4–12–99
Vol. 64 No. 69
Pages 17501–17940

Federal Register

Monday
April 12, 1999

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WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 1999 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document announces the new levels of cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1029, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1029 or telephone at (202) 720–9439.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Quota Licensing Regulation codified at §§ 6.20–6.36 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Programs Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and in conjunction with the U.S. Customs Service monitors their use.

The regulation at 7 CFR 6.34(a) states: ''Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.'' Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets out revised Appendices for the 1999 tariff-rate quota year.

Richard P. Warsack,

Licensing Authority.

List of subjects in 7 CFR part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 6 is amended as follows:

1. The authority citation for part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

BILLING CODE 3410–10–P

Appendices 1, 2 and 3 to Subpart--Dairy Tariff-Rate Import Quota Licensing

Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 1999

Article by Additional U.S. Note Number and Country of Origin NON-CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Butter (Note 6)	5,697,582	679,418		
EU-15	83,978	12,183		
New Zealand	131,256	19,337		
Other Countries	64,037	9,898		
Any Country	5,418,311	638,000		
Dried Skim Milk (Note 7)	600,076	3,860,924		
Australia	600,076			
Canada		219,565		
Any Country		3,641,359		
Dried Whole Milk (Note 8)	3,175	2,728,125		
New Zealand	3,175			
Any Country		2,728,125		
Dried Buttermilk/Whey (Note 12)	224,981			
Canada	161,161			
New Zealand	63,820			
Butter Substitutes containing over 45 percent of butterfat and/or butter oil (Note 14)		5,560,500		
Any Country		5,560,500		
TOTAL: NON-CHEESE ARTICLES	6,525,814	12,828,967		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter) (Note 16)	24,205,278	7,265,453	9,661,128	6,730,000
Argentina	7,690		92,310	
Australia	535,628	5,542	758,830	1,458,333
Canada	1,031,946	109,054		
Costa Rica				1,550,000
Czech Republic				200,000
EU-15	15,941,269	6,391,163	1,132,568	1,955,000
Of which Portugal is:	127,536	1,773	223,691	
Israel	79,696		593,304	
Iceland	294,000		29,000	
New Zealand	4,534,333	281,139	6,506,528	
Norway	124,982	25,018		
Poland	917,497	18,727		300,000
Slovak Republic				600,000
Switzerland	607,602	63,810	548,588	416,667
Uruguay				250,000
Other Countries	130,635	71,000		
Any Country		300,000		
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, Blue-mold cheese (Note 17)	2,348,967	132,034		366,667
Argentina	2,000			
EU-15	2,346,966	132,034		250,000
Chile				66,667
Czech Republic				50,000
Other Countries	1			

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Cheddar Cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	3,687,483	596,373	519,033	6,358,333
Australia	942,397	42,102	215,501	1,041,667
Chile				183,333
Czech Republic				50,000
EU-15	61,932	201,068		833,333
New Zealand	2,557,280	239,188	303,532	4,250,000
Other Countries	125,874	14,015		
Any Country		100,000		
American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	2,878,980	269,906	357,003	
Australia	843,993	37,005	119,002	
EU-15	190,758	146,575		
New Zealand	1,680,364	81,635	238,001	
Other Countries	163,865	4,691		
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (Note 20)	5,420,056	186,346		1,043,333
Argentina	119,003	5,997		110,000
Czech Republic				100,000
EU-15	5,161,334	127,666		833,333
Norway	114,318	52,682		
Other Countries	25,401	1		
Italian-type cheeses, made from cow's milk, (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya-not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Note 21)	6,578,228	942,319	795,517	4,965,000
Argentina	3,996,111	129,372	367,517	1,890,000
EU-15	2,569,117	812,883		583,333
Poland				1,325,000
Romania				416,667
Uruguay			428,000	750,000
Other Countries	13,000	64		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Swiss or Emmenthaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (Note 22)	5,892,174	759,140	823,519	316,667
EU-15	4,464,267	687,727	393,006	316,667
Switzerland	1,353,147	66,340	430,513	
Other Countries	74,760	5,073		
Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat (except articles within the scope of other tariff-rate quotas provided for in this subchapter), and margarine cheese (Note 23)	3,900,044	524,864	1,050,000	
EU-15	3,730,968	519,032		
Israel			50,000	
New Zealand			1,000,000	
Poland	169,075	5,832		
Other Countries	1			
Swiss or Emmenthaler cheese with eye formation (Note 25)	18,395,551	3,901,781	9,557,945	2,433,333
Argentina	9,115		70,885	
Australia	209,698		290,302	
Canada			70,000	
Czech Republic				400,000
Hungary				800,000
EU-15	13,363,935	3,112,894	4,003,172	1,066,666
Iceland	149,999		150,001	
Israel	27,000			
Norway	3,213,658	441,652	3,227,690	
Switzerland	1,336,871	347,234	1,745,895	166,667
Other Countries	85,275	1		
TOTAL: CHEESE ARTICLES	73,306,761	14,578,216	22,764,145	22,213,333

[FR Doc. 99–8761 Filed 4–9–99; 8:45 am]
BILLING CODE 3410–10–C

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150–AD65

Radiological Criteria for License Termination of Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is amending its regulations regarding decommissioning of licensed thorium mills and uranium recovery facilities to provide specific radiological criteria for the decommissioning of lands and structures. This final rule uses the existing soil radium standard to derive a dose criterion (benchmark approach) for the cleanup of byproduct material other than radium in soil and for the cleanup of surface activity on structures to be released for unrestricted use. This final rule is intended to provide a clear and consistent regulatory basis for determining the extent to which lands and structures can be considered to be decommissioned.

EFFECTIVE DATE: This regulation becomes effective on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Cardile, telephone: (301) 415–6185; e-mail: fpc@nrc.gov; or Elaine Brummett, telephone: (301) 415–6606, e-mail: esb@nrc.gov, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Summary of Public Comments and Responses to Comments
IV. Agreement State Compatibility
V. Final Environmental Assessment: Availability
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act
XI. Criminal Penalties

I. Introduction

The NRC is amending its regulations regarding decommissioning of licensed thorium mills and uranium recovery (UR) facilities (conventional uranium mills and uranium extraction processes such as in situ leach (ISL) facilities) to provide radiological criteria for the decommissioning of lands and structures. These criteria apply to the decommissioning of licensed UR facilities subject to the NRC's jurisdiction and will also apply to thorium mills if any become licensed in the future. The criteria apply to decommissioning of UR facilities that operate through their normal lifetime and to those that may be shut down prematurely. The NRC will apply these criteria in determining the adequacy of remediation of residual radionuclides resulting from the possession or use of byproduct material.[1]

The intent of this rulemaking is to provide a clear and consistent regulatory basis for determining the extent to which lands and structures at UR facilities must be remediated before decommissioning of a site can be considered complete and the license terminated. The NRC has previously applied site release criteria for decommissioning on a site-specific basis using existing guidance for surface activity and radionuclides other than radium in soil. The NRC believes that inclusion of criteria in the regulations will result in more efficient and consistent licensing actions related to site remediation activities.

II. Background

On August 22, 1994 (59 FR 43200), the NRC published a proposed rule to amend 10 CFR Part 20 of its regulations ''Standards for Protection Against Radiation'' to include radiological criteria for license termination as subpart E. The proposed rule applied to uranium mills and other NRC-licensed facilities, but did not apply to mill tailings or to soil radium cleanup at mills because they are regulated under 10 CFR Part 40, Appendix A.

On July 21, 1997 (62 FR 39058), the NRC published a final rule that codified radiological criteria for license termination for NRC licensees, but excluded UR facilities. The NRC excluded UR facilities from the scope of the final cleanup rule to allow further consideration of the issues unique to the decommissioning of these facilities. These unique issues include the existing regulatory framework for UR facilities and the nature of contamination at UR facilities, both of which are discussed below.

Under the existing regulatory framework for UR facilities, the Environmental Protection Agency (EPA) has the authority to set cleanup standards for uranium and thorium mills and, based on that authority, issued regulations in 40 CFR Part 192 that contain some decommissioning criteria for these facilities. NRC's regulations in 10 CFR Part 40, Appendix A, Criterion 6(6), conform to EPA's standards for radium in soil. Appendix A also provides ground-water protection criteria.

Therefore, this rulemaking addresses only the radiological criteria for decommissioning of lands and structures. The rule only applies to those UR facilities that do not have an approved decommissioning plan for buildings and soil when the rule becomes effective. The sites with approved decommissioning plans may request an amendment to their license to adopt the criteria of this rule after the revision to Criterion 6(6) is promulgated.

The applicable cleanup standards for soil radium in 10 CFR Part 40, Appendix A, Criterion 6(6), address the main contaminant at uranium mills in the large areas where windblown contamination from the tailings pile has occurred, and to a lesser extent, at ISLs in holding/settling ponds and process or bleed solution spills. These standards require that the concentration of radium (Ra-226 at UR facilities, Ra-228 at thorium mills) not exceed the background level by more than 5 pCi/g (0.19 Bq/g) in the first 15 cm (6 inches) of soil and 15 pCi/g (0.56 Bq/g) for every subsequent 15 cm (6 inch) layer. However, in other mill and ISL site areas proximate to locations where radium contamination exists (e.g., under/around the mill/process building, in a yellow cake storage area, and under/around an ore crusher), uranium (U-nat) is the radionuclide of concern. At least one mill site must also address soil cleanup of thorium (Th–230, the parent of Ra–226, is usually in approximate equilibrium (same activity concentration) with Ra–226) because thorium is more mobile in the acidic milling solutions and leaches farther into the ground than the radium under raffinate ponds and heap leach pads. Because 10 CFR Part 40, Appendix A, does not have cleanup standards for surface activity or for soil contamination from radionuclides other than radium, NRC guidance documents have been the source of cleanup criteria for residual uranium, thorium, and building surface activity.

An additional difficulty for remediation of UR facilities is that the residual radionuclides to be addressed in the site decommissioning are also present in the surrounding background soil in elevated and widely variable concentrations. Some mill sites even have uranium mine pits and/or piles of

[1] As defined in 10 CFR Part 40, byproduct material is the tailings or wastes produced by the extraction of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

overburden soil containing low-grade ore on or adjacent to the areas to be remediated. This complicates the determination of background values and limits the ability of the licensee to distinguish residual radioactivity from naturally occurring (in-situ) radioactivity.

To allow for consideration of these issues, the NRC also published, on July 21, 1997 (62 FR 39093), a request for additional comments on regulatory options for decommissioning of UR facilities. Included as part of the request was a discussion of an option to codify a dose objective for radionuclides other than radium (uranium and thorium) at UR facilities consistent with the radium cleanup standard. Under this approach, UR facilities would use the dose, excluding radon, from radium at the cleanup standard in existing 10 CFR Part 40, Appendix A, Criterion 6(6), as a benchmark for the cleanup of building surface activity and radionuclides other than radium in soil. Commenters were requested to provide input on options for decommissioning and, specifically, on the benchmark approach.

Use of the benchmark approach would provide for a common dose criterion across a UR site for those areas contaminated with radium and for those areas contaminated with other radionuclides.

The radium dose benchmark approach would require UR licensees subject to the rule to calculate the potential total effective dose equivalent to the average member of the critical group for the site that would result from the radium standard within 1000 years, based upon site-specific parameters. These licensees would be required to provide justification for the models and parameters selected in the dose calculations. The dose from the 5 pCi/g (0.19 Bq/g) radium standard would be applicable for most of the site contamination. Licensees would then remediate the site such that the residual radionuclides (byproduct material) remaining on the site that are distinguishable from background would not result in a dose that is greater than that which would result from the radium soil standard. The radionuclides of concern are uranium and thorium, because it is assumed that the progeny of Ra–226 are at acceptable levels when the radium standard is achieved. Licensees would also be required to demonstrate that doses were ''as low as is reasonably achievable'' (ALARA). In the unlikely event that a site benchmark dose (before application of ALARA) exceeds 100 mrem/yr (1 mSv/yr), the NRC staff would consult with the Commission before approving such a benchmark dose.

III. Summary of Public Comments and Responses to Comments

Comments received on the 1994 proposed rule for 10 CFR Part 20 subpart E were summarized in NUREG/CR–6353 and in the final rule notice (62 FR 39058, July 21, 1997). The eleven responses (nine commenters) to the July 21, 1997, request for additional comments on radiological criteria for UR facilities are addressed here.

A. Comments on Approach to the Criteria

One commenter indicated that the standards should be technically-based, protective of human health, and based on a substantial fraction of the 100 mrem/yr (1 mSv/yr) public dose limit. The use of dose-objective standards was encouraged. Evaluation of radon and thoron exposure was considered essential. This commenter also pointed out that the benchmark approach would codify a different dose limit for each facility.

The EPA commented that the soil radium standard of 5 pCi/g (0.19 Bq/g) is consistent with the minimally acceptable dose limit of 15 mrem/yr (0.15 mSv/yr) for the residential scenario, and that for other land use scenarios, the cleanup standards are more stringent for Ra-226, Ra-228, Th-232, and Th-230. The EPA also cautioned that a dose limit for uranium cleanup should not exceed 15 mrem/yr (0.15 mSv/yr).

A third commenter stated that the proposed rule is not acceptable because doses resulting from the benchmark approach could exceed 100 mrem/yr; NRC's existing guidance on cleanup of uranium, thorium, and surface activity should be used to set the minimum requirements; the expected dose from the radium standard should be clarified; the radon dose should be included in demonstrating compliance; and the time frame for dose modeling should be 10,000 years. The commenter also indicated that the proposed approach seems to allow a total dose of twice the radium dose; and that if more types of areas are to be included than those indicated in the proposal, then the enlargement of scope would require additional notice and review.

Six other commenters supported the Ra-226 benchmark dose approach for cleanup of other radionuclides such as U-nat, Th-230, and Th-232. These commenters indicated that the existing regulatory framework is appropriate and provides for flexibility to allow optimum tailings disposal on a site-specific basis. One of these commenters also pointed out that uranium mill sites will be turned over to the custodial care of the Department of Energy (DOE) or the State for long-term care, effectively eliminating substantial portions of these sites from the public exposure pathways. In addition, some of the vicinity properties remediated with neighboring abandoned mills (under the DOE's's Uranium Mill Tailings Remedial Action Project) have deposits of contamination (Ra-226, Th-230, or U-nat) above the limits remaining under the supplemental standards provisions of 40 CFR 192.21.

A. Response: The NRC agrees with the need to develop regulations that are protective of public health and safety with regard to decommissioning of UR facilities. NRC has previously addressed considerations related to radioactivity and dose to the public, public health aspects, fraction of the 100 mrem/yr (1 mSv/yr) dose, and the rationale for excluding the radon dose in Sections A.2.2.1, A.2.2.2, and F.6 of the July 21,1997, **Federal Register** notice (62 FR at 39060–64 and 39082) for the final rule for 10 CFR Part 20, subpart E; those discussions remain applicable to this final rulemaking.

As discussed above, the UR facilities have large areas contaminated with radium in soils where the existing radium standard is applied. The NRC believes that it is important to promulgate cleanup standards for other residual radionuclides that are consistent with the radium cleanup standards. Use of such an approach would result in a common dose criterion across an entire UR site, both for those areas contaminated with radium and for those areas contaminated with uranium and thorium. As noted above, the 5 pCi/g radium standard was promulgated by EPA for UR sites. The 5 pCi/g radium value has also been recommended as an exemption level by the Board of Directors of the Conference of Radiation Control Program Directors (October 1998) for the Suggested State Regulations on technologically enhanced naturally occurring radioactive materials.

The NRC staff's preliminary dose modeling, using realistic parameter values and the RESRAD code, indicates that at typical UR facilities, where the background radiation results in doses of over 200 mrem/yr (2.0 mSv/yr), the Ra-226 standard of 5 pCi/g (0.19 Bq/g) could typically result in a potential peak annual dose on the order of 20 to 35 mrem/yr (0.2 to 0.35 mSv/yr) to the average member of the critical group. Although it is possible that some site-

specific parameter values and subsurface contamination could result in a higher benchmark dose than that estimated by the staff for the various scenarios, the staff has high confidence that a site-specific dose using the benchmark approach will typically be a small fraction of 100 mrem/yr (1 mSv/yr), and in all cases will not exceed 100 mrem/yr (1 mSv/yr). The rule also requires licensee's to demonstrate that doses are ALARA which should result in a potential dose of less than 25 mrem/yr (0.2 mSv/yr) from the residual Ra-226 on the remediated site for most sites. Therefore, the potential health risk should be similar to the NRC dose limit established for other facilities in Part 20, subpart E, and approximate the level suggested in the EPA comment.

The radium benchmark dose modeling results are greater than the 5 pCi/g (0.19 Bq/g) radium modeling results reported by the EPA. The main reason for the difference in results is that the EPA modeled a much smaller area of contamination than that used by NRC staff (100 m^2 versus 404,687 m^2). Also, EPA modeled a much smaller fraction of time an individual would spend outdoors (0.02 versus 0.25) and used a less conservative root depth value (0.9 versus 0.25 meters) which generally decreases the calculated potential dose. What is not factored into the dose modeling is the low probability of anyone constructing a house or growing a large garden on the areas of residual contamination at these facilities. The UR facilities are in semi-arid (7–15 inches (18–39 cm) annual precipitation), sparsely populated areas (1–13 persons/$mile^2$ (0.4–5 persons/km^2)) where mining and grazing (3 cows/acre (1 cow/1348 m^2)) are the main land uses.

