations and contracts for complex or critical items (see 46.203(b) and (c)) or when the technical requirements of the contract require—

(1) Control of such things as work operations, in-process controls, and inspection; or

(2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(b) When the contracting officer, in consultation with technical personnel, finds it is in the Government's interest to require that higher-level quality standards be maintained, the contracting officer shall use the clause prescribed at 46.311. The contracting officer shall indicate in the clause which higher-level quality standards will satisfy the Government's requirement. Examples of higher-level quality standards are ISO 9001, 9002, or 9003; ANSI/ASQC Q9001, Q9002, or Q9003; QS-9000; AS-9000; ANSI/ASQC E4; and ANSI/ASME NQA-1.

3. Section 46.311 is revised to read as follows:

46.311 Higher-level contract quality requirement.

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-4).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.246-11 is revised to read as follows:

52.246-11 Higher-Level Contract Quality Requirement.

As prescribed in 46.311, insert the following clause:

Higher-Level Contract Quality Requirement (Feb 1999)

The Contractor shall comply with the higher-level quality standard selected below. [If more than one standard is listed, the offeror shall indicate its selection by checking the appropriate block.]

Title	Number	Date	Tailoring
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

[Contracting Officer insert the title, number (if any), date, and tailoring (if any) of the higher-level quality standards.]
(End of clause)

[FR Doc. 98-33518 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAC 97-10; FAR Case 97-027; Item VII]

RIN 9000-AH94

Federal Acquisition Regulation; Mandatory Government Source Inspection

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to facilitate the elimination of unnecessary requirements for Government contract quality assurance at source. This rule deletes the mandatory requirement for Government contract quality assurance at source on all contracts that include a higher-level contract quality requirement, and for supplies requiring inspection that are destined for overseas shipment.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 97-027.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 46.402 to eliminate unnecessary requirements for Government contract quality assurance at source. The rule eliminates mandatory Government source inspection under contracts that contain higher-level quality requirements or that cover supplies to be shipped overseas.

A proposed rule was published in the **Federal Register** at 63 FR 13770, March

20, 1998. Nine respondents submitted comments on the proposed rule. All comments were considered in the development of the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

No public comments were received in response to the Initial Regulatory Flexibility Analysis.

We expect both large and small entities to experience a reduction in the administrative burden by eliminating unnecessary Government source inspection under contracts that contain higher-level quality requirements or that cover supplies to be shipped overseas. DoD and civilian agencies administer the contracts of approximately 20,289 large businesses and 51,691 small entities. Approximately 20 percent have contracts that contain the clause at FAR 52.246-11, Higher level Contract Quality Requirement (Government Specification).

There are no reporting, recordkeeping, or other compliance requirements likely to result from the rule.

No significant negative economic impacts of the rule were identified during our analysis or during the public comment period. The rule is expected to reduce costs and administrative burdens for both contractors and the Government.

We expect these revisions to contribute to an efficient and effective acquisition process. We initially considered making all of the requirements at FAR 46.402 discretionary but decided that this would be premature since a Defense Contract Management Command process action team reviewing source inspection and acceptance policies has not completed its review and made its final recommendations.

A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 46 is amended as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

46.402 [Amended]

2. Section 46.402 is amended—
a. By removing paragraphs (e) and (g);
b. By redesignating paragraphs (f) and (h) as (e) and (f), respectively; and
c. In the newly designated paragraph (e) by adding “or” at the end of the paragraph.

[FR Doc. 98-33519 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

[FAC 97-10; FAR Case 96-011; Item VIII]

RIN 9000-AH37

Federal Acquisition Regulation; No- Cost Value Engineering Change Proposals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final without change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item X of Federal Acquisition Circular 97-05 at 63 FR 34078, June 22, 1998, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 96-011.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published at 63 FR 34078, June 22, 1998, to clarify that the no-cost VECP guidance at FAR 48.104-3 permits the use of no-cost settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings; and when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

No public comments were received in response to the interim FAR rule. Therefore, the interim FAR rule is being converted to a final rule without change.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is summarized as follows:

This rule clarifies that the guidance at FAR 48.104-3, Sharing alternatives—no-cost settlement method, permits use of no-cost VECP settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings; and, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

The FRFA has been provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or

collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 48, which was published at 63 FR 34078, June 22, 1998, is adopted as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 98-33520 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 97-10; FAR Case 97-011; Item IX]

RIN 9000-AH73

Federal Acquisition Regulation; Evidence of Shipment in Electronic Data Interchange (EDI) Transactions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased on a free on board (f.o.b.) destination basis with inspection and acceptance at origin.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at

(202) 501-1900. Please cite FAC 97-10, FAR case 97-011.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises the clause at FAR 52.247-48 to facilitate the use of EDI for submission of invoices under contracts awarded on an f.o.b. destination basis with inspection and acceptance at origin. The rule eliminates requirements for contractors to provide evidence of shipment with invoices for payment under such contracts. However, contractors are required to retain, and to make available to the Government for review as necessary, the evidence of shipment documentation for a period of 3 years after final payment under the contract.

A proposed rule was published on January 27, 1998 (63 FR 4074). Six sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies to a limited number of contracts, *i.e.*, contracts for the purchase of supplies on an f.o.b. destination basis with inspection and acceptance at origin. Therefore, the rule is estimated to affect only a small number of entities, both large and small.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a revised paperwork burden under OMB Clearance 9000-0061 reflecting a slight increase to the hours will be forwarded to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a *Federal Register* notice published on January 27, 1998. No comments were received.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.247-48 is revised to read as follows:

52.247-48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305-4(c), insert the following clause:

F.o.b. Destination—Evidence of Shipment (Feb 1999)

(a) If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

(1) Shall not submit an invoice for payment until the supplies covered by the invoice have been shipped to the destination; and

(2) Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 3 years after final payment under the contract:

(i) If transportation is accomplished by common carrier, a signed copy of the commercial bill of lading for the supplies covered by the Contractor's invoice, indicating the carrier's intent to ship the supplies to the destination specified in the contract.

(ii) If transportation is accomplished by parcel post, a copy of the certificate of mailing.

(iii) If transportation is accomplished by other than common carrier or parcel post, a copy of the delivery document showing receipt at the destination specified in the contract.

(b) The Contractor is not required to submit evidence of shipment documentation with its invoice.

(End of clause)

[FR Doc. 98-33521 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 19, 32, 37, 42, 52, and 53

[FAC 97-10; Item X]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

List of Subjects in 48 CFR Parts 1, 19, 32, 37, 42, 52, and 53

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 19, 32, 37, 42, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 19, 32, 37, 42, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The table in section 1.106 is amended by removing the FAR segment and the corresponding OMB Control Number entry for Part 30; and by adding entry 52.247-48, in numerical order, to read as follows:

1.106 OMB Approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
* * * * *	* * * * *
52.247-48	9000-0061
* * * * *	* * * * *

PART 19—SMALL BUSINESS PROGRAMS

3. Section 19.102(g) is amended in the tables by revising the parentheticals following "DIVISION F—WHOLESALE TRADE" and "DIVISION G—RETAIL TRADE" to read as follows:

19.102 Size standards.

* * * * *

Division F—Wholesale Trade

(The following size standards are not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

* * * * *

Division G—Retail Trade

(The following size standards are not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

* * * * *

19.502-5 [Amended]

4. Section 19.502-5 is amended in paragraph (e) by revising the word "contract" to read "acquisition".

PART 32—CONTRACTING FINANCING

32.908 [Amended]

5. Section 32.908 is amended in paragraph (a)(3) by revising "(iii)" to read "(ii)", and in paragraph (c)(3) by revising the word "paragraph" to read "paragraphs"; and inserting "and (ii)" after "(a)(1)(i)".

PART 37—SERVICE CONTRACTING

37.602-3 [Amended]

6. Section 37.602-3 is amended by revising "15.605" to read "15.304".

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.203 [Amended]

6A. Section 42.203 is amended in the last sentence by revising "http://www.dcmc.dcrb.dla.mil" to read "http://www.dcmc.hq.dla.mil/casbook/casbook.htm".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

7. Section 52.212-5 is amended by revising the date of the clause to read "(Jan 1999)"; in paragraph (b)(5) by revising "Limitation" to read

“Limitations”; and in paragraph (e)(4) by revising “Flagged” to read “Flag”.

52.219-9 [Amended]

8. Section 52.219-9 is amended in the first sentence of paragraph (d)(5) by revising “Assistance” to read “Access”; and by revising the term “PRONET” to read “PRO-Net” (three times).

52.222-37 [Amended]

9. Section 52.222-37 is amended by revising the date of the clause to read “(Jan 1999)”; and in paragraph (c) by revising “March 31” to read “September 30” both times it appears.

PART 53—FORMS

10. Section 53.228 is amended by revising paragraphs (a), (b), (c), (e), (j), and (m) to read as follows:

53.228 Bonds and insurance.

* * * * *

(a) *SF 24 (Rev. 10/98) Bid Bond.* (See 28.106-1.) SF 24 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(b) *SF 25 (Rev. 5/96) Performance Bond.* (See 28.106-1(b).) SF 25 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(c) *SF 25-A (Rev. 10/98) Payment Bond.* (See 28.106-1(c).) SF 25-A is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

* * * * *

(e) *SF 28 (Rev. 6/96) Affidavit of Individual Surety.* (See 28.106-1(e) and 28.203(b).) SF 28 is authorized for local reproduction and a copy is furnished for

this purpose in Part 53 of the looseleaf edition of the FAR.

* * * * *

(j) *SF 275 (Rev. 10/98) Reinsurance Agreement in Favor of the United States.* (See 28.106-1(j) and 28.202-1(a)(4).) SF 275 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

* * * * *

(m) *SF 1416 (Rev. 10/98) Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

* * * * *

11. Section 53.301-24 is revised to read as follows:

53.301-24 Bid Bond.

BILLING CODE 6820-EP-P

BID BOND <i>(See instruction on reverse)</i>	DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>	OMB NO.:9000-0045
--	---	-------------------

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION
--	--

SURETY(IES) *(Name and business address)*

PENAL SUM OF BOND				BID IDENTIFICATION		
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR <i>(Construction, Supplies, or Services)</i>	

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.	<i>Corporate Seal</i>	
	<i>(Seal)</i>	<i>(Seal)</i>	<i>(Seal)</i>		
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.		
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.	<i>(Seal)</i>		
NAME(S) <i>(Typed)</i>	1.	2.			
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT (\$)
	SIGNATURE(S)	1.	2.	<i>Corporate Seal</i>	
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

12. Section 53.301-25 is revised to read as follows:

53.301-25 Performance Bond.