The existing regulatory framework does not provide criteria for the cleanup of radionuclides other than radium in soil. Also, the existing guidance does not provide dose criteria, so additional criteria are warranted. In areas where there is more than one residual radionuclide, the benchmark dose would apply to the sum of all radionuclides present in that area (i.e., radium, uranium, thorium, etc.). This is indicated in the rule text, and in draft guidance for implementation of the benchmark approach, where it is stated that, for each 100 m^2 area, the unity rule will apply such that the sum of the ratios for each radionuclide of the concentration present to the concentration limit may not exceed ''1'' (i.e., unity). The rule text and guidance also stipulate that the total effective dose equivalent limit is based on the peak annual dose within a 1000 year period to the average member of the critical group. This time frame is in keeping with the EPA regulatory time frame for these facilities (40 CFR Part 192).

Only portions of uranium mill sites and no portion of ISL facilities are anticipated to be turned over to the custodial care of Government entities. The radium standard applies to all areas of a site except the disposal cell, regardless of future use. The NRC staff plans a similar approach for the criteria for other radionuclides. The restricted use of areas that will be in perpetual custodial care could be considered under the ALARA provision, if cleanup is difficult or expensive in these areas.

B. Radionuclides at UR Sites are Naturally Occurring and of Variable Concentration in Nature

Several commenters indicated that the residual radionuclides at UR sites (uranium, thorium, radium) are naturally occurring in the local environment and that there is significant variability in soil background concentrations of these radionuclides, in particular at UR facilities where uranium pit mines or mineral outcrops exist. This leads to variability in potential dose such that the 25 mrem/yr (0.25 mSv/yr) dose in Part 20 subpart E would be indiscernible in the natural variability of background at a UR site. Any concentration standard must account for the significant variability in background and state that the limits are for ''concentrations above background'' at the different areas of the site. Also, two commenters indicated that a statistical approach, not just an average value, should be used to determine the background values for a site.

It was also mentioned that measurement of U-238 and Th-230 at levels above background, which result in an annual dose to residents of 25 mrem (0.25 mSv), would not be possible using reasonably available field techniques and that the additional cost of laboratory analyses to demonstrate compliance could be $100,000 per acre.

Several commenters stated that there is no reliable way to distinguish natural (in situ) ore material from processed (licensed) ore. A related concern was that decommissioning standards for UR facilities must not regulate mining activities and the associated ore material that may be present at UR sites.

B. Response: As noted above in Section II, and as described in the rule implementation guidance, the radionuclide dose limit is applied to the level of licensed (byproduct) material distinguishable from background. Site cleanup guidance indicates that background values should be based on areas with characteristics similar to the contaminated area(s) and that distinct areas of the site could have different background values. Statistical approaches, such as those discussed in the Multi-Agency Radiation Survey and Site Investigation Manual (NUREG–1575, 1997), will be considered.

Field measurements for soil U-nat and Th-230 in general are difficult and not just in the concentration equivalent of 25 mrem/yr (0.25 mSv/yr). Laboratory measurements are practical because site-specific dose modeling provides derived concentration limits for U-nat and Th-230 that can exceed current guideline values. For most sites, cleanup of soil U-nat and Th-230 would involve less than an acre (4,047 m^2). Therefore, the costs of sampling and of laboratory analysis for these radionuclides would be a minor part of the decommissioning costs.

Distinguishing in situ ore from processed ore material can be a problem on some sites and is addressed in the guidance. The NRC will regulate only NRC-licensed materials remaining at UR facilities, not in situ ore or mine waste. In determining compliance with the new regulation, the NRC staff will consider 10 CFR 40.42 (j) and (k) that state, in part, that as a final step in decommissioning, the licensee shall demonstrate that the site is suitable for release and that reasonable effort has been made to eliminate residual radioactive contamination.

C. Considerations of Risks, Costs, and Benefits of Cleanup

Several commenters pointed out that the actual risk of excavating and moving dirt (construction and transport accident risks that are actuarial) must be compared against health risks of radiation exposure which have not been demonstrated below 10 rem/yr (0.1 Sv/yr). The risk of cleaning up areas to below regional background levels would likely result in net human health and environmental detriment. Lowering of the current radium standard for uranium and thorium could cause undue economic burden to industry and the Government based on the need for cleanup of large soil areas and would not result in significant (if any) risk reduction.

At ISL facilities, lowering dose criteria could result in large areas retroactively becoming disposal areas requiring substantial and costly cleanup, and could inhibit efficiency of mining if irrigation practices with restoration fluids were effectively prohibited.

C. Response: The NRC considered the risk of the cleanup work in the regulatory analysis. The radium standard is not lowered by the rulemaking; therefore, there is no undue economic burden for licensees. Providing a radium benchmark dose standard for U-nat and Th-230 should not result in significant decrease in the soil concentration allowed to remain, compared to current guidance.

D. Regulatory Guidance

Several commenters offered suggestions for regulatory guidance and requested that the regulatory guidance implementing the standard include determination of background and dose modeling flexibility.

D. Response: The NRC recognizes that there may be difficulties in the determination of background concentrations of radionuclides at some UR facility sites. The NRC staff has prepared guidance (in the form of evaluation criteria) on mill site cleanup in the draft Standard Review Plan (SRP) for reclamation plans. This draft SRP will soon be published for public comment. The NRC staff is preparing another chapter of this SRP to address the implementation of the radium benchmark dose approach and dose modeling flexibility for this unique set of licensees. This chapter will also be published as a draft for public comment before finalization and incorporation into the SRP.

IV. Agreement State Compatibility

This rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among State and Federal safety requirements. The final rule on radiological criteria for license termination for nuclear facilities issued July 21, 1997 (62 FR 39058), was determined to be a Division 2 matter of compatibility under the previous Commission policy for Agreement State compatibility. As noted for that final rule (at 62 FR 39079), Division 2 rules address basic principles of radiation safety and regulatory functions. Although Agreement States must address these principles in their regulations, the use of language identical to that in NRC rules is not necessary if the underlying principles are the same. Also, the Agreement States may adopt requirements more stringent than NRC rules. Under the current NRC policy, Category C compatibility would be consistent with that indicated in 62 FR 39079, and, hence, the NRC has determined that this rule will be a Category C matter of compatibility.

V. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The final rule amends the NRC's regulations in 10 CFR Part 40 to include radiological dose criteria for decommissioning of lands and structures at UR facilities. The rule will affect 11 current NRC licensees. The environmental impact of this rule will be insignificant compared to current practice and to the decommissioning process in general because the areas requiring cleanup for residual radionuclides other than radium are small.

The final environmental assessment and finding of no significant impact on which this determination is based are available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant environmental impact are available from Elaine Brummett, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mailstop T7–J9, Washington, DC 20555–0001, telephone (301) 415–6066.

VI. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VII. Regulatory Analysis

The NRC has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Frank Cardile, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mailstop T–C24, Washington, DC 20555–0001, telephone (301) 415–6185.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule, if adopted, does not have a significant economic impact upon a substantial number of small entities. The rule will affect 11 current NRC licensees and any future licensees who will be conducting uranium milling operations. These licensees are not small entities as defined in 10 CFR 2.810.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and therefore, a backfit analysis is not required for this final rule because these amendments do not involve reactor operations and do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major'' rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

XI. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the NRC is issuing the final rule under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

List of Subjects in 10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 40.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948,

953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In 10 CFR Part 40, Appendix A, Criterion 6(6), a second paragraph is added to read as follows:

Appendix A to Part 40

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I. Technical Criteria

* * * * *

Criterion 6 * * *

(6) * * *

Byproduct material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the above standard (benchmark dose), and must be at levels which are as low as is reasonably achievable. If more than one residual radionuclide is present in the same 100-square-meter area, the sum of the ratios for each radionuclide of concentration present to the concentration limit will not exceed ''1'' (unity). A calculation of the potential peak annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard (not including radon) on the site must be submitted for approval. The use of decommissioning plans with benchmark doses which exceed 100 mrem/yr, before application of ALARA, requires the approval of the Commission after consideration of the recommendation of the NRC staff. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before June 11, 1999.

* * * * *

Dated at Rockville, Maryland, this 6th day of April 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–9035 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG02

Elimination of Reporting Requirement and 30-Day Hold in Loading Spent Fuel After Preoperational Testing of Independent Spent Fuel Storage or Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement that a report of the preoperational testing of an independent spent fuel storage installation or monitored retrievable storage installation be submitted to the NRC at least 30 days before the receipt of spent fuel or high-level radioactive waste. Experience has shown that the NRC staff does not need the report or the holding period because the NRC staff is on site and evaluates preoperational testing as it occurs. This amendment will eliminate an unnecessary regulatory impact on licensees.

EFFECTIVE DATE: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195, e-mail geg1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1998 (63 FR 49046), the NRC published a proposed rule in the **Federal Register** that would amend NRC's regulations in 10 CFR part 72 to eliminate a preoperational testing reporting requirement and a 30-day hold in loading spent fuel. Part 72 requires that the conditions for a site-specific license (10 CFR 72.24(g)) and the conditions for a Certificate of Compliance (CoC) (10 CFR 72.236(l)) contain requirements for the performance of preoperational testing by the site-specific licensee or the general licensee, respectively. The licensee is required to complete the preoperational testing program described in the applicable Safety Analysis Report (SAR) before spent fuel is loaded into an independent spent fuel storage installation (ISFSI) or before spent fuel or high-level radioactive waste (HLW) is loaded into a monitored retrievable storage installation (MRS). Information on the preoperational test program, including the specific tests and their acceptance criteria, are contained in the SAR submitted by the site-specific licensee or by the certificate holder for the design of the spent fuel storage cask to be used by the general licensee.

Section 72.82(e) requires licensees to submit to the NRC a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW for loading into an ISFSI or MRS. However, the licensee is not required to submit test procedures, only a summary report of the test results. A copy of this report is subsequently placed in the NRC Public Document Room (PDR). The purpose of the 30-day period is to establish a sufficient hold point to ensure that the NRC has sufficient time to inspect a new licensee's preparations and, if necessary, exercise its regulatory authority before spent fuel is received at an ISFSI or spent fuel and HLW at an MRS. The licensee is not required to obtain NRC approval of the report before commencing loading operations.

Comments on the Proposed Rule

The Commission received four letters commenting on the proposed rule. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC. One letter was from NEI, one letter from a CoC holder, and two letters were from utilities holding 10 CFR part 50 reactor licenses. All of the letters supported the proposed rule. One utility quantified the savings of eliminating the 30-day hold as more than $300,000.

Discussion

The requirement for a preoperational test report and 30-day hold period was added to the part 72 regulations governing licensing requirements for ISFSIs and an MRS at the time they became effective on November 28, 1980 (45 FR 74693), and before the NRC staff had any practical experience in licensing such facilities. However, in the intervening period, the Commission's practice has been for the NRC staff to maintain an extensive oversight presence during the preoperational testing phase of ISFSIs, reviewing the acceptance criteria, preoperational test, and test results as

they occur. Thus, NRC staff has had immediate access to the licensee's procedures and test results, and has not needed either a preoperational test report or a 30-day hold period in order to complete its inspection activities and determine whether any further regulatory action is needed before the licensee begins to load spent fuel or HLW.

The NRC inspection program now in place (i.e., Inspection Manual Chapter 2690 and Inspection Procedures 60854 and 60855) ensures that the NRC staff will review the licensee's normal, abnormal, and emergency operating procedures, (including loading and unloading procedures), as well as observe implementation of those procedures during preoperational testing. Consequently, NRC staff is in a position to ensure that the licensee has resolved any problems before loading spent fuel into the ISFSI. NRC staff documents the results of the inspection of the preoperational test program in a written inspection report, which is subsequently placed in the PDR. This report contains conclusions on whether the licensee has adequately completed the preoperational test program, an assessment of the licensee's performance in completing the preoperational test program, and an assessment of the licensee's readiness to begin loading spent fuel or HLW.

Notwithstanding that the current regulation ensures that the NRC will be notified by the licensee before it begins loading spent fuel, other regulations and processes provide adequate assurance that the NRC will be aware of a licensee's anticipated loading activities. For ISFSIs at operating reactor sites, the Commission expects that on-site NRC resident inspector staff would be aware of any potential fuel loading activities. Additionally, general licensees are required by 10 CFR 72.212(b)(1)(i) to notify the NRC at least 90 days before spent fuel loading begins. For site-specific licensees, the fact that a license has been issued serves as adequate notice to the NRC that spent fuel loading activities are planned. Further, site-specific licensees are also required by 10 CFR 72.70(a) to submit a final safety analysis report to the Commission at least 90 days before spent fuel loading begins.

The public will retain the ability to review a description of the preoperational tests and their acceptance criteria because this information is contained in the SAR, which is available for review in the NRC PDR. Relevant information on the preoperational test program and the results of the preoperational test program both remain available for public review in the SAR and the inspection report, respectively.

The NRC staff's experience has also been that the 30-day hold established by 10 CFR 72.82(e) creates a potentially significant financial burden for licensees because, during the 30-day period, the licensee can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This has resulted in five requests for exemptions in the last 3 years (1995–1998) by licensees and the need for the NRC staff to expend time processing these requests. The elimination of this regulation will preclude the need for exemption requests, enable the licensee to use the crew assembled for fuel transfer while the lessons of preoperational testing are fresh in their minds, and contribute to the efficiency of operations by avoiding unnecessary idle time. The NRC on-site inspection staff observing the spent fuel loading will similarly benefit.

Therefore, the Commission is removing 10 CFR 72.82(e) from NRC's regulations because neither the report nor the 30-day hold period are needed for regulatory purposes and that taking this action will relieve licensees from an unnecessary regulatory burden. Although elimination of this reporting requirement will reduce the information which has been available to the public, the alternative sources of information available to the public on preoperational test activities are sufficient to allow for public review.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule decreases the burden on licensees by eliminating 10 CFR 72.82(e) and the associated reporting burden. The burden reduction for this information collection is estimated to average 40 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The amendment will eliminate the requirement that 10 CFR part 72 licensees submit a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW on the grounds that NRC's inspection program ensures that the NRC staff will be present for observance of preoperational testing to ensure that a licensee is prepared to safely load spent fuel or HLW. Thus, the report and the 30-day hold period are not needed for NRC's regulatory activities.

The benefit of the rule is that elimination of a report and 30-day hold period not needed by the NRC will reduce an unnecessary regulatory impact on licensees resulting from the 30-day waiting period following submittal of a report of the preoperational test criteria and test results to the NRC. During this period, the licensees can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This imposes a potentially significant financial burden on licensees. The rule will also relieve both licensees and the NRC staff from the need to process exemption requests. The Commission has received and approved several requests for exemption from 10 CFR 72.82(e) and envisions that most future Part 72 licensees will also apply for exemption from this regulation.

An impact of the final rule will be that a report of the preoperational test criteria and test results will no longer be available. However, information on the preoperational test criteria is contained in the SAR, which is available for review in the NRC PDR. In addition, NRC inspection reports will contain NRC findings on the preoperational testing and assessments on the licensee's readiness to commence loading spent fuel. These inspection reports are available in the NRC Public Document Room system. The NRC also considered the alternative of shortening rather than eliminating the hold period but rejected this alternative because it would have retained a requirement not needed for regulatory purposes and thus would have imposed an unnecessary regulatory burden on licensees.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 as amended 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a

significant economic impact on a substantial number of small entities. This final rule would affect only the operators of ISFSIs. These companies do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this rule, because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR 72.62(a). Therefore, a backfit analysis is not required for this final rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements, by a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendment to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under sec. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), Stat. 2252 (42 U.S.C. 10198).

§ 72.82 [Amended]

2. Section 72.82 is amended by removing paragraph (e).

Dated at Rockville, Maryland, this 23rd day of March 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–9041 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–157–AD; Amendment 39–11114; AD 99–08–08]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires repetitive lubrication of the engine control push-pull cables, and installation of heating tubes on the control cables in the cockpit area and in the left-hand and right-hand engine balconies, which terminates the repetitive lubrication requirement. 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 ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 17, 1999.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published

as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 28, 1999 (64 FR 4370). That action proposed to require repetitive lubrication of the engine control push-pull cables. That action also proposed to require the installation of heating tubes on the control cables in the cockpit area and in the left-hand and right-hand engine balconies, which would terminate the repetitive lubrication requirement.

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 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required lubrication, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $12,000, or $240 per airplane.

The FAA estimates that the installation of heating tubes on the control cables required in this AD action will take approximately 50 work hours per airplane to accomplish, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators is estimated to be $150,000, or $3,000 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:

99–08–08 Dornier Luftfahrt GMBH: Amendment 39–11114. Docket 98–NM–157–AD.

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

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 2 months after the effective date of this AD, lubricate the engine control push-pull cables in accordance with Dornier Alert Service Bulletins ASB–328–76–022, dated December 22, 1997, and ASB–328–76–015, Revision 3, dated January 9, 1998. Repeat the lubrication thereafter at intervals not to exceed 300 flight hours until the actions required by paragraph (b) of this AD are accomplished.

(b) Within 6 months after the effective date of this AD, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive lubrication requirement of paragraph (a) of this AD.

(1) Install heating tubes on the control cables in the cockpit area in accordance with Dornier Service Bulletin SB–328–76–254, dated June 30, 1998, or Revision 1, dated August 6, 1998.