PERFORMANCE BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB No.: 9000-0045		
Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.				
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i>			
	<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION			
SURETY(IES) <i>(Name(s) and business address(es))</i>	STATE OF INCORPORATION			
	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
	CONTRACT DATE		CONTRACT NO.	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal -

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL			
SIGNATURE(S)	1. _____ <small>(Seal)</small>	2. _____ <small>(Seal)</small>	3. _____ <small>(Seal)</small>
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	3. _____
INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. _____ <small>(Seal)</small>	2. _____ <small>(Seal)</small>	
NAME(S) <i>(Typed)</i>	1. _____	2. _____	
CORPORATE SURETY(IES)			
SURETY A	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT \$ _____
	SIGNATURE(S)	1. _____	2. _____
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____

CORPORATE SURETY(IES) (Continued)

		STATE OF INC.	LIABILITY LIMIT	
SURETY B	NAME & ADDRESS		\$	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY C	NAME & ADDRESS		\$	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY D	NAME & ADDRESS		\$	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY E	NAME & ADDRESS		\$	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY F	NAME & ADDRESS		\$	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY G	NAME & ADDRESS		\$	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	

BOND PREMIUM	▶	RATE PER THOUSAND (\$)	TOTAL (\$)
---------------------	---	------------------------	------------

INSTRUCTIONS

- This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
- Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
 - Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
 - Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.
- Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
- Type the name and title of each person signing this bond in the space provided.

13. Section 53.301-25A is revised to read as follows:

53.301-25-A Payment Bond.

PAYMENT BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB No.: 9000-0045																				
Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405																						
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION																					
SURETY(IES) <i>(Name(s) and business address(es))</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align:center; font-size:small;">PENAL SUM OF BOND</th> </tr> <tr> <th style="width:25%; font-size:small;">MILLION(S)</th> <th style="width:25%; font-size:small;">THOUSAND(S)</th> <th style="width:25%; font-size:small;">HUNDRED(S)</th> <th style="width:25%; font-size:small;">CENTS</th> </tr> <tr> <td style="height: 40px;"></td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="font-size:small;">CONTRACT DATE</td> <td colspan="2" style="font-size:small;">CONTRACT NO.</td> </tr> <tr> <td colspan="2" style="height: 40px;"></td> <td colspan="2"></td> </tr> </table>		PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE		CONTRACT NO.					
PENAL SUM OF BOND																						
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS																			
CONTRACT DATE		CONTRACT NO.																				

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.	Corporate Seal	
	(Seal)	(Seal)	(Seal)		
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.		
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.			
	(Seal)	(Seal)			
NAME(S) <i>(Typed)</i>	1.	2.			
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
				\$	
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated

"SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

14. Section 53.301-28 is revised to read as follows:

53.301-28 Affidavit of Individual Surety.

AFFIDAVIT OF INDIVIDUAL SURETY <i>(See instructions on reverse)</i>	OMB No.: 9000-0001
---	--------------------

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

STATE OF	SS.
COUNTY OF	

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)	2. HOME ADDRESS (Number, Street, City, State, ZIP code)
3. TYPE AND DURATION OF OCCUPATION	4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) <i>(Number, Street, City, State, ZIP Code)</i>	6. TELEPHONE NUMBER HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.	
10. SIGNATURE	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:					Official Seal
a. DATE OATH ADMINISTERED			b. CITY AND STATE (Or other jurisdiction)		
MONTH	DAY	YEAR			
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH <i>(Type or print)</i>			d. SIGNATURE	e. MY COMMISSION EXPIRES	

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts, shall complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety shall have the completed form notarized.
2. No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties. Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports.
3. United States citizenship is a requirement for individual sureties. However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations - any foreign country; the Commonwealth of Puerto Rico; the Virgin Islands; the Canal Zone; Guam; or any other territory or possession of the United States.
4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of firm, partnership, or joint venture, or an officer of the corporation involved.

15. Section 53.301-275 is revised to read as follows:

53.301-275 Reinsurance Agreement in Favor of the United States.

REINSURANCE AGREEMENT IN FAVOR OF THE UNITED STATES <i>(See instructions on reverse)</i>		OMB No.: 9000-0045
Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.		
1. DIRECT WRITING COMPANY*	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT	
	1B. STATE OF INCORPORATION	
2. REINSURING COMPANY*	2A. AMOUNT OF THIS REINSURANCE (\$)	
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT	
	2C. STATE OF INCORPORATION	
3. DESCRIPTION OF BOND		
3A. DESCRIPTION OF BOND <i>(Type, purpose etc.) (If associated with contract number, date, amount, etc., include name of Government agency involved.)</i>	3B. PENAL SUM OF BOND \$	
	3C. DATE OF BOND	3D. BOND NO.
	3E. PRINCIPAL*	
	3F. STATE OF INCORPORATION <i>(If Corporate Principal)</i>	

AGREEMENT:

(a) The Direct Writing Company named above is bound as surety to the United States of America, on the bond described above, wherein the above-named is the principal. The bond is given for the protection of the United States and the Direct Writing Company has applied to the above Reinsuring Company to be reinsured and counter-secured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the bond to the extent of the "Amount of this Reinsurance," or for any less sum than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the United States.

THEREFORE:

1. If the Direct Writing Company fails to pay any default under the bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

2. The Reinsuring Company further covenants and agrees that in case of default on the bond for the "Amount of this Reinsurance," or more, the United States may sue the Reinsuring Company for the "Amount of this Reinsurance" or for the full amount of the default when the default is less than the "Amount of this Reinsurance."

WITNESS

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date above -- written opposite their respective names.

(Over)

*Items 1, 2, 3E - Furnish legal name, business address and ZIP Code.

4. DIRECT WRITING COMPANY		
4A.(1). SIGNATURE	(2). ATTEST: SIGNATURE	<i>Corporate Seal</i>
4B.(1) NAME AND TITLE <i>(Typed)</i>	4B.(2). NAME AND TITLE <i>(Typed)</i>	
5. REINSURING COMPANY		
5A.(1). SIGNATURE	(2). ATTEST: SIGNATURE	<i>Corporate Seal</i>
5B.(1). NAME AND TITLE <i>(Typed)</i>	5B.(2). NAME AND TITLE <i>(Typed)</i>	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on bonds running to the United States except Miller Act Performance and Payment Bonds. See FAR (48 CFR) 28.202-1 and 53.228(j) and 31 CFR 223.11(b)(1). If this form is used to reinsure a bid bond, the "Penal Sum of Bond" and "Amount of this Reinsurance" may be expressed as percentage of the bid provided the actual amounts will not exceed the companies' respective underwriting limitations.

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

16. Section 53.301-1416 is revised to read as follows:

53.301-1416 Payment Bond for Other than Construction Contracts.

PAYMENT BOND FOR OTHER THAN CONSTRUCTION CONTRACTS <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>	OMB NO.:9000-0045																
Public reporting burden for this collection of information is estimated to average 26 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20406.																		
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION																	
SURETY(IES) <i>(Name(s) and business address(es)) (Include ZIP code)</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: center; font-size: small;">PENAL SUM OF BOND</th> </tr> <tr> <th style="width:25%; font-size: x-small;">MILLION(S)</th> <th style="width:25%; font-size: x-small;">THOUSAND(S)</th> <th style="width:25%; font-size: x-small;">HUNDRED(S)</th> <th style="width:25%; font-size: x-small;">CENTS</th> </tr> <tr> <td style="height: 30px;"></td> <td></td> <td></td> <td></td> </tr> </table> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th style="width:50%; font-size: x-small;">CONTRACT DATE</th> <th style="width:50%; font-size: x-small;">CONTRACT NO.</th> </tr> <tr> <td style="height: 30px;"></td> <td></td> </tr> </table>		PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE	CONTRACT NO.		
PENAL SUM OF BOND																		
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS															
CONTRACT DATE	CONTRACT NO.																	

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payment to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expiration of ninety (90) days after the date of which the last labor was performed or material furnishing, have a direct right of action against the principal and Surety(ies) on this bond for the sum or sums justly due. The claimant, however, may not bring a suit or any action -

(1) Unless claimant, other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim is made. The notice is to state with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration one (1) year following the date on which claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the suit is brought.

(3) Other than in the United States District court for the district in which the the contract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.	Corporate Seal	
		(Seal)	(Seal)		(Seal)
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	Corporate Seal	
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.	Corporate Seal		
		(Seal)			(Seal)
NAME(S) & TITLE(S) (Typed)	1.	2.	Corporate Seal		
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when payment bonds are required under FAR (48 CFR) 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual Sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
5. Type the name and title of each person signing this bond in the space provided.

STANDARD FORM 1416 (REV. 10-98) BACK

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).
ACTION: Small Entity Compliance Guide.
SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in

Federal Acquisition Circular (FAC) 97-09 which amend the FAR. The rules marked with an asterisk (*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-10 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 97-10

Item	Subject	FAR case	Analyst
I	Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (Interim).	97-307	Moss
II	Limits for Indefinite-Quantity Contracts	98-016	DeStefano
III	Office of Federal Contract Compliance Programs National Pre-Award Registry	98-607	O'Neill
IV	Limitation on Allowability of Compensation for Certain Contractor Personnel	97-303	Nelson
V	Contractor Purchasing System Review Exclusions	97-016	Klein
VI	Contract Quality Requirements	96-009	Klein
VII	Mandatory Government Source Inspection *	97-027	Klein
VIII	No-Cost Value Engineering Change Proposals *	96-011	Klein
IX	Evidence of Shipment in Electronic Data Interchange Transactions	97-011	Nelson

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program

[FAR Case 97-307]

This interim rule amends FAR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 to implement the Small Business Administration Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

Item II—Limits for Indefinite-Quantity Contracts

[FAR Case 98-016]

This final rule amends FAR 16.504(a) to clarify that maximum and minimum limits for indefinite-quantity contracts may be expressed as a number of units or dollar value.

Item III—Office of Federal Contract Compliance Programs National Pre-Award Registry

[FAR Case 98-607]

This final rule amends FAR part 22 and related clauses to (1) inform the procurement community of the availability of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) National Pre-Award Registry (Registry), accessible through the Internet, that contains contractor establishments who have received a preaward clearance within the preceding 24 months, and the option to use the information in the Registry in lieu of submitting a written request for a preaward clearance; and (2) implement revised Department of Labor (DoL) regulations pertaining to equal employment opportunity and affirmative action requirements for Federal contractors and subcontractors.