(2) Install heating tubes on the control cables in the left and right engine balconies in accordance with Dornier Service Bulletin SB–328–76–267, Revision 1, dated September 25, 1998, or Revision 2, dated October 8, 1998.

Alternative Methods of Compliance

(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.

Special Flight Permits

(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.

Incorporation by Reference

(e) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–76–022, dated December 22, 1997; Dornier Alert Service Bulletin ASB–328–76–015, Revision 3, dated January 9, 1998; Dornier Service Bulletin SB–328–76–254, dated June 30, 1998; Dornier Service Bulletin SB–328–76–254, Revision 1, dated August 6, 1998; Dornier Service Bulletin SB–328–76–267, Revision 1, dated September 25, 1998; and Dornier Service Bulletin SB–328–76–267, Revision 2, dated October 8, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 1998–105, dated January 30, 1998, and 1997–148/6, dated December 3, 1998.

(f) This amendment becomes effective on May 17, 1999.

Issued in Renton, Washington, on March 31, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8536 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–325–AD; Amendment 39–11116; AD 99–08–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, –SP, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747–100, –200, –300, –SP, and –400F series airplanes.

Among other things, this amendment requires repetitive leak tests of the lavatory drain system and repair, if necessary; installation of a cap or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of any ''donut'' type valves installed in the waste drain system. This amendment is prompted by continuing reports of damage to airframes and damage to property on the ground, caused by ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. The actions specified by this AD are intended to prevent damage to airframes and property on the ground that is associated with the problems of ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 1999.

ADDRESSES: 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: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747–100, –200, –300, –SP, and –400F series airplanes was published in the **Federal Register** on June 15, 1998 (63 FR 32624). That action proposed to require repetitive leak tests of the lavatory drain system and repair, if necessary; installation of a cap or flush/fill line ball valve on the flush/fill line; periodic seal changes; and replacement of any ''donut'' type valves installed in the waste drain system.

The actions specified in that proposal are intended to prevent damage to airframes and property on the ground that is associated with the problems of ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage.

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

1. Support for the Proposal

Two commenters support the proposed rule.

2. Request To Revise the Unsafe Condition

One commenter, the airplane manufacturer, requests that the proposed rule be revised to remove reference to ''engine damage'' in the description of the unsafe condition. The airplane manufacturer bases this request on the fact that it is not aware of any in-service reports of engine damage due to ''blue ice'' on Model 747 series airplanes.

The FAA concurs. Since the FAA has not received any reports of engine damage due to ''blue ice'' on Model 747 series airplanes, reference to ''engine damage'' in the description of the unsafe condition has been removed from the AD.

3. Request To Extend Leak Test Intervals for Model 747 Series Airplanes

One commenter requests that the leak test intervals be specified in flight cycles rather than flight hours as proposed in the Notice of Proposed Rulemaking (NPRM). The commenter also requests that, if the intervals are retained as flight hours, all of the intervals should be extended. The commenter points out that a typical ''C'' check on Model 747 series airplanes is between 5,000 and 6,000 flight hours, as compared to typical ''C'' checks of Models 727 and 737 series airplanes, which are generally between 3,000 and 4,000 flight hours. Since most of the wear and damage is caused by opening and closing the valve, which happens during a flight cycle, and is not directly related to the number of flight hours, flight cycles are more critical than flight hours with regard to the potential for leakage. Because Model 747 series airplanes have a low number of flight cycles per hour, the fleet should be allowed a greater leak test interval than the interval specified for Models 727 and 737 series airplanes.

The FAA does not concur that the leak test intervals should be specified in flight cycles rather than flight hours. The commenter did not provide any specific data that correlated the number of flight hours to the number of flight cycles for the Boeing Model 747 fleet and the Boeing 727 and 737 fleets. Additionally, existing ''blue ice'' Airworthiness Directives for other airplanes presently specify the leak test intervals in terms of flight hours. To change the leak test intervals from flight hours to flight cycles could result in an operator having some airplanes operating under flight hours intervals and other airplanes operating under flight cycle intervals, which may be burdensome for the operator.

However, the FAA does concur that certain leak test intervals can be extended somewhat for Model 747 series airplanes for the reasons the commenter suggested. Specific extensions of leak tests for certain valves are discussed later in this disposition of comments.

4. Requests To Extend PneuDraulics Leak Test Intervals

One commenter requests that the leak test interval for the PneuDraulics service panel drain valve be revised from 2,000 to 4,000 flight hours. The commenter advises that the PneuDraulics service panel drain valve specified in paragraph

(a) of the proposal has had in excess of 800,000 flight hours of service history documented by operators in FAA-approved maintenance programs with only two leakage events reported.

The FAA concurs that, for the reasons provided by the commenter, extension of the leak test interval from 2,000 flight hours to 4,000 flight hours for those PneuDraulics valves is justified. Since that service history was obtained when the operators were using FAA-approved maintenance programs that required reporting of any leakage, the FAA has high confidence that this data is representative of the actual leakage rates. Paragraph (a)(3) of the final rule has been revised to reflect the 4,000 flight hour leak test interval.

5. Request To Extend Leak Test Interval for Certain Shaw Aero Valves

The commenter requests that the leak test interval for certain Shaw Aero service panel drain valves be extended from 1,000 flight hours to 2,000 flight hours. The commenter states that data submitted previously to the FAA indicates that there are nearly 8,000 Shaw Aero service panel drain valves on airplanes that have accumulated in excess of 50 million flight hours over the past 10 years. The commenter points out that, on all of the airplanes on which Shaw Aero service panel drain valves were installed during production, there were less than ten reports of leakage during that time that could have been attributed to a Shaw Aero Devices service panel drain valve.

In addition, the commenter states that Boeing has presented data to the FAA showing that the Shaw Aero service panel drain valve has been the baseline unit installed on Model 737 series airplanes since January 1991, and on Model 757 series airplanes since July 1992. All Boeing service data available through February 1996 indicates that all versions of the Shaw service panel drain valves can be attributed to less than 0.60 percent of the reports of leakage on Model 737 and 757 series airplanes.

The commenter states that the data presented shows ample evidence to support a leak test interval equal to the PneuDraulics valve, which was granted a leak test interval extension based on only 412 valves installed on aircraft flown over a much shorter interval than the 10 year period cited for the Shaw valves. Additionally, the commenter points out that industry experience clearly indicates that the main problems occur after two years of residue build-up on the sealing surfaces of any valve, irrespective of the design features. The commenter points out that meaningful data must be gathered over a period of at least two years.

Additionally, the commenter advises that several airlines have collected, or are in the process of collecting, data in order to submit a request for extended leak test intervals for their fleets. In fact, the commenter states that it has attached a copy of one such draft request that indicates that there have been only two cases reported of any evidence of leakage on a fleet of 163 Boeing Model 727 series airplanes that have accumulated 325,678 flight hours on Shaw Aero Devices 332 series valves.

The FAA concurs with the commenter's request to extend certain interval times based on the general extension of intervals given to Model 747 series airplanes explained previously. Those intervals have been extended for certain Shaw Aero service panel drain valves from 1,000 to 1,500 flight hours. The leak test interval for certain other Shaw Aero service panel drain valves has been increased from 600 to 800 flight hours. The FAA has revised certain sub-paragraphs of paragraph (a) of the final rule to reflect those extensions of the leak test intervals.

This commenter also states that in over 50 million flight hours on 8,000 valves only four instances of leakage have been reported. However, data the FAA has received indicates that most instances of leakage are not reported. Leakage from a service panel drain valve is not a reportable event as required by Part 21.3 of the Federal Aviation Regulations (14 CFR part 21.3). The service history data was not collected as part of an FAA-approved maintenance program that requires reporting of service panel drain valve leakage. Therefore, the FAA does not have a high level of confidence that the reported leakage rates are necessarily representative of the actual leakage rate in service. As an example, a Boeing report cited by the commenter listed 157 total reports of leakage for 662 Boeing Model 747 series airplanes for the history of the fleet up until April of 1996, when the data was collected. However, the FAA recently received a copy of a report regarding ice on certain airplanes arriving at Narita Airport in Japan during a two-week period in February 1998. For 562 arrivals of Boeing Model 747 series airplanes that were inspected during the two-week period, there were 14 instances of ice found at lavatory service panels. While some of those instances were caused by leakage from the flush/fill lines instead of the waste drain valve, the fact remains that a two-week period of actual inspection at one airport revealed 14 instances of leakage compared to 157 cases of leakage reported by operators to Boeing for the entire operating history of the Model 747 fleet until 1996. Clearly, the amount of actual leakage is not reflected in the number reported by operators to Boeing.

In regard to the commenter's statement that several operators are in the process of gathering data regarding performing leak checks, the FAA has not received that data as of this date. Without reviewing the actual data and information, the FAA cannot provide a decision to extend the leak test interval. Therefore, no change is necessary to the final rule in this regard.

6. Request To Extend the Leak Test Interval for Certain Service Panel Ball Valves

The same commenter requests that the leak test interval (currently 1,000 flight hours) be extended for Kaiser Electroprecision service panel ball valves, Part Number (P/N) 2651–357. The commenter contends that the Kaiser Electroprecision service panel ball valve is designed considerably different than the other valves that are subject to the proposed 1,000-flight-hour intervals for valves. The commenter notes that the Kaiser ''Expander'' valve, P/N 0218–0032, and Shaw Aero ''Posi-Lift'' valve, P/N 10101000C( ), are subject to the proposed 1,000-flight-hour intervals also. The commenter points out that Kaiser P/N 2651–357 is considered a ball valve. The commenter questions that if the FAA considers similarity of valves in determining an appropriate leak test interval, Kaiser P/N 2651–357 is at least equivalent to a PneuDraulics P/N 9527 series valve. The commenter points out that P/N 9527 series valves are essentially only a half-ball valve. Since Kaiser makes the in-line ball valve, P/N 2651–278, which has a 4,500-flight-hour leak test interval, Kaiser's experience in manufacturing reliability should be considered when setting an initial leak test interval for the panel ball valve, P/N 2651–357. The commenter concludes that a new valve such as this should not receive a ''generic'' 1,000-flight-hour leak test, but rather should be considered for an extension of the leak test interval based on its design and similarity to other valves.

The FAA concurs that Kaiser Electoprecision panel ball valve, P/N 2651–357( ) series can be extended from the proposed 1,000-flight-hour interval. In fact, the FAA has recently approved the leak test interval for that panel ball valve to be extended from 1,000 to 2,000 flight hours. The FAA based this extension on similarity to the Kaiser

Electroprecision in-line drain valve, the service history of over 20 panel ball valves with an average of over 2,000 flight hours per valve and with no reports of leakage, and other data and analysis. The FAA considers similarity of valves, the manufacturer's experience, and manufacturing reliability in setting the initial leak test interval for a particular valve. These factors are also considered in determining the amount of in-service monitoring by operators that is required for an extension of the leak test interval. The intent of requiring service experience in addition to similarity analysis is to make sure that there are no unforeseen design deficiencies in a valve for which similarity is claimed. Similarity can be used to reduce the amount of in-service experience needed for a particular valve to receive an extension of the leak test interval. Therefore, paragraph (a)(4) of the final rule specifies the 2,000-flight-hour interval for the Kaiser Electoprecision panel ball valve, P/N 2651–357( ) series.

7. Request To Use Optional Method

One commenter requests that the proposal be revised to allow use of Monogram P/N 4803–76 or P/N 4803–96 series vacuum breaker check valve as an option to the installation of a lever lock cap on the flush/fill line or a ball valve on the flush/fill line. Another commenter requests that the proposal be revised to allow use of either a vacuum breaker check valve or an automatic shut-off valve as an option to installing a lever lock cap on the flush/fill line or a ball valve on the flush/fill line. The commenters point out that such an option to installing flush/fill line ball valves was permitted in the ''blue ice'' AD for McDonnell Douglas Model DC–10 series airplanes [AD 96–12–18, amendment 39–9661 (61 FR 29009, June 7, 1996)].

The FAA concurs with the commenter's request. Vacuum breaker check valves, Monogram P/N 4803–86, installed on McDonnell Douglas Model DC–10 series airplanes, and Monogram P/N 4803–76 and –96 installed on Boeing Model 747 series airplanes are similar to each other in design and function. The FAA has determined that those valves are adequate to install as an alternative to installing a lever lock cap of the flush/fill line or a ball valve on the flush/fill line. The FAA also has determined that installation of an automatic shut-off valve is an adequate method to prevent leakage from the flush/fill line. Certain paragraphs of this AD [(a), (b)(3), and (a)(9)(ii)] have been revised to add provisions to install vacuum breaker valves as an option to installing a lever lock cap or ball valve on the flush/fill line. Additionally, the final rule has been revised to add provisions in paragraphs (b)(3) and (a)(9)(iv) of this AD to install and test a shut-off valve per Boeing specification number 60B50341 as an option to installing a lever lock cap or flush/fill line ball valve on the flush/fill line.

In addition to listing optional valves for the flush/fill line, the FAA also added vacuum leak test procedures as discussed in comment 10 below, and reorganized the seal change and leak test requirements previously contained in paragraph (a)(8) of the NPRM, and moved them into paragraphs (a)(9) and (a)(10) of the final rule.

8. Request To Revise Specifications of the Leak Test of the Toilet Tank Dump Valve

The commenter, the airplane manufacturer, points out that the proposal specifies that the toilet tank be filled with a ''minimum of 10 gallons of water/rinsing fluid'' prior to performing the leak test of the toilet tank dump valve. The commenter requests that the specifications for the leak test be changed to require ''a minimum of 10 gallons of water/rinsing fluid for tanks with less than 30 gallons capacity, and a minimum of 20 gallons of water/rinsing fluid for tanks with more than 30 gallons capacity.'' The commenter states that due to the wide variation in toilet tank sizes on the Model 747 fleet, 10 gallons may not be adequate in some cases to properly conduct a leak test.

The FAA concurs that the amount of fluid in the tank should be sufficient to test for leakage of the toilet tank dump valve, and that the specifications for conducting the leak test should be revised. The intent of specifying that the leak test be performed with ''a minimum of 10 gallons'' was to indicate that sufficient fluid be used to perform a valid leak test, without having to completely fill the tank and risk a spill of fluid inside the airplane. Since some Model 747 series airplanes are equipped with toilet tanks that are considerably larger than tanks in other airplanes, an increase in the minimum amount of fluid used to perform the test is considered necessary for airplanes with the larger tanks. The FAA has revised the final rule to specify the requested revision.

9. Request To Revise Table 1 of the Proposal

The commenter requests that Table 1 of the proposal be revised to correct the serial numbers of 10101000B–A–1 valves and to add 10101000C–R and 10101000C–G valves to Table 1.

The FAA concurs with the request to correct the serial numbers for 10101000B–A–1 valves and has revised Table 1 accordingly. However, the FAA does not concur with the commenter's request to add the two additional valves to Table 1. The FAA has determined that those valves are not used on the airplanes affected by this AD. Further, the FAA has removed certain other part numbers of valves (10101000B–A and 10101000C–A) listed in Table 1 of the proposal since they are not eligible for the 1,000-flight-hour leak test interval. Additionally, Note 2 of the AD has been revised to specify that Table 1 of the AD contains only valves that are eligible for a leak check interval of 1,500 hours.

10. Request To Use Vacuum Tool

One commenter requests that the proposal be revised to allow testing of the inner seal of the service panel valve with a vacuum tool for a period of one minute without any fluid upstream of the valve. This same commenter states that testing with air (vacuum tool) is more stringent than testing with water. The commenter points out that when testing with air, a leak path is detected readily within one minute because the pressure gauge will move indicating a loss of vacuum. The commenter also points out that previous AD's have permitted leak testing with a vacuum tool. A second commenter states that by allowing a leak test without requiring that the inner door of the service panel be covered with fluid, the likelihood of ''blue showers'' (i.e., uncontrolled leakage of waste tank drain line inside the airplane) would be reduced.

The FAA concurs with the request to allow a vacuum leak test procedure for the reasons the commenter provided. The FAA has revised paragraphs (a), (a)(10)(ii), and Note 3 of the final rule to add provisions and instructions for the use of vacuum leak test procedures. However, the FAA does not concur with the request to establish a period of one minute for the vacuum leak test. The commenter did not provide sufficient evidence to support reducing the leak test period from five minutes to one minute. Therefore, no change is necessary to the final rule regarding the time period required for the leak test.

11. Request To Revise ''Dump Valve'' Terminology

One commenter requests that paragraph (a)(5)(i) of the proposal be revised to change the current wording of ''dump valve'' to the correct terminology of ''toilet tank dump valve.'' The commenter points out that changing the terminology in that particular paragraph would make the

use of the term ''toilet tank dump valve'' consistent throughout the proposal. The FAA concurs and has revised the final rule accordingly.

12. Request To Clarify Seal Replacement Interval

One commenter requests that the compliance time for replacement of seals be revised to clarify that the seal replacement interval would begin when the new valve is installed or a new airplane is delivered.

The FAA concurs. Installation of a new valve or delivery of a new airplane would also mean that a new seal is in place. Therefore, the FAA considers that a new valve installation or delivery of a new airplane constitutes the ''last documented seal change.'' The FAA has revised paragraphs (a)(1) and (a)(9) of the final rule to reflect this change. The FAA points out that, for the purposes of this AD, a ''new'' airplane is one that has accumulated less than 100 total flight hours or 30 calendar days, whichever occurs later, since the issuance of the original airworthiness certificate.

13. Request To Correct a Part Number

One commenter requests that paragraphs (a)(8)(ii) and (b)(2) of the proposal be revised to reflect the correct part number for the flush/fill ball valve. The commenter advises that the correct part number is Kaiser Electroprecision part number series 0062–0010, not ''0062–0009,'' as specified in the proposal. The FAA concurs with the commenter's request, and has revised paragraphs (a)(9)(iii) and (b)(2) of the final rule to reflect the correct part numbers.

14. Request To Extend the Seal Change Interval

One commenter requests that paragraph (a)(1)(ii) of the proposal be revised to reduce the seal change interval from 6,000 to 5,000 flight hours for the PneuDraulics valve. The commenter states that the seal in a ball-valve or half-ball valve located at the service panel is subjected to a significantly greater dynamic action than that of a seal in a flapper-type valve. The distance that the ball or half-ball drags across the seal subjects the seal to considerably more wear that the wear experienced by an O-ring seal in a flapper-type valve as it moves from a sealed to an unsealed position. The plastic seals used in the ball or half-ball valves are much less forgiving and less compressible than elastomer type seals used in flapper-type valves. Therefore, the ball or half-ball valves are more susceptible to being damaged by foreign objects and consequent leakage. The potential for ice, hardened debris, and ''black tar'' to build up on the ball at the service panel makes the seals more susceptible to damage by service and maintenance personnel than the seals of an in-line ball valve. Additionally, the commenter contends that the performance of the seals in the in-line ball valve cannot be replicated in-service on ball or half-ball valves used at the service panel. Service panel components also experience greater temperature fluctuations (−65 degrees Fahrenheit to +130 degrees Fahrenheit) than those experienced by components upstream.

The FAA does not concur with the commenter's request to reduce the seal change interval for the PneuDraulics valve. The commenter did not provide any specific data to demonstrate that ball valve seals or half-ball valve seals actually do have greater failure rates than flapper type valves. The FAA established the seal change interval for the PneuDraulics valve based on data submitted by an operator and the valve manufacturer. No change is necessary to the final rule.

15. Request To Standardize the Requirements for Extension of the Leak Test

One commenter, a valve manufacturer, requests that the proposal be revised to require ''equivalent'' criteria for extending the leak tests of all valves. The manufacturer states that certain criteria were required to obtain leak test extensions for its product, but that other valves were not subjected to the same stringent criteria. The commenter notes that valves with components prone to multiple failure and easily damaged seals will leak if exposed to the hourly usage schedules (as proposed in the NPRM). The commenter contends that a valve with exposed soft seals can leak immediately after successfully passing a test if damaged by ice, tools, or loss of the donut plug. The commenter further contends that the valves should have a primary seal and a secondary seal as required by the specifications of the airplane manufacturer for panel valves.

The FAA does not concur that the final rule should be revised in regard to establishing ''equivalent'' criteria for extending the leak test intervals. The FAA has required all operators requesting an extension to provide service history and data to support any extensions of leak test intervals. Previous service experience, similarity to existing valves, and the quality of the data are considered in determining an appropriate extension of the leak check interval for each valve. No change is necessary to the final rule.

16. Request To Establish Consistent Testing Intervals for Components

One commenter, the airplane manufacturer, states that it is concerned that test and maintenance intervals for a particular part number component may not be consistent across all models. The commenter requests that any increased intervals for a specific component be applied to all models using that component.

The FAA does not concur. As explained in a previous disposition of comment (number 3), the flight cycles per flight hours are different on various airplane models. Therefore, the cyclic wear on various components differs according to the airplane model on which the component is installed. Consequently, the FAA cannot approve consistent flight hour intervals for leak checks on specific components that apply to all airplane models.

Operators who wish to take advantage of the increase in leak test intervals may request information concerning the existence of approved alternative methods of compliance, in accordance with Note 5 of this AD. Additionally, paragraph (d) of this AD provides for any operator to request approval of an alternative method of compliance that provides an acceptable level of safety.

17. Request To Provide a Maintenance Option

One commenter, the airplane manufacturer, requests that the FAA add a maintenance option to the AD that would permit operators to revise their FAA-approved maintenance program to include the requirements specified in the proposal. The commenter points out that such a revision would permit operators to justify extending leak test intervals to intervals that are consistent with their regularly scheduled maintenance.

The FAA does not concur. The FAA did not provide the maintenance option in this AD based on information it received that few operators were inclined to revise their maintenance program to incorporate the requirements of this AD. Additionally, comments submitted regarding previous ''blue ice'' AD's that did contain the maintenance option stated that the proposed AD's were ''too long, and hard to understand.'' The FAA's intent by not specifying the maintenance option in this AD is to simplify and clarify the requirements of this AD. No change to the final rule is necessary in that regard. However, if an operator wishes to request approval for revision of its

maintenance program, a request should be submitted to the FAA in accordance with the provisions of paragraph (d) of this AD.

18. Request To Include Terminating Action in the AD

One commenter, the airplane manufacturer, requests that a provision for terminating action be included in the AD. The commenter agrees that incorporation of the proposed AD requirements such as ''donut'' lug removal, seal replacement, rinse system upgrade, and installation of improved drain valves will result in reduced incidences of ''blue ice.'' However, if an operator incorporates the requirements of the proposed AD, and revises its maintenance program to include seal replacement and/or seal visual inspections, the commenter considers those actions to be sufficient to provide terminating action.

The FAA does not concur. The FAA finds that previous requests for terminating action based on the installation of certain valves have been unsuccessful. Accomplishment of the requirements of this AD will ensure that an effective and uniform program to prevent incidents of ''blue ice'' is in effect for the entire fleet. Therefore, no change to the final rule is necessary in that regard.

19. Request To Remove the Requirement to Replace ''Donut'' Valves

One commenter, an airline operator, requests that the proposal be revised to remove the requirement ''to replace 'donut' valves with another FAA-approved valves within 5,000 flight hours.'' The commenter points out that other AD's concerning ''blue ice'' have not required replacement of ''donut'' valves. Further, the commenter contends that the repetitive leak test intervals specified in the proposal will address the safety considerations. The commenter states that, based on financial considerations, the replacement of ''donut'' valves should be an option for operators.

The FAA does not concur with the request to remove the requirement to replace ''donut valves.'' The FAA finds that several incidents of ''blue ice'' were caused by ''donut'' valve leakage on airplanes, despite a required leak test at intervals of 200 hours. Additionally, the largest and most potentially dangerous pieces of ''blue ice'' have been associated with ''donut'' valves. Based on the continued problems associated with the use of ''donut'' valves, the FAA has determined that those valves must be replaced. No change to the final rule is necessary in that regard. Regarding current AD's addressing ''blue ice,'' continuing to require the leak test intervals for the ''donut'' valves may motivate operators to replace the ''donut'' valves. However, if the FAA finds that ''donut'' valves continue to be a source of ''blue ice,'' additional rulemaking may be considered.

20. Request To Call Out Part Numbers by Name

One commenter requests that lever/lock caps manufactured in accordance with an FAA-Parts Manufacturer Approval granted to Shaw Aero Devices be called out by part number the same way the Kaiser flush/fill ball valve part number is called out in the proposal. The commenter did not provide an explicit reason for this request.

The FAA does not concur. Reference to lever lock caps as ''FAA-approved lever lock caps'' rather than specific part numbers that are called out has been the standard practice in the development of the ''blue ice'' AD's. Therefore, the Shaw Aero Devices lever lock cap, part number 580–116, is encompassed in the final rule as an ''FAA-approved lever lock cap.'' However, the Kaiser flush/fill line ball is not a lever lock cap and would not be encompassed by the phrase ''FAA-approved lever lock caps.'' Consequently, the Kaiser valve part number is specifically called out in the final rule. No change is necessary to the final rule in that regard.

21. Requests To Revise the Cost Impact Information

One commenter, a parts manufacturer, requests that the cost impact information, below, be revised to reflect an optional use of a hand held vacuum pump as the most cost effective method to perform the leak tests. The commenter points out that a hand held vacuum pump takes less time and does not require fuel to power-up the airplane.

The FAA does not concur with the commenter's request. The cost impact figures provided in an AD are intended to provide an approximate cost of performing required tasks. The FAA has no way of determining the specific cost figures of each possible method of accomplishing a required task. The cost estimates, as provided, are simply estimates based on the best information the FAA has available at the time the rule is developed. No change is necessary to the final rule in that regard.

Another commenter states that the work hours necessary to install the flush/fill line cap is estimated in the proposal to be 1 work hour per cap. The commenter requests that the work hour estimate be revised to include heating the flush/fill line to prevent ice build-up within the line behind the cap. The commenter provided no work hour figures that would include heating of the flush/fill line.

The FAA does not concur. Heating for the line behind the flush/fill cap may be considered a good practice and possibly the most practical solution where flush/fill lines take a long time to drain. The FAA typically provides cost estimates only for those actions that are required to be accomplished. In this case, heating of the line behind the flush/fill cap is not necessary when operators allow the flush/fill line to drain before closing the cap. The FAA considers it to be the operator's choice to allow the flush/fill line to drain after servicing, or to install heating for the flush/fill line. Therefore, no change is necessary to the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule 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 711 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 201 airplanes of U.S. registry and 89 U.S. operators will be affected by this AD.

The waste drain system leak test and outer cap inspection will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the waste drain system leak test and outer cap inspection is estimated to be $72,360, or $360 per airplane, per test/inspection.

Certain airplanes (i.e., those that have ''donut'' type drain valves installed) may be required to be leak tested as many as 15 times each year. Certain other airplanes having other valve configurations will be required to be leak tested as few as 1 time each year. Based on these figures, the annual (recurring) cost impact of the required repetitive leak tests on U.S. operators is estimated to be between $360 and $5,400 per airplane, per year.

With regard to replacement of ''donut'' type drain valves, the cost of a new valve is approximately $1,200. However, the number of leak tests for an airplane that is flown an average of

3,000 flight hours a year is thereby reduced from 15 tests to 3 tests. The cost reduction because of the number of tests required is approximately equal to the cost of the replacement valve. Therefore, no additional cost would be incurred.

The FAA estimates that it will take approximately 1 work hour per airplane lavatory drain to accomplish a visual inspection of the service panel drain valve cap/door seal and seal mating surfaces, at an average labor rate of $60 per work hour. As with leak tests, certain airplanes will be required to be visually inspected as many as 15 times or as few as 3 times each year. Based on these figures, the annual (recurring) cost impact of the required repetitive visual inspections on U.S. operators is estimated to be between $180 and $900 per airplane, per year.

The installation of the flush/fill line cap will take approximately 1 work hour per cap to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be $275 per cap. There are an average of 4 caps per airplane. Based on these figures, the cost impact on U.S. operators of these requirements of this AD is estimated to be $269,340, or $1,340 per airplane, per replacement cycle.

The seal replacements of the drain valves required by paragraph (a) of this AD will require approximately 2 work hours to accomplish, at an average labor cost of $60 per hour. The cost of required parts will be $200 per each seal change. Based on these figures, the cost impact on U.S. operators of these requirements of this AD is estimated to be $64,320, or approximately $320 per airplane, per replacement.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions of this AD will be conducted as ''stand alone'' actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary ''additional'' work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

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

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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:

Compliance: Required as indicated, unless accomplished previously.

99–08–10 Boeing: Amendment 39–11116. Docket 97–NM–325–AD.

Applicability: All Model 747–100, –200, –300, –SP, and –400F series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent airframe damage, and/or hazard to persons or property on the ground as a result of ''blue ice'' that has formed from leakage of the lavatory drain system or flush/fill systems and dislodged from the airplane, accomplish the following:

(a) Accomplish the applicable requirements of paragraphs (a)(1) through (a)(11) of this AD at the time specified in each paragraph. If the waste drain system incorporates more than one type of valve, only one of the waste drain system leak test procedures (the one that applies to the equipment with the longest leak test interval) must be conducted at each service panel location. The waste drain system valve leak tests specified in this AD shall be performed in accordance with the following requirements: The toilet tank dump valve leak test must be performed by filling the toilet tank with water/rinsing fluid to fill the toilet tank to a level that submerges the toilet

tank dump valve seals with sufficient fluid to perform a valid test, and testing for leakage after a period of five minutes. For guidance, a minimum of 10 gallons is considered sufficient for a tank of 30 gallons or less capacity, and 20 gallons of fluid is considered sufficient for a tank with more than 30 gallons capacity. For tests of service panel drain valves, unless otherwise specified by this AD: Fluid shall completely cover the upstream end of the valve being tested; the direction of the 3 pounds per square inch differential pressure (PSID) shall be applied across the valve in the same direction as occurs in flight; the other waste drain system valves shall be open; and the minimum time to maintain the differential pressure shall be 5 minutes. As an alternative to the above test procedure for the service panel drain valves and in-line drain valves, a vacuum test may be done in accordance with Shaw Aero Devices Document ILS–193, Operation Instructions for the Waste Drain Valve Inner Flapper and Lavatory Rinse/Fill Valve Leak Test Tool, dated November 17, 1998, using a minimum of 3 PSID across the in-line drain valve or waste drains system service panel valve inner door for a period of 5 minutes. Any movement of the needle of the pressure gauge during the test period constitutes failure of the test. Other leak test tools may by used for this test if approved per paragraph (d) of this AD. Any revision of the seal change intervals or leak test intervals must be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(1) Replace the valve seals with new valve seals in accordance with the applicable schedule specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD. For purposes of determining seal replacement times specified in this AD: If a new valve is installed or a ''new airplane'' is delivered, it is considered that the new valve installation or airplane delivery constitutes the ''last documented seal change.'' A ''new airplane'' for the purposes of this AD is an airplane that has accumulated less than 100 total flight hours or 30 calendar days, whichever occurs later, since the issuance of the original airworthiness certificate.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278 or a Kaiser Electroprecision service panel ball valve, part number series 2651–357: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 48 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 48 months.

(ii) For each lavatory drain system that has a PneuDraulics part number series 9527 valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months of the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

(iii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months.

(2) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278: Within 6,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 6,000 flight hours, accomplish the procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The in-line drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(ii) If a service panel valve or cap is installed, perform a visual inspection of the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door with a second positive seal), and the seal mating surfaces for wear or damage that may allow leakage.

(3) For each lavatory drain system that has a service panel drain valve installed, PneuDraulics part number series 9527: Within 4,000 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD. Thereafter, repeat the leak tests at intervals not to exceed 4,000 flight hours.

(i) Conduct leak tests of the toilet tank dump valve and service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The leak test of the service panel drain valve must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(4) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 2651–357–(2) or higher –() (dash number): Within 2,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 2,000 flight hours, conduct a leak test of the toilet tank dump valve and service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(5) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0032 or Shaw Aero part number/serial number as listed in Table 1 of this AD: Within 1,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,500 flight hours, accomplish the requirements of paragraphs (a)(5)(i) and (a)(5)(ii) of this AD:

TABLE 1.—SHAW AERO VALVES APPROVED FOR 1,500 FLIGHT HOUR LEAK TEST INTERVAL

Shaw waste drain valve part number	Serial numbers of part number valve approved for 1,500 hour leak test interval
331 Series, 332 Series	All.
10101000B–A–1	0201 and higher.
10101000BA2	0130 and higher.
10101000C–A–1	0277 and higher.
10101000CN OR C–N	3649 and higher.
Certain 10101000B valves	Any of these ''B'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000B–38–1, dated October 7, 1994, and are marked ''SBB38–1–58''
Certain 10101000C valves	Any of these ''C'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000C-38–2 dated October 7, 1994, and are marked ''SBC38–2–58''.

Note 2: Table 1 is a list of approved Shaw valves that are eligible for a 1,500 hour leak test, including those valves approved by Parts Manufacturer Approval (PMA) or Supplemental Type Certificate (STC) for installation on Boeing Model 747 series airplanes that are subject to this AD.

(i) Conduct a leak test of the toilet tank dump valve and service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) For each valve, perform a visual inspection of the outer cap/door and seal mating surface for any wear or damage that may cause leakage.

(6) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0026; or Shaw Aero Devices part number series 10101000B or 10101000C [except as specified in paragraph (a)(4) of this AD]: Within 800 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 800 flight hours, accomplish the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(7) For each lavatory drain system with a lavatory drain system valve that incorporates either ''donut'' plug, Kaiser Electroprecision part number 4259–20 or 4259–31; Kaiser Roylyn/Kaiser Electroprecision cap/flange part numbers 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, 2651–286; Shaw Aero Devices assembly part number 0008–100; or other FAA-approved equivalent parts; accomplish the requirements of paragraphs (a)(7)(i), (a)(7)(ii), and (a)(7)(iii) of this AD at the times specified in those paragraphs. For the purposes of this paragraph [(a)(7)], ''FAA-approved equivalent part'' means either a ''donut'' plug which mates with the cap/flange part numbers listed above, or a cap/flange which mates with the ''donut'' plug part numbers listed above, such that the cap/flange and ''donut'' plug are used together as an assembled valve.

(i) Within 250 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 250 flight hours, conduct leak tests of the toilet tank dump valve and the service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve.

(ii) Perform a visual inspection of the outer door/cap and seal mating surface for wear or damage that may cause leakage. This inspection shall be accomplished in conjunction with the leak tests of paragraph (a)(7)(i).