Item IV—Limitation on Allowability of Compensation for Certain Contractor Personnel

[FAR Case 97-303]

The interim rule published as Item XIII of FAC 97-04 is converted to a final rule with minor clarifying amendments at FAR 31.205-6(p)(2). The rule implements Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 808 limits allowable compensation costs for senior executives of contractors to the benchmark year by the Administrator, Office of Federal Procurement Policy (OFPP). The benchmark compensation amount is \$340,650 for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP.

Item V—Contractor Purchasing System Review Exclusions

[FAR Case 97-016]

This final rule amends FAR 44.302 and 44.303 to exclude competitively awarded firm-fixed-price and competitively awarded fixed-price contracts with economic price adjustment, and sales of commercial items pursuant to FAR part 12, from the dollar amount used to determine if a contractor's level of sales to the Government warrants the conduct of a CPSR; and to exclude subcontracts awarded by a contractor exclusively in

support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to FAR part 12, from evaluation during a CPSR.

Item VI—Contract Quality Requirements

[FAR Case 96-009]

This final rule amends FAR 46.202-4, 46.311, and 52.246-11 to replace references to Government specifications with references to commercial quality standards as examples of higher-level contract quality requirements; to require the contracting officer to indicate in the solicitation which higher-level quality standards will satisfy the Government's requirement; and, if more than one standard is listed in the solicitation, to require the offeror to indicate its selection by checking a block.

Item VII—Mandatory Government Source Inspection

[FAR Case 97-027]

This final rule amends FAR 46.402 to facilitate the elimination of unnecessary requirements for Government contract quality assurance at source. This rule deletes the mandatory requirements for Government contract quality assurance at source on all contracts that include a higher-level contract quality requirement, and for supplies requiring inspection that are destined for overseas shipment.

Item VIII—No-Cost Value Engineering Change Proposals

[FAR Case 96-011]

The interim rule published as Item X of FAC 97-05 is converted to a final rule without change. The rule revises FAR 48.104-3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting

officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Item IX—Evidence of Shipment in Electronic Data Interchange (EDI) Transactions

[FAR Case 97-011]

This final rule revises the clause at FAR 52.247-48 to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased on a free on board (f.o.b.) destination basis with inspection and acceptance at origin.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 98-33523 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

Reader Aids

Federal Register

Vol. 63, No. 243

Friday, December 18, 1998

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202-523-5227
Laws	523-5227
Presidential Documents	
Executive orders and proclamations	523-5227
The United States Government Manual	523-5227
Other Services	
Electronic and on-line services (voice)	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (numbers, dates, etc.)	523-6641
TTY for the deaf-and-hard-of-hearing	523-5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

<http://www.access.gpo.gov/nara>

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

<http://www.nara.gov/fedreg>

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, DECEMBER

65995-66404.....	1
66405-66704.....	2
66705-66976.....	3
66977-67398.....	4
67399-67572.....	7
67573-67764.....	8
67765-68160.....	9
68161-68390.....	10
68391-68668.....	11
68669-68988.....	14
68989-69176.....	15
69177-69538.....	16
69539-69990.....	17
69991-70308.....	18

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	301.....	69563
	319.....	67011
	360.....	67011
	361.....	67011
	993.....	70063
	1427.....	67806
	1755.....	68406
Proclamations:		
6641 (see Proc.		
7154).....	67761	
6961 (see Proc.		
7154).....	67761	
6969 (see Proc.		
7154).....	67761	
7153.....	66977, 67724	
7154.....	67761	
7155.....	67765	
7156.....	67767	
7157.....	68149	
7158.....	68989	
7159.....	69173	
Executive Orders:		
Dec. 9, 1852 (Revoked		
in part by PLO		
7374).....	69646	
12748 (Amended by		
EO 13106).....	68151	
13037 (Amended by		
EO 13108).....	69175	
13071 (Superseded by		
EO 13106).....	68151	
13106.....	68151	
13107.....	68991	
13108.....	69175	
Administrative Orders:		
Memorandum of		
November 16,		
1998.....	65997	
Presidential Determinations:		
No. 99-4 of November		
14, 1998.....	65995	
No. 99-5 of November		
25, 1998.....	68145, 68829	
8 CFR		
	103.....	67724
	244.....	67724
Proposed Rules:		
	214.....	67431
9 CFR		
	94.....	67573
	205.....	66720
Proposed Rules:		
	94.....	67809
	381.....	68700
	441.....	68700
10 CFR		
	1.....	69543
	2.....	66721
	51.....	66721
Proposed Rules:		
	31.....	66492
	32.....	68700
	35.....	66496, 69026
	40.....	68700
	50.....	66496, 66497, 66772,
		69026
	60.....	66498, 69026
	430.....	66499
	432.....	66235
	850.....	66940
11 CFR		
Proposed Rules:		
	100.....	69224
	110.....	70065
	114.....	69224
	9003.....	69524
	9004.....	69524
	9007.....	69524
	9008.....	69524
	9032.....	69524
	9033.....	69524
	9034.....	69524
	9035.....	69524
	9036.....	69524
	9038.....	69524
12 CFR		
	201.....	66001
	226.....	67575
	303.....	66276
	337.....	66276
	362.....	66276
	563.....	66348
Proposed Rules:		
	21.....	67524