(iii) Within 5,000 flight hours after the effective date of this AD, replace the donut valve [part numbers per paragraph (a)(7) of this AD] with another type of FAA-approved valve. Following installation of the replacement valve, perform the appropriate leak tests and seal replacements at the intervals specified for that replacement valve, as applicable.

(8) For each lavatory drain system not addressed in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) of this AD: Within 250 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 250 flight hours, accomplish the requirements of paragraphs (a)(8)(i) and (a)(8)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(9) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, perform the requirements of paragraph (a)(9)(i), (a)(9)(ii), (a)(9)(iii), or (a)(9)(iv) of this AD, as applicable. Thereafter, repeat the requirements at intervals not to exceed 5,000 flight hours, or 48 months after the last documented seal change, whichever occurs later. For the purpose of determining seal replacement times required by this AD: If a new valve has been installed or a new airplane has been delivered, the new valve installation or airplane delivery may be considered to constitute the ''last documented seal change.'' For the purposes of this AD, a ''new airplane'' is defined as an airplane that has accumulated less than 100 total flight hours or 30 calendar days, whichever occurs later, since the issuance of the original airworthiness certificate.

(i) If a lever lock cap is installed on the flush/fill line of the subject lavatory, replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Perform a leak test of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(10)(i) or (a)(10(ii), or (a)(10)(iii) of this AD, as applicable.

(ii) If a vacuum breaker check valve having Monogram part number series 4803–76 or 4803–96 is installed on the subject lavatory, prior to further flight, replace the seals/o-rings in the vacuum breaker check valve. Perform a leak test of the vacuum breaker check valve in accordance with paragraph (a)(10)(i) or (a)(10)(ii) of this AD, as applicable. Verify proper operation of the vent line vacuum breaker in accordance with paragraph (a)(10)(iii) of this AD.

(iii) If a flush/fill ball valve having Kaiser Electroprecision part number series 0062–0010 is installed on the flush/fill line of the subject lavatory, replace the seals in the flush/fill ball valve and the toilet tank anti-siphon valve. Perform a leak test of the toilet tank anti-siphon valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(10)(i) or (a)(10)(ii) of this AD, as applicable.

(iv) If a shut-off valve having Boeing Specification #SCD 60B50341 is installed on the flush/fill line of the subject lavatory, replace the seals in the shut-off valve. Perform a leak test of the shut-off valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(10)(ii) of this AD. At the time the test is performed, ground handling bus power must be removed from the shutoff valve and level sensor. This can be accomplished by de-energizing the ground handling bus completely (refer to Boeing Maintenance Manual 38–32–00/1 and 24–22–00/201 as an additional source of service information) or by removing ground handling bus supplied power to only the shutoff valve and waste level sensor. To remove ground handling bus supplied power to the shutoff valve and waste level sensor, open the ground service lavatory lights circuit breaker supplying 115V AC to the shutoff valve and the lavatory tank fill control circuit breaker supplying 28 V DC to the level sensor. These circuit breakers are located on panel P14 of Model 747–100, –200, –300 and SP airplanes, and on panel P414 of Model 747–400F series airplanes.

(10) Perform the tests specified in paragraph (a)(9) of this AD in accordance with the instructions of paragraph (a)(10)(i), (a)(10)(ii), or (a)(10)(iii) of this AD, as applicable.

(i) Leak test the toilet tank anti-siphon valve or the vacuum breaker check valve by filling the bowl above the toilet tank approximately half-full with water/rinsing fluid (at least 2 inches above the flapper in the bowl). Apply 3 PSID across the valve in the same direction as occurs in flight. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed or opened during the test. Test for leakage at the flush/fill line port for a period of 5 minutes.

Note 3: The leak test may be accomplished by pressurizing the airplane or by performing the leak test using Boeing vacuum test rig described in Boeing Maintenance Manual, 38–32–00/501, which is considered to be an additional source of service information for this test, if the toilet tank is filled to the level specified in paragraph (a)(10)(i) of this AD.

(ii) As an alternative to the leak tests of the flush/fill line valve specified in paragraph (a)(10)(i) of this AD, a vacuum test may be done using a minimum of 3 PSID across the anti-siphon valve, vacuum breaker valve, or shut-off valve in the flush/fill line for a period of 5 minutes, in accordance with Shaw Aero Devices Document ILS–193 (Operation Instructions for the waste Drain Valve Inner Flapper and Lavatory Rinse/Fill Valve Leak Test Tool) dated November 17, 1998. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed/open during the test. Any movement of the needle of the pressure gauge during the test period constitutes failure of the test and shall be considered evidence of leakage. Other leak test tools may by used for this test if approved in accordance with paragraph (d) of this AD.

(iii) Verify proper operation of the vent line vacuum breaker by filling the tank and testing at the fill line port for back drainage after disconnecting the fluid source from the flush/fill line port. As an alternative to the above test technique, verify proper operation of the vent line vacuum breaker in accordance with the procedures of the applicable component maintenance manual. If back drainage does not occur, prior to further flight, replace the vent line vacuum breaker or repair the vacuum breaker check valve in accordance with the appropriate component maintenance manual to obtain proper back drainage.

(11) If evidence of leakage or valve damage that may cause leakage is found during the leak tests and inspections required by paragraph (a) of this AD or at any other time: Accomplish the requirements of paragraph (a)(11)(i), (a)(11)(ii), or (a)(11)(iii) of this AD, as applicable.

(i) If any leakage is discovered, prior to further flight, perform the requirements of paragraphs (a)(11)(i)(A) and (a)(11)(i)(B) of this AD.

(A) Repair the leakage in accordance with the applicable component repair or maintenance manual.

(B) Perform the appropriate leak test, as specified in paragraph (a) of this AD; thoroughly clean the surfaces adjacent to any leakage to remove any horizontal fluid residue streaking. Cleaning must be to the extent that any future appearance of a horizontal fluid residue streak would indicate that the system is leaking.

Note 4: For purposes of this AD, ''leakage'' is defined as any visible leakage, if observed during a leak test. At any time other than during a leak test, ''leakage'' is defined as the presence of ice in the service panel, horizontal fluid residue streaks, or ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found and that wear or damage could result in a leak, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(11)(i) or (a)(11)(ii) of this AD: Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs are accomplished.

(b) For all airplanes: Unless accomplished previously, within 5,000 flight hours after the effective date of this AD, install one of the caps/valves specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD on each flush/fill line of all lavatories.

(1) Install an FAA-approved lever/lock cap on the flush/fill line. Or

(2) Install a flush/fill ball valve Kaiser Electroprecision part number series 0062–0010 on the flush/fill line. Or

(3) Install a vacuum breaker valve, Monogram part number series 4803–76 or 4803–96 on the flush/fill line. Or

(4) Install a shut-off valve, Boeing specification number 60B50341, on the flush/fill line.

(c) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak tests required by this AD shall be established in accordance with either paragraph (c)(1) or (c)(2) of this AD, as applicable. After each leak test has been performed once, each subsequent leak test must be performed according to the new operator's schedule, in accordance with paragraph (a) of this AD.

(1) For airplanes that have been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever results in the earlier accomplishment date for that leak test.

(2) For airplanes that have not been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished prior to further flight, or in accordance with a schedule approved by the FAA Principal Maintenance Inspector (PMI), but within a period not to exceed 250 flight hours.

(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, Seattle Aircraft Certification Office, Transport Airplane Directorate, Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(f) Except as provided in paragraph (a) of this AD, the vacuum leak tests of the service panel drain valves and in-line drain valves, and vacuum leak tests of the service panel drain valves and flush/fill line valves, if accomplished, shall be done in accordance with Shaw Aero Devices, Doc. ILS–193, Operation Instructions for the Waste Drain Valve Inner Flapper and Lavatory Rinse/Fill Valve Leak Test Tool, dated November 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 Shaw Aero Devices, Inc., 12291 Towne Lake Drive, Ft. Myers, Florida 33913. 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.

(g) This amendment becomes effective on May 17, 1999.

Issued in Renton, Washington, on April 1, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8686 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–175–AD; Amendment 39–11115; AD 99–08–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes, that currently requires a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes for correct alignment, and rework of the fitting surface and bolt replacement, if necessary. This amendment requires replacement of the MLG actuator fitting bolts with new, improved bolts. This amendment also revises the applicability of the existing AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the MLG actuator fitting bolts, which could result in the inability to retract the MLG and attain an adequate climb gradient.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–19–06,

amendment 39–6727 (55 FR 37457, September 12, 1990), which is applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes, was published in the **Federal Register** on August 13, 1998 (63 FR 43335). The action proposed to require replacement of the MLG actuator fitting bolts with new, improved bolts. The action also proposed to revise the applicability of the existing AD.

Comments Received

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

Request To Extend Compliance Time

One commenter requests that the compliance time for accomplishment of the replacement be extended from the proposed 7 months to 13 months after the date of its letter (August 20, 1998). The commenter states that such an extension would allow the replacement to be accomplished during a regularly scheduled ''heavy check'', and thereby eliminate any additional expenses that would be associated with special scheduling.

The FAA concurs that the compliance times can be extended somewhat. The FAA's intent was that the replacement be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenter, the FAA now recognizes that 10 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraph (a) of the final rule has been revised to reflect a compliance time of 10 months. The FAA does not consider that this extension will adversely affect safety. In addition, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request to Reference Latest Service Bulletin

One commenter requests that the proposed AD be revised to reference Revision 1 of Avions de Transport Regional Service Bulletin ATR42–53–0112, dated April 22, 1998. The commenter states that Revision 1 clarifies the instructions for the replacement and description of the work to be accomplished. The FAA concurs. Since issuance of the NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has approved and the FAA has reviewed Revision 1 of the subject service bulletin. The FAA finds that the replacement procedures specified in Revision 1 are essentially identical to those described in the original version of the service bulletin (which was referenced in the proposed AD as the appropriate source of service information for accomplishment of the replacement). Therefore, the FAA has revised paragraph (a) of the final rule to include Revision 1 of the subject 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 79 airplanes of U.S. registry that will be affected by this AD.

The new replacement that is required in this AD action will take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the cost impact of the required replacement of this AD on U.S. operators is estimated to be $76,630, or $970 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 removing amendment 39–6727 (55 FR 37457, September 12, 1990), and by adding a new airworthiness directive (AD), amendment 39–11115, to read as follows:

99–08–09 Aerospatiale: Amendment 39–11115. Docket 98–NM–175–AD. Supersedes AD 90–19–06, Amendment 39–6727.

Applicability: Model ATR42–200, –300 –320, and –500 series airplanes; except for airplanes on which either Aerospatiale Modification 4052 or Avions de Transport Regional Service Bulletin ATR42–53–0097, dated November 7, 1997, or Revision 1, dated January 20, 1997, has been accomplished; certificated in any category.

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

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) actuator fitting bolts, which could result in the inability to retract the MLG and attain an adequate climb gradient, accomplish the following:

Required Replacement

(a) Within 10 months after the effective date of this AD, replace the MLG actuator fitting bolts with new, improved bolts in accordance with Avions de Transport Regional Service Bulletin ATR42–53–0112, dated January 20, 1998, or Revision 1, dated April 22, 1998.

Alternative Methods of Compliance

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

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

Special Flight Permits

(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.

Incorporation by Reference

(d) The replacement shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–53–0112, dated January 20, 1998, or Avions de Transport Regional Service Bulletin ATR42–53–0112, Revision 1, dated April 22, 1998, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1, 9–11, 14, 16, 19	1	April 22, 1998.
2–8, 12, 13, 15, 17, 18	Original	January 20, 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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–115–070(B)R1, dated February 11, 1998.

(e) This amendment becomes effective on May 17, 1999.

Issued in Renton, Washington, on April 1, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8689 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–292–AD; Amendment 39–11125; AD 99–08–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires replacement of the auxiliary power unit (APU) fuel boost pump with a serviceable pump. This amendment is prompted by findings from a design review and analysis, conducted as part of an accident investigation, of APU fuel boost pumps installed on certain Boeing Model 747 series airplanes. The actions specified in this AD are intended to prevent potential failures within the electrical motor assembly of the APU fuel boost pump (which could result in leakage of fuel from the electrical connector) or electrical arcing across the connector pins of the pump, and consequent fuel fire.

DATES: Effective April 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–292–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: As part of the accident investigation into the TWA Flight 800 accident of July 1996, the FAA participated in an engineering design review and analysis of the electrical connectors of Lear Romec auxiliary power unit (APU) fuel boost pumps. It has been determined that the Lear Romec component maintenance manual specifies an incorrect part number for that connector. Electrical connectors of Lear Romec APU fuel boost pumps incorporate a silicone insulating material. The results of that review and analysis indicate that contact with fuel can deteriorate the silicone insulating material in the electrical connectors during normal APU operation, due to the silicone material's incompatibility with fuel. Damage to the electrical connectors could cause failures within the electrical motor assembly of the APU fuel boost pump, which is located at the left-hand rear spar-to-landing-gear support beam. Such failures of the APU fuel boost pump could result in fuel leakage from the electrical connector, or the possibility of electrical arcing across the connector pins of the pump, and, if not corrected, could result in a fuel fire.

Other Relevant Rulemaking

On November 26, 1997, the FAA issued AD 97–25–06, amendment 39–10230 (62 FR 63622, December 1, 1997).

[A correction of the rule was published in the **Federal Register** on January 2, 1998 (63 FR 4).] That AD required disconnection of the electrical connector to the scavenge pump of the center wing tank; a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary. The intent of that AD is to prevent potential failures within the electrical motor assembly of the scavenge pump on certain Boeing Model 747 series airplanes; such failures could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor, and consequent fuel fire in the wheel well.

Since the issuance of AD 97–25–06, the FAA received a report of damage to the internal wiring of a scavenge pump. The connector of that scavenge pump had been replaced with a Lear Romec-supplied connector, in accordance with the requirements of AD 97–25–06. AD 97–25–06 was superseded by AD 98–14–17, amendment 39–10650 (63 FR 36836, July 8, 1998), to require a one-time inspection to identify the scavenge pump motor-impeller unit and to require replacement of a certain Lear Romec pump.

Certain electrical connectors on APU fuel boost pumps manufactured by Lear Romec incorporate the same silicone insulating material as that used on those scavenge pump connectors. The unsafe condition and its cause, as identified in AD 98–14–17, are similar to those addressed in this amendment.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–28A2209, Revision 1, dated February 18, 1999, which describes procedures for a one-time visual inspection to identify the part number of the APU fuel boost pump. The service bulletin also describes procedures for replacement of any Lear Romec APU boost pump having an unacceptable part number, and provides two choices for the replacement pump: a pump that has been reworked, or a pump that has been manufactured by another supplier. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition, except as described below.

Differences Between AD and Relevant Service Information

The effectivity of the service bulletin specifies certain line positions. The applicability of this AD is further limited to those airplanes installed with certain boost pumps. (The only action required by this AD is the replacement of those boost pumps.)

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent potential failures within the electrical motor assembly of the APU fuel boost pump, which could result in leakage of fuel from the electrical connector, or electrical arcing across the connector pins of the pump, and consequent fuel fire. This AD requires accomplishment of the actions specified in Boeing Service Bulletin 747–28A2209, Revision 1.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–292–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

99–08–19 BOEING: Amendment 39–11125. Docket 98–NM–292–AD.

Applicability: Model 747 series airplanes, line positions 001 through 1150 inclusive; equipped with an auxiliary power unit (APU) fuel boost pump manufactured by Lear Romec and having Lear Romec part number (P/N) RR24640B; 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 potential failures within the electrical motor assembly of the APU fuel boost pump, which could result in fuel leakage from the electrical connector, or electrical arcing across the connector pins of the pump, and consequent fuel fire, accomplish the following:

(a) Within 90 days after the effective date of this AD, replace the APU fuel boost pump as specified by either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing Service Bulletin 747–28A2209, Revision 1, dated February 18, 1999.

(1) Replace the pump with a pump that has been reworked in accordance with the service bulletin. Or

(2) Replace the pump with an FAA-approved pump manufactured by a supplier other than Lear Romec, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane an APU fuel boost pump having Lear Romec P/N RR24640B.

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

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

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

(e) The replacement shall be done in accordance with Boeing Service Bulletin 747–28A2209, Revision 1, dated February 18, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 27, 1999.

Issued in Renton, Washington, on April 5, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8957 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29520; Amdt. No. 1923]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420, Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies

the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 2, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN;§ 97.25 LOC, LOC/DME, LDA, LDA/DME,SDF,SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . .Effective May 20, 1999

Bakersfield, CA, Meadows Field, GPS RWY 30R, Orig
Hanford, CA, Hanford Muni, GPS RWY 32, Amdt 1
Oakdale, CA, Oakdale, GPS RWY 10, Orig
Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 27L, Amdt 11
Oakland, CA, Metropolitan Oakland Intl, ILS RWY 27R, Amdt 32
Oakland, CA, Metropolitan Oakland Intl, NDB RWY 27R, Amdt 5
Oakland, CA, Metropolitan Oakland Intl, GPS RWY 27L, Orig
Oroville, CA, Oroville Muni, VOR OR GPS–A, Amdt 6
Oroville, CA, Oroville Muni, NDB RWY 1, Amdt 3
Oroville, CA, Oroville Muni, GPS RWY 1, Orig
Grand Junction, CO, Walker Field, GPS RWY 29, Orig
Kissimmee, FL, Kissimmee Muni, VOR/DME OR GPS–A, Amdt 7B, CANCELLED
Kissimmee, FL, Kissimmee Muni, NDB RWY 15, Amdt 9B, CANCELLED
Kissimmee, FL, Kissimmee Muni, VOR/DME OR GPS RWY 15, Amdt 5A, CANCELLED
Orlando, FL, Kissimmee Muni, VOR/DME OR GPS–A, Orig
Orlando, FL, Kissimmee Muni, NDB RWY 15, Orig
Orlando, FL, Kissimmee Muni, GPS RWY 6, Orig
Orlando, FL, Kissimmee Muni, GPS RWY 15, Orig
Orlando, FL, Kissimmee Muni, GPW RWY 33, Orig
Nashville, GA, Berrien County, RADAR–1, Amdt 1, CANCELLED
Belleville, IL, Scott AFB/Midamerica, ILS RWY 14R, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, ILS RWY 32L, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, NDB RWY 32L, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, GPS RWY 14 R, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, GPW RWY 32L, Orig, CANCELLED
Chicago/Romeoville, IL, Lewis University, GPS RWY 9, Orig
Chicago/Romeoville, IL, Lewis University, GPS RWY 27, Amdt 2
Huntington, IN, Huntington Muni, VOR/DME–A, Orig
Terre Haute, IN, Sky King, VOR–B, Orig
Ankeny, IA, Ankeny Regional, GPS RWY 36, Amdt 1
Rock Rapids, IA, Rock Rapids Muni, NDG RWY 16, Amdt 2
Rock Rapids, IA, Rock Rapids Muni, GPS RWY 16, Orig
Rock Rapids, IA, Rock Rapids Muni, GPS RWY 34, Orig
Baton Rouge, LA, Baton Rouge Metropolitan/Ryan Field, RADAR–1, Amdt 10
Lake Charles, LA, Chennault Intl, VOR OR GPS RWY 33L, Amdt 3
Lake Charles, LA, Chennault Intl, ILS RWY 15R, Amdt 4
Lake Charles, LA, Chennault Intl, RADAR–1, Amdt 1
Duluth, MN, Duluth Intl, GPS RWY 21, Orig
International Falls, MN, Falls Intl, VOR OR GPS RWY 13, Amdt 13
International Falls, MN, Falls Intl, VOR RWY 31, Amdt 15
International Falls, MN, Falls Intl, VOR/DME OR TACAN RWY 31, Amdt 4
International Falls, MN, Falls Intl, LOC BC RWY 13, Amdt 9
International Falls, MN, Falls Intl, NDB OR GPS RWY 31, Amdt 8
International Falls, MN, Falls Intl, ILS RWY 31, Amdt 8
Little Falls, MN, Little Falls-Morrison County, NDB RWY 30, Amdt 6
Little Falls, MN, Little Falls-Morrison County, GPS RWY 30, Orig
Jackson, MS, Jackson Intl, GPS RWY 16L, Orig
Jackson, MS, Jackson Intl, GPS RWY 16R, Orig
Jackson, MS, Jackson Intl, GPS RWY 34L, Orig
Jackson, MS, Jackson Intl, GPS RWY 34R, Orig
Fort Leonard Wood, MO, Waynesville Regional Airport at Forney Field, NDB/DME RWY 14, Amdt 1
Lexington, NC, Davidson County, VOR/DME OR GPS RWY 8, Amdt 6, CANCELLED
Lexington, NC, Davidson County, NDB RWY 8, Amdt 5, CANCELLED
Lexington, NC, Davidson County, VOR OR GPS–A, Amdt 4A, CANCELLED
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 23L, Amdt 17
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV OR GPS RWY 10, Amdt 12
Columbus, OH, Ohio State University, GPS RWY 27L, Amdt 1
Hartsville, SC, Hartsville Muni, GPS RWY 3, Orig
Hartsville, SC, Hartsville Muni, GPS RWY 21, Orig
Walterboro, SC, Waterboro Muni, GPS RWY 5, Orig

Walterboro, SC, Walterboro Muni, GPS RWY 17, Orig
Walterboro, SC, Walterboro Muni, GPS RWY 23, Orig
Walterboro, SC, Walterboro Muni, GPS RWY 35, Orig
Midland, TX, Midland Intl, VOR/DME RNAV RWY 16R, Amdt 3
Midland, TX, Midland Intl, VOR/DME RNAV RWY 34L, Amdt 2
Midland, TX, Midland Intl, GPS RWY 16R, Orig
Midland, TX, Midland Intl, GPS RWY 34L, Orig
Midland, TX, Midland Intl, RADAR–1, Amdt 5
Portage, WI, Portage Muni, VOR/DME OR GPS–A, Amdt 6
Portage, WI, Portage Muni, VOR/DME RNAV OR GPS RWY 17, Amdt 4

...*Effective 15 July 1999*

Decatur, AL, Pryor Field Regional, GPS RWY 18, Orig
Griffin, GA, Griffin-Spalding County, GPS RWY 14, Orig
Griffin, GA, Griffin-Spalding County, GPS RWY 32, Orig
Murray, KY, Kyle-Oakley Field, GPS RWY 5, Amdt 1
Murray, KY, Kyle-Oakley Field, GPS RWY 23, Amdt 1

Note: The FAA published the following amendments in Docket No. 29487, Amdt No. 1919 to Part 97 of the Federal Aviation Regulations (64 FR 13336, dated Thursday, March 18, 1999), under sections 97.23; 97.27; 97.29 and 97.33 effective May 20, 1999, which are hereby changed to read as follows:

Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, VOR RWY 26, Amdt 3
Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, NDB RWY 26, Amdt 3
Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, ILS RWY 26, Amdt 2
Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, GPS RWY 26, Orig

[FR Doc. 99–8917 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29522; Amdt. No. 1925]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS OR FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or GMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and

contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washinton, DC on April 2, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

...Effective May 20, 1999

Bettles, AK, NBD OR GPS–A, Amdt 8 CANCELLED
Bettles, AK, NDB–A, Amdt 8
Cold Bay, AK, Cold Bay, VOR/DME OR TACAN OR GPS–A, Orig-A CANCELLED
Cold Bay, AK, Cold Bay, VOR/DME OR TACAN–A, Orig-A
Dead Horse, AK, NDB OR GPS–A, Amdt 2A, CANCELLED
Dead Horse, AK, NDB–A, Amdt 2A
Kenai, AK, Kenai Muni, NDB OR GPS–A, Amdt 3, CANCELLED
Kenai, AK, Kenai Muni, NDB–A, Amdt 3
King Salmon, AK, King Salmon, VOR OR TACAN OR GPS RWY 11, Amdt 11, CANCELLED
King Salmon, AK, King Salmon, VOR OR TACAN RWY 11, Amdt 11
King Salmon, AK, King Salmon, VOR OR TACAN OR GPS RWY 29 Amdt 8, CANCELLED
King Salmon, AK, King Salmon, VOR OR TACAN RWY 29, Amdt 8
Kotzebue, AK, Kotzebue/Ralph Wien Memorial, NDB OR GPS–A, Orig, CANCELLED
Kotzebue, AK, Kotzebue/Ralph Wien Memorial, NDB–A, Orig
Port Heiden, AK, Port Heiden, NBD/DME OR GPS RWY 5, Amdt 1 CANCELLED
Port Heiden, AK, Port Heiden, NBD/DME RWY 5, Amdt 1
Port Heiden, AK, Port Heiden, NBD/DME OR GPS RWY 13, Amdt 1 CANCELLED
Port Heiden, AK, Port Heiden, NBD/DME RWY 13, Amdt 1
Talkeetna, AK, Talkeetna, VOR OR GPS–A, Amdt 9A, CANCELLED
Talkeetna, AK, Talkeetna, VOR–A, Amdt 9A
Bakersfield, CA, Meadows Field, VOR OR GPS RWY 30R, Amdt 7, CANCELLED
Bakersfield, CA, Meadows Field, VOR RWY 30R, Amdt 7
Crescent City, CA, Jack McNamara Field, VOR/DME OR GPS RWY 11, Amdt 12, CANCELLED
Crescent City, CA, Jack McNamara Field, VOR/DME RWY 11, Amdt 12
Crescent City, CA, Jack McNamara Field, VOR/DME OR GPS RWY 35, Amdt 10, CANCELLED
Crescent City, CA, Jack McNamara Field, VOR/DME RWY 35, Amdt 10
Oakdale, CA, Oakdale, VOR OR GPS RWY 10, Amdt 5B, CANCELLED
Oakdale, CA, Oakdale, VOR RWY 10, Amdt 5B
Oakland, CA, Metropolitan Oakland Intl, VOR/DME or GPS RWY 27L, Amdt 10A, CANCELLED
Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 27L, Amdt 10A
Oroville, CA, Oroville Muni, NDB OR GPS RWY 1, Amdt 2A CANCELLED
Oroville, CA, Oroville Muni, NDG RWY 1, Amdt 2A
Zephyrhills, FL, Zephyrhills Muni, NDB OR GPS RWY 4, Orig, CANCELLED
Zephyrhills, FL, Zephyrhills Muni, NDB RWY 4, Orig
Denison, IA, Denison Muni, NDB OR GPS RWY 30, Amdt 4A, CANCELLED
Denison, IA, Denison Muni, NDB RWY 30, Amdt 4A
Maquoketa, IA, Maquoketa Muni, NBD OR GPS RWY 15, Amdt 2B CANCELLED
Maquoketa, IA, Maquoketa Muni, NBD RWY 15, Amdt 2B
Rock Rapids, IA, Rock Rapids Muni, NBD OR GPS RWY 16, Amdt 1, CANCELLED
Rock Rapids, IA, Rock Rapids Muni, NBD RWY 16, Amdt 1
Chicago/Romeoville, IL, Lewis University, VOR OR GPS RWY 9, Amdt 1, CANCELLED
Chicago/Romeoville, IL, Lewis University, VOR RWY 9, Amdt 1
Little Falls, MN, Little Falls-Morrison County, NBD OR GPS RWY 30, Amdt 5, CANCELLED
Little Falls, MN, Little Falls-Morrison County, NBD RWY 30, Amdt 5
Jackson, MS, Jackson Intl, NDB OR GPS RWY 16L, Amdt 4A, CANCELLED
Jackson, MS, Jackson Intl, NDB RWY 16L, Amdt 4A
Roxboro, NC, Roxboro/Person County, NBD OR GPS RWY 6, Amdt 3, CANCELLED
Roxboro, NC, Roxboro/Person County, NBD RWY 6, Amdt 3
Bartlesville, OK, Bartlesville Muni, VOR OR GPS RWY 17, Amdt 10, CANCELLED
Bartlesville, OK, Bartlesville Muni, VOR RWY 17, Amdt 10
Bartlesville, OK, Bartlesville Muni, VOR/DME OR GPS RWY 35, Amdt 5, CANCELLED
Bartlesville, OK, Bartlesville Muni, VOR/DME RWY 35, Amdt 5
Clinton, OK, Clinton-Sherman, VOR OR GPS RWY 35L, Amdt 11A, CANCELLED
Clinton, OK, Clinton-Sherman, VOR RWY 35L, Amdt 11A
Columbia, SC, Columbia Metropolitan, VOR/DME RNAV OR GPS RWY 5, Orig-B, CANCELLED
Columbia, SC, Columbia Metropolitan, VOR/DME RNAV RWY 5, Orig-B
Walterboro, SC, Walterboro Muni, NDB OR GPS RWY 23, Amdt 11A, CANCELLED
Walterboro, SC, Walterboro Muni, NDB RWY 23, Amdt 11A
College Station, TX, College Station Easterwood Field, VOR OR TACAN OR GPS RWY 10, Amdt 18A, CANCELLED
College Station, TX, College Station Easterwood Field, VOR OR TACAN RWY 10, Amdt 18A
College Station, TX, College Station Easterwood Field, NDB OR GPS RWY 34, Amdt 11B, CANCELLED
College Station, TX, College Station Easterwood Field, NDB RWY 34, Amdt 11B
Wise, VA, Lonesome Pine, VOR/DME RNAV OR GPS RWY 24, Amdt 2, CANCELLED
Wise, VA, Lonesome Pine, VOR/DME RNAV RWY 24, Amdt 2
Casper, WY, Natrona County Intl, VOR/DME OR GPS RWY 3, Amdt 3, CANCELLED
Casper, WY, Natrona County Intl, VOR/DME RWY 3, Amdt 3

[FR Doc. 99–8918 Filed 4–9–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 12

[T.D. 99—35]

RIN 1515—AC46

Import Restrictions Imposed On Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by imposing emergency import restrictions on certain ecclesiastical and ritual ethnological

material from Cyprus representing the Byzantine period, ranging in date from approximately the 4th century A.D. through approximately the 15th century A.D. These restrictions are being imposed pursuant to a determination of the United States Information Agency issued under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document contains the Designated List describing the Byzantine ecclesiastical and ritual ethnological material from Cyprus to which the restrictions apply.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Donnette Rimmer, Intellectual Property Rights Branch (202) 927–2273; (Operational Aspects) Joan E. Sebenaler, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub. L. 97–446, 19 U.S.C. 2601 et seq.) (''the Act''). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and to achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed either as a result of requests for emergency protection received from those nations or pursuant to bilateral agreements between the United States and other countries.

This document amends the regulations by adding additional ethnological artifacts to the list of articles for which importation restrictions exist.

Cyprus

Under § 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), Cyprus, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose import restrictions on certain categories of archeological and/or ethnological material the pillage of which, it was alleged, jeopardizes the national cultural patrimony of Cyprus. Notice of receipt of this request was published by the United States Information Agency (USIA) in the **Federal Register** (63 FR 49154) on September 14, 1998.

The request was forwarded to the Cultural Property Advisory Committee, which conducted a review and investigation and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Deputy Director, USIA. Pursuant to the provisions of 19 U.S.C. 2603(a)(3), the Committee found the situation in Cyprus to be an emergency, and recommended that emergency import restrictions be imposed on certain Byzantine ritual and ecclesiastical ethnological material from Cyprus. The Deputy Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 86–3, considered the Committee's recommendations and on March 4, 1999, the Acting Director made the determination that emergency import restrictions be applied.

The Commissioner of Customs, in consultation with the Acting Director of the USIA, has developed a list of types of covered ritual and ecclesiastical ethnological material from Cyprus representing the Byzantine period. The materials on this list are subject to § 12.104a(b), Customs Regulations (19 CFR 12.104a(b)). As provided in 19 U.S.C. 2601 *et seq.*, and § 12.104a(b), Customs Regulations, listed materials from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Cyprus legally and not in violation of the laws of Cyprus.

In the event an importer cannot produce the certificate, documentation, or other evidence required by § 12.104c, Customs Regulations (19 CFR 12.104c) at the time of making entry, § 12.104d, Customs Regulations (19 CFR 12.104d) provides that the port director shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of Part 162, Customs Regulations (19 CFR Part 162).

List of Ecclesiastical and Ritual Ethnological Material from Cyprus Representing the Byzantine Period

Ecclesiastical and ritual ethnological material from Cyprus representing the Byzantine period dating from approximately the 4th century A.D. through the 15th century A.D., includes the categories listed below. The following list is representative only.

I. Metal

A. Bronze

Ceremonial objects include crosses, censers (incense burners), rings, and buckles for ecclesiastical garments. The objects may be decorated with engraved or modeled designs or Greek inscriptions. Crosses, rings and buckles are often set with semi-precious stones.

B. Lead

Lead objects date to the Byzantine period and include ampulla (small bottle-shaped forms) used in religious observance.

C. Silver and Gold

Ceremonial vessels and objects used in ritual and as components of church treasure. Ceremonial objects include censers (incense burners), book covers, liturgical crosses, archbishop's crowns, buckles, and chests. These are often decorated with molded or incised geometric motifs or scenes from the Bible, and encrusted with semi-precious

or precious stones. The gems themselves may be engraved with religious figures or inscriptions. Church treasure may include all of the above, as well as rings, earrings, and necklaces (some decorated with ecclesiastical themes) and other implements (e.g., spoons).

II. Wood

Artifacts made of wood are primarily those intended for ritual or ecclesiastical use during the Byzantine period. These include painted icons, painted wood screens (iconstasis), carved doors, crosses, painted wooded beams from churches or monasteries, thrones, chests and musical instruments. Religious figures (Christ, the Apostles, the Virgin, and others) predominate in the painted and carved figural decoration. Ecclesiastical furniture and architectural elements may also be decorated with geometric or floral designs.

III. Ivory and Bone

Ecclesiastical and ritual objects of ivory and bone boxes, plaques, pendants, candelabra, stamp rings, crosses. Carved and engraved decoration includes religious figures, scenes from the Bible, and floral and geometric designs.

IV. Glass

Ecclesiastical objects such as lamps and ritual vessels.

V. Textiles—Ritual Garments

Ecclesiastical garments and other ritual textiles from the Byzantine period. Robes, vestments and altar clothes are often of a fine fabric and richly embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

VI. Stone

A. Wall Mosaics

Dating to the Byzantine period, wall mosaics are found in ecclesiastical buildings. These generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding panels may contain animal, floral, or geometric designs.

B. Floor Mosaics

Floor mosaics from ecclesiastical contexts. Examples include the mosaics at Nea Paphos, Kourion, Kouklia, Chrysopolitissa Basilica and Campanopetra Basilica. Floor mosaics may have animal, floral, geometric designs, or inscriptions.