208.....67516
 210.....68701
 211.....67516
 213.....67434
 225.....67516
 226.....67436
 229.....66499, 68701, 69027
 303.....66339
 326.....67529
 337.....66339
 563.....67536
 611.....69229
 614.....69229
 618.....69229
 935.....67625

14 CFR

39.....66418, 66420, 66422, 66735, 66737, 66739, 66741, 66743, 66744, 66746, 66751, 66753, 66979, 67576, 67769, 67771, 67775, 68165, 68167, 68169, 68171, 68172, 68669, 68672, 68674, 69996, 69999, 70001, 70002, 70004, 70005
 71.....66423, 66425, 66235, 66755, 66980, 66981, 66982, 67175, 67724, 68174, 68391, 68675, 69177, 69179, 69185, 69188
 71.....69190
 91.....68175
 97.....66425, 66427, 69544, 69546, 69548
 121.....68175
 141.....68175

Proposed Rules:

23.....68636
 25.....68211, 68636
 33.....68636
 39.....66500, 66078, 67629, 67631, 67633, 67813, 68705, 68707, 68708, 69569, 69571, 70068, 70069
 71.....66502, 67014, 67016, 67017, 67816, 69230, 69231, 69574
 91.....67544
 93.....67544
 121.....67544
 135.....67544

16 CFR

305.....66428
 1700.....66001
Proposed Rules:
 423.....69232
 1212.....69030

17 CFR

10.....68829
 140.....68175
Proposed Rules:
 200.....67174, 67331, 69136
 202.....67174
 210.....67174
 228.....67174
 229.....67174, 67331
 230.....67174, 67331, 69136
 232.....67174, 67331, 69236
 239.....67174, 67331, 69136
 240.....67174, 69136
 249.....67174, 69136
 260.....69136
 270.....69236
 274.....69236

18 CFR

11.....66003
 35.....66011
Proposed Rules:
 2.....66772
 157.....66772
 284.....66772
 375.....66772
 380.....66772
 381.....66772
 385.....66772

21 CFR

172.....66013, 66014
 176.....69550
 178.....68391
 201.....66632, 66378, 67399
 208.....66378
 312.....66632, 68676
 314.....66632, 68378
 343.....66015
 522.....66431, 68182, 68183
 524.....68183
 556.....68183
 558.....66432, 66018
 601.....66632, 66378
 610.....66378

Proposed Rules:

10.....69575
 14.....69575
 16.....69575
 120.....69579
 207.....68212
 312.....68710
 334.....67817
 807.....68212
 1271.....68212

22 CFR

42.....68393
 503.....67576
Proposed Rules:
 706.....68213
 713.....68213

25 CFR

Proposed Rules:
 Ch. I.....69580

26 CFR

1.....66433, 67577, 68184, 68188, 68678, 69551, 69554, 70009
 25.....68188
 301.....68995, 70012
 602.....68188, 68678, 69554, 70009

Proposed Rules:

1.....66503, 67634, 69581, 69584, 70071
 20.....69248
 35.....70071
 49.....69585
 301.....69031

28 CFR

545.....67566
 571.....69386

Proposed Rules:

16.....68217

29 CFR

44.....70260
 1910.....66018, 66238
 1915.....66238

1917.....66238
 1918.....66238
 1926.....66238
 4007.....68684
 4044.....68998

Proposed Rules:

2520.....68370

30 CFR

602.....66760
 901.....66983
 935.....66987
 944.....66989

Proposed Rules:

913.....68218
 926.....66079
 931.....66772, 66774
 948.....68221
 950.....70080

31 CFR

285.....67754
 357.....69191

32 CFR

270.....68194
 286.....67724
 888g.....68685

33 CFR

100.....67401, 68999, 70015
 117.....67402, 68685, 69000, 699191, 69193, 69556, 70018
 165.....68686, 70015
 334.....68140

36 CFR

Proposed Rules:
 13.....68666
 59.....67635

37 CFR

1.....66040, 67578
 201.....66041
 253.....66042

Proposed Rules:

201.....69251
 251.....70080

38 CFR

21.....67778

39 CFR

20.....66043
 491.....67403
 952.....66049
 953.....66049
 954.....66049
 955.....66049
 956.....66049
 957.....66049
 958.....66049
 959.....66059
 960.....66049
 961.....66049
 962.....66049
 963.....66049
 964.....66049
 965.....66049
 966.....66049

Proposed Rules:

20.....67017

40 CFR

1.....67779

9.....69390, 69478
 52.....66755, 66758, 67405, 67407, 67419, 67584, 67586, 67591, 67594, 67780, 67782, 67784, 69193, 69557, 69559, 70019
 61.....66054
 62.....68394, 70022
 63.....66054, 66990, 67787, 68397
 72.....68400
 73.....68400
 141.....69390, 69478
 142.....69390, 69478
 180.....66994, 66996, 66999, 67794, 69194, 69200, 69205, 70027, 70030
 271.....67800
 302.....69166

Proposed Rules:

9.....66081
 52.....66776, 67439, 67638, 67639, 67817, 67818, 68415, 69589, 69594, 70086
 58.....67818
 60.....67988
 61.....66083
 62.....68418, 69364, 70086
 63.....66083, 66084, 68832, 69251
 81.....69598
 90.....66081
 94.....68508
 141.....69256
 142.....69256
 152.....67834
 156.....67834
 180.....66435, 66438, 66447, 66448, 66456, 66458, 66459
 260.....66101, 70233
 261.....66101, 70233
 262.....66101, 67562
 264.....66101, 67562
 265.....67562
 268.....66101
 269.....66101
 270.....67562
 271.....66101, 67834
 300.....68712, 69032, 69601
 302.....69169
 745.....70087, 70190

41 CFR

300-3.....66674
 301-11.....66674
 301-12.....66674

Proposed Rules:

101-35.....66092
 101-42.....68136
 101-43.....68136

42 CFR

50.....66062
 400.....68687
 402.....68687

Proposed Rules:

1001.....68223

43 CFR

3195.....66760

Proposed Rules:

39.....67834
 3100.....66776, 66840
 3106.....66776
 3110.....66840
 3120.....66840

3130.....66776, 66840	13.....68904	19.....70265, 70292	5316.....67600
3140.....66840	22.....68904	22.....70282	Proposed Rules:
3150.....66840	24.....68904	26.....70265	Ch. 20.....67726
3160.....66776, 66840	26.....68904	31.....70287	11.....68344
3170.....66840	27.....68904	32.....70292	52.....68344
3180.....66840	52.....68197	37.....70292	1526.....67845
	54.....67006, 68208	42.....70292	1552.....67845
44 CFR	64.....67006	44.....70288	
64.....70036, 70037	69.....67006	46.....70289, 70290	49 CFR
65.....67001, 67003	73.....67430, 69208, 70040	48.....70290	381.....67600
67.....67004	74.....69562	52.....70265, 70282, 70289, 70291, 70292	383.....67600
354.....69001	78.....69562	53.....70265, 70292	538.....66064
Proposed Rules:	80.....68904	204.....69005	544.....70051
67.....67026	87.....68904	206.....67803	571.....66762
	90.....68904	217.....67803	639.....68366
45 CFR	95.....68904	223.....67804	653.....67612
2500.....66063	97.....68904	228.....69006	654.....67612
2501.....66063	101.....68904, 69562	232.....69006	Proposed Rules:
2502.....66063	Proposed Rules:	235.....69007	105.....68624
2503.....66063	Ch. 1.....70089	236.....69007	106.....68624
2504.....66063	0.....66104	237.....67804	107.....68624
2505.....66063	1.....70090	252.....67804, 69006	395.....68729
2506.....66063	2.....69606	253.....69007	571.....68233, 68730
	36.....67837	801.....69216	1312.....66521
46 CFR	54.....67837, 68224	803.....69216	
401.....68697	62.....68714	805.....69216	50 CFR
Proposed Rules:	65.....68418	806.....69216	17.....67613, 67618, 69008, 70053
502.....66512	73.....66104, 67036, 67439, 67449, 68424, 68425, 68718, 68719, 68720, 68721, 68722, 68729, 69607, 69608, 69609	808.....69216	20.....67619
525.....69603	74.....68729, 69606	814.....69216	216.....66069, 67624
535.....69034	76.....66104	817.....69216	217.....66766
545.....66512	78.....69606	819.....69216	227.....66766, 67624
550.....67030	101.....69606	822.....69216	229.....66464
551.....67030		825.....69216	260.....69021
555.....67030	48 CFR	828.....69216	600.....67624
560.....67030	Ch. 1.....70264, 70306	831.....69216	630.....66490
565.....67030	1.....70292	832.....69216	648.....68404
585.....67030	5.....70265	833.....69216	679.....66762, 68210, 69024
586.....67030	6.....70265	836.....69216	Proposed Rules:
587.....67030	7.....70265	837.....69216	17.....66777, 67640
588.....67030	8.....70265	842.....69216	20.....67037
571.....66512	12.....70265	846.....69216	622.....66522, 70093
572.....69034	13.....70265	847.....69216	648.....66524, 66110, 67450, 70093
47 CFR	14.....70265	849.....69216	660.....66111, 69134
0.....68904	15.....70265	852.....69216	679.....66112, 69256
1.....67422, 68904, 70040	16.....70282	853.....69216	
2.....69562		870.....69216	
		871.....69216	

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 18, 1998

AGRICULTURE DEPARTMENT**Agricultural Marketing Service**

Egg Products Inspection Act: Technical amendments; published 12-17-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

No-cost value engineering change proposals; published 12-18-98

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

South Dakota; published 10-19-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Harpin; published 12-18-98
Tebufenozide; published 12-18-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

No-cost value engineering change proposals; published 12-18-98

GOVERNMENT ETHICS OFFICE

Executive Branch financial disclosure, qualified trusts, and certificates of divestiture:

Technical amendments; published 12-18-98

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Administrative practice and procedure:

Internal review of agency decisions; published 11-18-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

No-cost value engineering change proposals; published 12-18-98

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

Airbus; published 12-3-98
AlliedSignal, Inc.; published 12-3-98

Cessna; published 12-3-98
Dornier; published 11-13-98

Hamilton Standard; published 12-3-98

Industrie Aeronautique E Meccaniche; published 11-16-98

Raytheon; published 11-13-98

Stemme GmbH & Co. KG; published 11-25-98

TRANSPORTATION DEPARTMENT**National Highway Traffic Safety Administration**

Insurer reporting requirements:

Insurers required to file reports; list; published 12-18-98

TREASURY DEPARTMENT**Internal Revenue Service**

Practice and administration:

Tax-qualified retirement plans; eligible rollover distributions; notice, consent, and election requirements; published 12-18-98