VII. Frescoes/Wall Paintings

Wall paintings from the Byzantine period religious structures (churches, monasteries, chapels, etc.) Like the mosaics, wall paintings generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding paintings may contain animal, floral, or geometric designs.

Inapplicability of Notice and Delayed Effective Date

This amendment is being made without notice or public procedure, pursuant to 5 U.S.C. 553(b)(B), because the action being taken is of an emergency nature and such notice or public procedure would be impracticable and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in E.O. 12866.

Drafting Information

The principal author of this document was Keith B. Rudich, Esq., Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g(b) the list of emergency actions imposing import restrictions on described articles of cultural property of State Parties is amended by adding Cyprus in appropriate alphabetical order as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

* * * * *

(b) * * *

State party	Cultural property	T.D. number
* * *	* * *	*
Cyprus	Byzantine ecclesiastical and ritual ethnological materials from Cyprus.	99–35

Approved: March 30, 1999.

Raymond W. Kelly,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–8992 Filed 4–9–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Parts 121, 123, 124 and 126

[Public Notice 3026]

Amendments to the International Traffic In Arms Regulations

AGENCY: Bureau of Political-Military Affairs, State.

ACTION: Final rule.

SUMMARY: The President of the United States at the 1998 Summit of the Americas in Santiago, Chile, discussed with the Summit leaders the importance of strengthening protections against the new transnational threats facing the region, including the production, distribution, and abuse of narcotics,

illegal arms trafficking and terrorism. To combat these threats and to strengthen the hemisphere's common security, the President agreed to implement model regulations on commercial arms transfers. In furtherance of this objective, the Secretaries of State, Commerce and Treasury are directed to implement the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition (''Model Regulations''). In responding to the President's directive, the ITAR was reviewed and it was determined that the predominant sections requiring change are the US Munitions List (USML), the Canadian exemption, and the personal use exemption for firearms and ammunition. Review of the Canadian exemption resulted in removal of the exemption for several USML items, including all Category I firearms and Category III ammunition for the firearms in Category I. It was also determined that the language should be revised to seek better understanding and compliance by US exporters of the current requirements of the ITAR and AECA when using the existing exemption: specifically, those of Part 123 dealing with reexport or retransfer, and congressional notifications, and of Part 124 that any production of a USML article in Canada requires prior written approval in accordance with Part 124 of the ITAR. In carrying out these initiatives, §§ 121.1, 121.9, 123.17, 124.13 and 126.5 of the International Traffic in Arms Regulations (ITAR) are being amended.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Deputy Director Licensing, Office of Defense Trade Controls, Department of State, Phone (703) 812–2568 or Fax (703) 875–6647.

SUPPLEMENTARY INFORMATION: This amendment, in addition to responding to the President's directive on implementing the ''Model Regulations,'' requires a license for additional critical military technologies identified on the USML and provides specific regulatory references to ensure proper compliance is exercised over the export of all items covered by the USML. The amendments also enhance State's ability to more efficiently, accurately and factually respond to inquiries from the Congress. In addition, compliance with the regulations will be enhanced, since the amendment benefits U.S. Customs in its efforts to carry out enforcement activities related to illegal exports. Recent escalation in defense companies' voluntary disclosures, discussions with the Canadian Government and the use of the Canadian exemption by unregistered companies provides evidence that unauthorized exports are taking place both from the US and by Canadian persons in possession of US defense articles and defense services. Therefore, revising the current ITAR language will assist in preventing future violations by companies participating in the export, directly or indirectly, of U.S. defense articles or defense services to unauthorized end-users and end-uses. Also, the lack of a license for transactions currently authorized under § 126.5 has eliminated documentation, made impossible USG review of significant transactions and increased the difficulty to track, interdict or verify the end-use and end-user violations. Therefore, § 126.5 has been amended to assist U.S. industry by providing a better understanding of when a license is required, when the exemption can be utilized, and the criteria for use of the exemption. These changes are being made in consultation with the Government of Canada in order to reduce the risks of illegal trafficking. To ensure the efficacy of this amendment in enhancing compliance with the ITAR and the AECA, further review will be conducted during the next several months to determine whether additional steps are necessary to ensure that the USG is, in all instances, able to enforce the defense export control mandates established in the law.

To carry out the President's Directive, ITAR § 121.1, Category I, Firearms, is amended to move firearms spare parts and accessories from paragraph (a) to paragraph (d) and to move technical data and defense services currently in paragraph (d) to a new paragraph (e). In addition, incorrect cites in paragraph (a) are being corrected. Also, § 121.9 is amended to exclude from the USML certain types of accessories and attachments for firearms. § 123.17 (a) is amended to reduce the value of the parts and components that may be shipped subject to this exemption from $500 to $100. This change maintains the original intent behind the exemption, which was to provide an expeditious manner for exporters to replace minor parts (e.g. springs, nuts) damaged during the initial shipment, while maintaining controls necessary to implement the ''Model Regulations.'' In addition, ITAR § 124.13 is amended to require a license for the export of all technical data exported for use in the manufacture of defense articles. Also being amended is § 126.5 of the ITAR. The amendment expands the defense articles and related technical data that are not exempt from licensing to include all Category I firearms and Category III ammunition for such firearms and certain defense articles and related technical data defined in categories IV, XIII, XIV, and XV of the USML. Therefore, the exemption does not apply to the following defense articles, defense services and related technical data for the following items:

(1) Category I—Firearms;

(2) Category III ammunition for the firearms in Category I; and

(3) Category IV (a), (b), (c), (d), (f) and (g)—Launch Vehicles, Guided Missiles, Ballistic Missiles, and Rockets. (This does not include bombs, grenades, torpedoes, depth charges, land and naval mines in IV (a); components, parts, accessories and attachments in IV(h); and related technical data for these items covered by Part 125.); and

(4) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(5) Naval nuclear propulsion equipment listed in Category VI(e); and

(6) Aircraft listed in Category VIII(a); and

(7) Category XIII(b) and XIII(j) (e.g. stealth); and

(8) Toxicological Agents and Equipment and Radiological Equipment listed in Category XIV(a) through (d); and

(9) Spacecraft, Remote Sensing Satellites, and Military Communications Satellites listed in Category XV(a), (b), and (c); and

(10) Nuclear Weapons Design and Test Equipment listed in Category XVI; and

(11) All Classified Articles, Technical Data and Defense Services, including Category XVII; and

(12) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d); and

(13) All USML items and related technical data identified on the Missile Technology Control Regime (MTCR) Annex.

The amendment also states the regulatory sections of the ITAR that must be complied with when using the exemption.

In addition to amending the ITAR, to fully implement the ''Model Regulations,'' the Office of Defense Trade Controls has modified its firearms licensing practices. All requests for a license or other approval to export firearms and/or ammunition must be accompanied with a firm order. A letter of intent will no longer be accepted for any firearms and/or ammunition request. An import authorization or a certification that the importing country does not issue import authorizations must also accompany all requests. DTC will continue the policy to require a Form DSP–83 (Nontransfer and Use Certificate) for any application for a quantity of 50 or more firearms. Any request that does not have the required documentation will be subject to being Returned Without Action (RWA).

However, in implementing the ''Model Regulations,'' any request for authorization to export to an OAS member country will be immediately RWA'd if the request does not include an import authorization. Any request for relief from this requirement will be denied. The current OAS member states that have agreed to the ''Model Regulations'' are: Antigua and Barbuda, Argentina, The Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

This change in licensing practices does not affect any change in any country's status as an ITAR § 126.1 proscribed destination. Also, the validity period of any license for the export of firearms and ammunition will be adjusted from the four-year period stated in § 123.21 of the ITAR to reflect a time period consistent with the validity period of the import authorization. Applicants may continue to use valid licenses or other approvals until all the authorized material has been exported or until the license has expired, unless otherwise advised by the Office of Defense Trade Controls. Any exporter that has used an exemption that no longer exists in the ITAR, for an activity that will continue following this publication, has 30 days from publication of this notice to apply for a license or other approval. Any previously exempted activity for which a license or other approval has not been submitted within 30 days and assigned a DTC case number must cease or the U.S. person will be considered to be in violation of the AECA and the ITAR.

This amendment involves a foreign affairs function of the United States and, thus, is excluded from the procedures of Executive Order 12866 (68 FR 51735) and 5 U.S.C. 533 and 554, but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (the ''Act''). Interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Room 200, SA–6, Washington, D.C. 20520–0602.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 121, 123, 124 and 126 are being amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1077 Comp., p. 79; 22 U.S.C. 2658.

2. In § 121.1 Category I—Firearms is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category I—Firearms

*(a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive. (See § 121.9 and §§ 123.17 and 123.18 of this subchapter.)

(b) Riflescopes manufactured to military specifications; firearm silencers and suppressers, including flash suppressors. (See Category XII(c) for night sighting devices.)

*(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber.

*(d) Components, parts, accessories and attachments for the articles in paragraphs (a) through (c) of this category. All the components, parts, accessories and attachments covered by this paragraph, except barrels, cylinders, receivers (frames) or complete breach mechanisms, are non-SME (see § 120.7).

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

3. Section 121.9 is amended by revising paragraph (a) to read as follows:

§ 121.9 Firearms.

(a) Category I includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to .50 inclusive. It includes combat shotguns. It excludes other shotguns with barrels 18″ or longer, BB, pellet, and muzzle loading (black powder) firearms. It also excludes accessories and attachments for firearms that do not enhance the usefulness, effectiveness, or capabilities of the firearm, its components and parts (e.g. belts, slings, after market rubber grips, cleaning kits).

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp., p. 79; 22 U.S.C. 2658.

4a. Section 123.4 is amended by revising paragraph (a) to read as follows:

§ 123.4 Temporary import license exemptions.

(a) District Directors of Customs shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years, of unclassified U.S.-origin defense items (including any items manufactured abroad pursuant to U.S. Government approval) if the item temporarily imported:

(1) Is serviced (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modifications, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another item which has already been authorized by the Office of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of the Treasury and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (LOA).

* * * * *

5. Section 123.15 is amended by revising paragraph (b) to read as follows:

§ 123.15 Congressional notification for licenses.

(a) * * *

(b) Persons who intend to export defense articles and defense services

pursuant to any exemption in this subchapter under the circumstances described in the first sentence of paragraph (a) of this section must notify the Office of Defense Trade Controls by letter of the intended export and, prior to transmittal to Congress, provide a signed contract and a DSP–83 signed by the applicant, the foreign consignee and end-user.

6. Section 123.17 is amended by revising paragraph (a) to read as follows:

§ 123.17 Exports of firearms and ammunition.

(a) Except as provided in § 126.1 of this subchapter, District Directors of Customs shall permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms when the total value does not exceed $100 wholesale in any transaction.

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

7. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp., p. 79; 22 U.S.C. 2658.

9. Section 124.13 is amended by revising paragraph (e) to read as follows:

§ 124.13 Procurement by United States persons in foreign countries (offshore procurement).

* * * * *

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to be extended beyond the period of validity of the original approved license. In all instances a license for offshore procurement must state as the purpose ''Offshore procurement in accordance with the conditions established in the ITAR, including § 124.13. No other use will be made of the technical data.'' If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements of this subchapter (e.g. § 126.4), the DSP–5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section and provide a written certification to the Office of Defense Trade Controls annually of the offshore procurement activity and cite the exemption under which the technical data was exported. The exemptions under § 125.4 of this subchapter may not be used to establish offshore procurement arrangements.

PART 126—GENERAL POLICIES AND PROVISIONS

10. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub L. 90–629, 90 Stat. 744 (22 U.S.C. 22752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

11. Section 126.5 is revised to read as follows:

§ 126.5 Canadian exemptions.

(a) District Directors of Customs and postmasters shall permit the permanent or temporary export without a license of any unclassified equipment or unclassified technical data to Canada for end-use in Canada by Canadian citizens or return to the United States, or temporary import of Canadian-origin items from Canada for end-use in the United States or return to Canada for a Canadian citizen, with the exception of the defense articles, defense services and related technical data listed in paragraphs (b), (c), and (d) of this section.

(b) The exemption provided in paragraph (a) of this section does not apply to the following ITAR part 121, § 121.1 defense articles, defense services, or related technical data:

(1) Category I—Firearms;

(2) Category III ammunition for the firearms in Category I;

(3) Category IV (a), (b), (c), (d), (f) and (g)—Launch Vehicles, Guided Missiles, Ballistic Missiles and Rockets. (This does not include bombs, grenades, torpedoes, depth charges, land and naval mines in IV (a); components, parts, accessories and attachments in IV(h); and related technical data for these items covered by part 125 of this subchapter.)

(4) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(5) Naval nuclear propulsion equipment listed in Category VI(e);

(6) Aircraft Listed in Category VIII(a));

(7) Category XIII (b) (e.g. military information security systems, cyptrographic devices, software, and components) and XIII (j) (e.g. stealth);

(8) Toxicological Agents and Equipment and Radiological Equipment listed in Category XIV(a) through (d);

(9) Spacecraft, Remote Sensing Satellites, and Military Communications Satellites listed in Category XV(a), (b), and (c);

(10) Nuclear Weapons Design and Test Equipment listed in Category XVI;

(11) All Classified Articles, Technical Data and Defense Services, including Category XVII;

(12) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d);

(13) All USML items and related technical data on the Missile Technology Control Regime (MTCR) Annex.

(c) Defense articles, defense services, or related technical data for use by a foreign national other than a Canadian citizen.

(d) Any defense service covered by part 124 of this subchapter.

(e) Any export involving defenses articles and defense services for which congressional notification is required in accordance with § 123.15 and 124.11 of this subchapter.

(f) Related requirements. The exemption provided in this section from requiring a license for export does not exempt the exporter from the following:

(1) Registration as an exporter as required by the Arms Export Control Act and part 122 of this subchapter;

(2) The exporter, or any party to the transaction must be eligible as described in § 120.1 (c) and (d) of this subchapter;

(3) The requirement for filing a Shippers' Export Declaration or notification letter required by § 123.22 of this subchapter;

(4) Written documentation that the defense article is:

(i) For end-use in Canada by a Canadian citizen, and

(ii) For use by non-Canadians, in Canada, or export from Canada to another foreign destination, requires prior written approval of the US Government;

(5) Obtaining a completed DSP–83 for all significant military equipment;

(6) Maintenance of records as required by § 122.5 of this subchapter.

Note: It is the responsibility of the exporter of record to determine in writing the Canadian end-use and end-user. In any instance when such written documentation is not available, this exemption may not be used. Further, in any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use by a non-Canadian citizen or for export to another foreign destination, other than the United States, an export license must be obtained prior to the transfer to Canada. The request should state the ultimate foreign end-user and end-use with Canada as an intermediate destination. The role of the Canadian parties should be defined. Should an instance exist when a defense article or related technical data was

properly exported, either using a license or an exemption, and there is a reason to change either the end-use or the end-user, the requirements of § 123.9 of this subchapter apply.

Dated: March 25, 1999.

John D. Holum,

Acting Under Secretary of State for Arms Control and International Security Affairs and Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 99–9033 Filed 4–9–99; 8:45 am]

BILLING CODE 4710–25–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 201

RIN 0412–AA41

Rules and Procedures Applicable to Commodity Transactions Financed by USAID: Administrative Revisions

AGENCY: United States Agency for International Development.

ACTION: Final rule.

SUMMARY: USAID Regulation 1 is being amended to update the coverage and the expiration date on OMB's approval of information collection requirements in accordance with the Paperwork Reduction Act. The name and address of the responsible USAID office is updated. Also, ZIP Codes and office name are being changed.

DATES: Effective May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Procurement, Policy Division (M/OP/P) USAID, Washington, DC 20523–7801. Telephone: (202) 712–4759, facsimile: (202) 216–3395, e-mail address: kohara@usaid.gov.

SUPPLEMENTARY INFORMATION: This amendment is editorial in nature and, therefore, is being published as a final rule with an effective date thirty days from publication since all the changes are already in effect. This rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is not a major rule under 5 U.S.C. 804. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

List of Subjects in 22 CFR Part 201

Administrative practice and procedure, Commodity procurement, Grant programs—foreign relations.

Accordingly 22 CFR part 201 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart A—Definitions and Scope of This Part

2. Section 201.03 is revised to read as follows:

§ 201.03 OMB approval under the Paperwork Reduction Act.

(a) OMB has approved the following information collection and recordkeeping requirements established by this part 201 (OMB Control No. 0412–0514, expiring July 31, 2000):

Sec.
201.13(b)(1)
201.13(b)(2)
201.15(c)
201.31(f)
201.31(g)
201.32(b)
201.32(c)
201.51(c)
201.52(a)
201.74

(b) USAID will use the information requested in these sections to verify compliance with statutory and regulatory requirements and to assist in the administration of USAID-financed commodity programs. The information is required from suppliers in order to receive payment for commodities or commodity-related services. The public reporting burden for this collection of information is estimated to average a half hour per response, including the time required 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 Office of Procurement, Policy Division (M/OP/P), U.S. Agency for International Development, 1300 Pennsylvania Avenue, Washington, DC 20523–7801, and the Office of Management and Budget, Paperwork Reduction Project (0412–0514), Washington, DC 20503.