Procedure and administration:

Abatement of interest; Unreasonable errors or delays by an IRS officer or employee; published 12-18-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT**Agricultural Marketing Service**

Federal Seed Act:

Noxious-weed seeds; prohibition of shipment of agricultural and vegetable seeds containing them; comments due by 12-21-98; published 10-20-98

Raisins produced from grapes grown in—

California; comments due by 12-22-98; published 10-23-98

Table grapes (European or vinifera type); grade standards; comments due by 12-21-98; published 10-21-98

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:

Mexican fruit fly; comments due by 12-21-98; published 10-22-98

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish et al.; comments due by 12-21-98; published 10-22-98

Pacific halibut and red king crab; comments due by 12-24-98; published 11-25-98

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish; comments due by 12-18-98; published 11-18-98

ENERGY DEPARTMENT**Federal Energy Regulatory Commission**

Practice and procedure:

Off-the-record communications; comments due by 12-24-98; published 9-25-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Nutritional yeast manufacturing facilities; comments due by 12-18-98; published 10-19-98

Air programs:

Stratospheric ozone protection—
Essential-use allowances; 1999 allocation; comments due by 12-21-98; published 11-20-98

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Alabama; comments due by 12-18-98; published 11-18-98

Illinois; comments due by 12-23-98; published 11-23-98

Air programs; State authority delegations:

Arizona; comments due by 12-18-98; published 11-18-98

Michigan; comments due by 12-23-98; published 11-23-98

Air quality implementation plans; approval and promulgation; various States:

Washington; comments due by 12-21-98; published 11-19-98

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 12-23-98; published 11-23-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Satellite communications—
Direct access to INTELSAT system; legal, economic, and policy ramifications; comments due by 12-18-98; published 11-5-98

Telecommunications Act of 1996; implementation—

Universal service policy; comments due by 12-23-98; published 12-9-98

Radio stations; table of assignments:

Texas; comments due by 12-21-98; published 11-10-98

HEALTH AND HUMAN SERVICES DEPARTMENT**Health Care Financing Administration**

Medicare:

Hospital wage data; limited additional opportunity to request revisions; comments due by 12-21-98; published 11-19-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT**Federal Housing Enterprise Oversight Office**

Practice and procedure:

Hearings on the record; comments due by 12-23-98; published 9-24-98

INTERIOR DEPARTMENT**Fish and Wildlife Service**

Endangered and threatened species:

Australian koala; comments due by 12-21-98; published 9-22-98

Dismal Swamp southeastern shrew; comments due by 12-21-98; published 10-21-98

- Findings on petitions, etc.—
Gray wolves in Minnesota, Wisconsin, and Michigan; delisting; comments due by 12-18-98; published 10-19-98
- Yacare caiman, etc.; comments due by 12-22-98; published 9-23-98
- INTERIOR DEPARTMENT**
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
New Mexico; comments due by 12-18-98; published 12-3-98
- LEGAL SERVICES CORPORATION**
Fund recipients:
Recipient fund balances; comments due by 12-21-98; published 10-22-98
- Timekeeping requirement; comments due by 12-21-98; published 10-22-98
- LIBRARY OF CONGRESS**
Copyright Office, Library of Congress
Copyright office and procedures:
Phonorecords, making and distribution; reasonable notice of use and payment to copyright owners; comments due by 12-24-98; published 12-16-98
- NUCLEAR REGULATORY COMMISSION**
Production, and utilization facilities; domestic licensing: Nuclear power reactors—
Changes, tests, and experiments; comments due by 12-21-98; published 10-21-98
- PERSONNEL MANAGEMENT OFFICE**
Employment:
Temporary appointment pending the establishment of a register (TAPER) authority; promotion possibility of employees appointed as worker-trainees; comments due by 12-18-98; published 11-18-98
- TRANSPORTATION DEPARTMENT**
Federal Aviation Administration
Airworthiness directives:
de Havilland; comments due by 12-22-98; published 10-22-98
Airbus; comments due by 12-23-98; published 11-23-98
- AlliedSignal Avionics, Inc.; comments due by 12-22-98; published 10-29-98
- Boeing; comments due by 12-24-98; published 11-9-98
- Bombardier; comments due by 12-23-98; published 11-23-98
- Cessna; comments due by 12-22-98; published 10-22-98
- Fokker; comments due by 12-23-98; published 11-23-98
- Raytheon; comments due by 12-18-98; published 10-9-98
- TRANSPORTATION DEPARTMENT**
Federal Highway Administration
Transportation Equity Act for 21st Century; implementation:
Repeat intoxicated driver laws; comments due by 12-18-98; published 10-19-98
- TRANSPORTATION DEPARTMENT**
National Highway Traffic Safety Administration
Motor vehicle safety standards:
School bus body joint strength; comments due by 12-21-98; published 11-5-98
- Tire identification and recordkeeping:
Tire identification number; date of manufacture in four digits instead of three digits; comments due by 12-18-98; published 10-19-98
- Transportation Equity Act for 21st Century; implementation:
Repeat intoxicated driver laws; comments due by 12-18-98; published 10-19-98
- TREASURY DEPARTMENT**
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Railroad employers; exception from supplemental annuity tax; comments due by 12-22-98; published 9-23-98
- Income taxes:
Taxable transactions; treatment of disposition by one corporation of stock of another corporation; comments due by 12-22-98; published 9-23-98