Subpart C—Procurement Procedures Responsibilities of Importers

§ 201.23 [Amended]

3. In § 201.23, paragraph (c) is amended by removing ''20523–1414'' from the second sentence and adding ''20523–7700 in its place.

Subpart D—Responsibilities of Suppliers

§ 201.301 [Amended]

4. Section 201.31 is amended by removing ''20523–1419'' from the last sentence in paragraph (f) and adding ''20523–7900'' in its place, and by removing ''20523–0208'' from the second sentence in paragraph (g) and adding ''20523–7702'' in its place.

§ 201.302 [Amended]

5. Section 201.32 is amended by removing ''20523–0280'' in the first sentence of paragraph (b) and adding ''20523–7792'' in its place, and by removing ''20523–1415'' from paragraph (c) and adding ''20523–7900'' in its place.

Subpart F—Payment and Reimbursement

§ 201.51 [Amended]

6. Section 201.51 is amended by removing ''Letter of Commitment Branch'' and ''20523–0208'' from the fourth sentence in paragraph (c)(4) and adding ''Cash Management and Payment Division (M/FM/CMP)'' and ''20523–7702,'' respectively, in their places.

§ 201.52 [Amended]

7. Section 201.52 is amended by removing ''20523–1419'' in paragraph (a)(2)(iii)(C) and adding ''20523–7900'' in its place; by removing ''20523–1415'' is paragraph (a)(4)(iii) and adding ''20523–7900'' in its place; and by removing ''20523–0208'' in paragraph (a)(4)(iii)(B) and adding ''20523–7702'' in its place.

Subpart G—Price Provisions

§ 201.67 [Amended]

8. Section 201.67 is amended by removing ''20523–0209'' in paragraph (a)(5)(ii) and adding ''20523–7702'' in its place.

Dated: March 8, 1999.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 99–8890 Filed 4–9–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 291

RIN 1076–AD87

Class III Gaming Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department is issuing regulations prescribing procedures to permit Class III gaming when a State interposes its immunity from suit by an Indian tribe in which the tribe accuses the state of failing to negotiate in good faith. The rule announces the Department's determination that the Secretary may promulgate Class III gaming procedures under certain specified circumstances. It also sets forth the process and standards pursuant to which any procedures would be adopted.

EFFECTIVE DATE: These regulations take effect on May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Indian Gaming Management Staff, Bureau of Indian Affairs, Department of the Interior, MS 2070–MIB, 1849 C Street NW, Washington, DC 20240, Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: Congress enacted the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721, to provide a statutory basis for the operation and regulation of Indian gaming and to protect Indian gaming as a means of generating revenue for tribal governments. Prior to the enactment of IGRA, states generally were precluded from any regulation of gaming on Indian reservations. See *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987). The IGRA, by offering States an opportunity to participate with Indian tribes in developing regulations for Indian gaming, ''extends to the States a power withheld from them by the Constitution.'' *Seminole Tribe of Florida* v. *State of Florida,* 517 U.S. 44, 58 (1996).

Since IGRA's passage in 1988, more than 200 compacts in 24 States have been successfully negotiated by tribes and States, and approved by the Secretary. Today, Indian gaming generates significant revenue for Indian tribes. As required by IGRA, gaming revenues are being devoted primarily to providing essential government services such as roads, schools, and hospitals, as well as economic development.

The IGRA divides Indian gaming into three categories. This rule addresses only the conduct of Class III gaming, which primarily includes slot machines, casino games, banking card games, dog racing, horse racing, and lotteries. 25 U.S.C. 2703(8); 25 CFR 502.4. Under IGRA, the conduct of ''Class III gaming activities'' is lawful on Indian lands only if such activities: (1) Are authorized by an ordinance adopted by the governing body of the tribe and approved by the Chairman of the National Indian Gaming Commission (NIGC), (2) are located in a State that permits such gaming for any purpose by any person, organization, or entity, and (3) are conducted in conformance with a Tribal-State compact. 25 U.S.C. 2710(d)(1)(B). The regulations that follow relate primarily to this third requirement, i.e., the Tribal-State compact.

Under IGRA, a tribe interested in operating Class III gaming initiates the compacting process by requesting the State to enter into negotiations to develop the Tribal-State compact. 25 U.S.C. 2710(d)(3)(A). Upon receiving such a request, the State is obliged ''to negotiate with the Indian tribe in good faith to enter into such a compact.'' Id. If the State fails to negotiate in good faith, the tribe may initiate an action against the State in Federal district court. 25 U.S.C. 2710(d)(7)(A)(i). If the court finds that the State has failed to negotiate in good faith, it must order the State and the tribe to conclude a compact within 60 days. 25 U.S.C. 2710(d)(7)(B)(iii). If the State and tribe fail to conclude a compact within that period, each side must submit their last best offer to a court-appointed mediator, who selects one of the proposals. 25 U.S.C. 2710(d)(7)(B)(iv). If the State consents to the mediator's proposal it is treated as a Tribal-State compact. 25 U.S.C. 2710(d)(7)(B)(vi). If the State does not consent, the Secretary of the Interior (Secretary) shall prescribe procedures (1) which are consistent with the proposed compact selected by the mediator, the provisions of IGRA, and the relevant provisions of State laws, and (2) under which Class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction. 25 U.S.C. 2710(d)(7)(B)(vii).

In *Seminole Tribe of Florida* v. *Florida,* the Supreme Court held that a State may assert an Eleventh Amendment immunity defense to avoid a lawsuit brought by a tribe alleging that the State did not negotiate in good faith. After the Seminole decision, some States have signaled their intention to assert immunity to any suit in Federal court. Claiming immunity will, if no further action is taken, create an effective State veto over IGRA's dispute resolution system and therefore will stalemate the compacting process. This rule contemplates that the Secretary may prescribe Class III gaming procedures to end the stalemate.

On May 10, 1996, the Bureau of Indian Affairs (BIA) published an Advance Notice of Proposed Rulemaking (ANPR) in response to the United States Supreme Court's decision in *Seminole Tribe of Florida* v. *Florida.* 61 FR 21394 (May 10, 1996). In that ANPR, the Department posed, among others, the question of ''[w]hether and under what circumstances, the Secretary is empowered to prescribe 'procedures' for the conduct of Class III gaming when a State interposes an Eleventh Amendment defense to an action pursuant to 25 U.S.C. 2710(d)(7)(B).'' The Secretary, in consultation with the Solicitor, has determined that he possesses legal authority to promulgate procedures setting out the terms under which Class III gaming may take place when a State asserts its immunity from suit. The Secretary's authority arises from the statutory delegation of powers contained in 25 U.S.C. 2710(d)(7)(B)(vii) of IGRA and 25 U.S.C. 2 and 9.

Summary of the Rule

The rule tracks IGRA's negotiation and mediation process, adjusted only to the extent necessary to reflect the unavailability of tribal access to Federal court where a State refuses to waive sovereign immunity. The rule applies only where a tribe asserts that a State is not negotiating in good faith, files suit against the State in Federal court in accordance with IGRA, but cannot proceed in Federal court because the State refuses to waive its sovereign immunity from suit. In cases in which a State chooses not to assert a sovereign immunity defense, the rule will not apply. Instead, the negotiation and mediation process set forth in section 2710(d)(7) of IGRA would continue under the supervision of the court.

In those cases in which a State interposes a sovereign immunity defense to a tribal lawsuit in Federal court, the regulation establishes a process for obtaining State participation in the compacting process, prior to the Secretary's identification of procedures.

The steps set forth in the rule include:

1. Following dismissal on grounds of sovereign immunity of a tribe's suit brought pursuant to 25 U.S.C. 2710(d)(7) against a State, the tribe will have the opportunity to submit a request to the Department to establish gaming procedures. The procedures submitted by the tribe will be required to address all of the issues identified in the rule, including the scope of the gaming activities being requested by the tribe and detailed mechanisms for regulation of the gaming, including assurances that games will be conducted fairly and that the financial integrity of the entire operation will be safeguarded. The tribe will be asked to provide a legal analysis supporting the proposed scope of gaming in view of State prohibitions and other policies on specific types of gaming.

2. The Department will notify the tribe within 15 days that it has received the proposal and whether it is complete. Within

30 days the Department will notify the tribe whether it is eligible for procedures.

3. Following issuance of a notice of completeness and eligibility, the Department will notify the State of the tribe's request for the issuance of procedures, and solicit the State's comments on the tribe's proposed procedures, including any comments on the proposed scope of gaming. The State will also be invited to submit alternative proposed procedures within 60 days.

4. Based on its review of the submissions of the tribe and the State, and if the State has not submitted an alternative proposal, the Department will advise the State and Indian tribe of: (a) its approval of the tribe's proposal if the Secretary determines that there are no objections to the proposals; (b) its convening of an informal conference with the State and tribe within 30 days for the purpose of resolving any areas of disagreement.

5. If the State offers an alternative proposal, the Secretary will appoint a mediator who will receive ''last best offers'' from the State and tribe. The mediator must then submit to the Secretary the proposed procedures that best comport with applicable Federal and State law. Within 60 days of receipt of the mediator's recommendation, the Secretary must notify the State and tribe of his decision to approve or disapprove the procedures submitted by the mediator, or prescribe such procedures as he determines appropriate that are consistent with State law and the provisions of IGRA.

Review of Public Comments

Sixty-seven (67) comments were submitted in response to the January 22, 1998, **Federal Register** publication of the proposed rule, 25 CFR 291.

Section 291.1 Purpose and Scope

Nearly all of the comments from the States reiterated or expanded on comments previously submitted arguing that the Secretary lacks legal authority to promulgate these regulations. Comments from the Indian tribes likewise reiterated prior comments in support of the Secretary's authority to adopt the proposed regulation.

Response: The Department adheres to the reasoning set forth in the January 22, 1998 **Federal Register** publication in support of the Secretary's authority to adopt the proposed regulation. In addition, a recent case, *Spokane Tribe of Indians* v. *Washington State,* 139 F.3d 1297 (9th Cir. 1998)(Spokane II), casts doubt on the legal authority relied upon by the States in their comments to the proposed rule. In Spokane II, the court noted that an earlier opinion (*Spokane Tribe of Indians* v. *Washington State,* 28 F.3d 991 9th Cir. 1994)(Spokane I)) questioned the Eleventh Circuit court of appeals' statement in *Seminole Tribe of Florida* v. *Florida,* 11 F.3d 1016 (1994) supporting the approach subsequently taken in our proposed rule. The Spokane II court noted that the statement in Spokane I: was in the context of our (incorrect) assumption that tribes could sue states. We were pointing out that the Eleventh Circuit's suggestion would not be as close to the Congress' intent as the scheme Congress in fact passed. True. But the Supreme Court has now told us that Congress' scheme is unconstitutional; the Eleventh Circuit's suggestion is a lot closer to Congress' intent than mechanically enforcing IGRA against tribes even when states refuse to negotiate. 139 F.3d at 1301–02.

As an adjunct to the argument that the Secretary lacks authority, the States assert that the Secretary's authority under the statute is limited to circumstances where a court has made a finding that a State has failed to negotiate in ''good faith'' with an Indian tribe over Class III gaming procedures. The State strenuously objects to any role for the Secretary in evaluating whether a State has negotiated in ''good faith.'' Their objection is based on alleged bias that the Secretary might have due to the trust responsibility owed by the Federal government to the Indian tribes. The States also assert that the Secretary lacks expertise to make such a finding. The final regulation eliminates the requirement that the Secretary make a finding on the ''good faith'' issue. States will be invited to participate in mediation if they wish. They can also submit comments on the proposed scope of gaming (the issue most often contested in negotiations) and on any other matter pertaining to an Indian tribe's proposed procedures. The Secretary will take those views into account in his decision-making process. Congress' intent was to ensure a role for the States in developing the terms and conditions under which Class III Indian gaming would take place. The approach taken in the regulation is consistent with that intent.

Several comments suggested that the rule be expanded to explicitly include compact renewals.

Response: This recommendation was adopted because the authority granted the Secretary in IGRA to issue Class III gaming procedures speaks only in terms of entire compacts, and a renewal of an entire compact falls within this authority. Section 291.2(b) was added in the definition section to make clear the term ''compact'' as used in the regulations includes compact renewals.

Several comments suggested the scope be expanded to include compact amendments.

Response: This recommendation was not adopted because the authority granted to the Secretary in IGRA to issue Class III gaming procedures speaks only in terms of entire compacts, not to amendments.

One comment suggested the scope was too narrow because it limits the application to when the tribe has brought an action in Federal court and the State has asserted its immunity from such suit, and the court has dismissed the action.

One comment suggested that if the State issues a letter of intent to raise its immunity defense, then this should suffice to trigger the Class III gaming procedures.

Response: These recommendations were not adopted because the statutory trigger in IGRA for the Secretary to issue Class III gaming procedures is the filing of a lawsuit.

One comment suggested the proposed scope would clog the courts in futile litigation and stonewall the IGRA process for several years. The comment suggested it should be sufficient for the State to assert its immunity in just one tribe's lawsuit.

Response: This recommendation was not adopted because the statutory trigger in IGRA for the Secretary to issue Class III gaming procedures is the filing of a lawsuit because of the particular parties' failure to conclude a compact. The regulation cannot dispense with the requirement that each tribe be involved in a lawsuit. The regulation must be the same for each tribe.

Section 291.2 Definitions

Paragraph (b) was added to make clear the regulations apply to compact renewals as suggested by several comments. See *Summary of Comments* under section 291.1.

Section 291.3 When May an Indian Tribe Ask the Secretary To Issue Class III Gaming Procedures?

One comment recommended that paragraph (b) be revised to state that if the tribe and State failed to negotiate a compact 180 days after the State received the tribe's request, or if the State previously asserted its Eleventh Amendment immunity in an action brought by any tribe, or if the State unequivocally refused to enter into or continue negotiations.

Response: This recommendation was not adopted because the regulation tracks the statutory requirements in 25 U.S.C. 2710(d)(7)(A) and (B).

One comment suggested that section (c) be reworded.

Response: This recommendation was not adopted because the words track the statutory language in 25 U.S.C. 2710(d)(7)(A)(i) and (B)(ii)(II).

One comment suggested broadening paragraph (d) to included *any* tribal action in which the State declined to waive its immunity.

Response: This recommendation was not adopted for the same reason expressed for one comment under § 291.1, which is that the statute requires the particular parties to be unable to conclude a compact and a lawsuit is initiated as a result. The regulation must have the same criteria for each tribe.

Several comments suggested broadening paragraph (d) to include the State's assertion of any immunity, whether it be the Eleventh Amendment, Tenth Amendment, or otherwise.

Response: These recommendations were not adopted because the regulation explicitly deals with Eleventh Amendment immunity, and not with other potential barriers.

One comment recommended that paragraph (d) require the State to either choose the court process or the Secretarial process out of concern that the Eleventh Amendment immunity defense could be raised late in the appeal process.

Response: This recommendation was not adopted because the regulation explicitly deals with the Secretarial process once the State successfully asserts its Eleventh Amendment immunity.

Several comments suggested that instead of requiring an actual assertion of the State's immunity, the regulation should only require documentation of the State's intention to assert such immunity.

Response: This recommendation was not adopted because the statutory trigger for the Class III gaming procedures is an initiation of a lawsuit. The scope of the regulations provides for procedures where the State actually raised its Eleventh Amendment immunity and the case was dismissed as a result.

Numerous comments suggested deleting paragraph (e) because the requirement that the action be dismissed for each tribe is burdensome, wasteful and time consuming.

One comment suggested that the requirement that each action be dismissed could place tribal attorneys in an awkward position under Rule 11 of the Federal Rules of Civil Procedure.

Several comments recommended that in place of requiring a dismissal for each lawsuit, require clear proof of the State's intention to raise its Eleventh Amendment immunity.

Response: These recommendations were not adopted because the Secretary's authority under IGRA for Class III gaming procedures is only triggered by a lawsuit and the regulatory trigger must be the same for each tribe.

The words ''because of lack of jurisdiction'' were deleted from paragraph (e) to clarify that the scope of the regulations is limited to when the State actually raises its Eleventh Amendment immunity and the case was dismissed on that ground. One comment agreed that the scope of section 291.3 is consistent with the suggestions made by the 11th Circuit in the *Seminole* decision.

Section 291.4 What Must the Proposal Requesting Class III Gaming Procedures Contain?

One comment suggested adding the words ''if any'' at the end of paragraph (c) because a tribe's gaming ordinance or resolution need not be approved by the NIGC prior to the negotiation and completion of a gaming compact.

Response: This recommendation was adopted because approval of the tribe's ordinance or resolution by the NIGC is not required before Class III gaming procedures are approved, but the ordinance or resolution must be approved by the NIGC before gaming is conducted.

Two comments suggested adding the words ''if any'' at the end of paragraph (d) because not all tribes have organic documents.

Response: These recommendations were adopted.

A few comments suggested clarifying paragraph (g) because a ''copy of court proceedings'' is ambiguous and provides no useful guidance on what exact documents need to be submitted.

Response: These recommendations were adopted, and paragraph (g) was amended to include a list of specific documents in language suggested by one of the comments.

One comment suggested revising paragraph (h) to enumerate specific examples of factual and legal authority for the scope of gaming.

Response: This recommendation was not adopted because the regulations leave it up to a tribe's discretion what it wishes to submit for the factual and legal authority.

One comment stated paragraph (i) was ambiguous, unnecessary and onerous because the regulation appeared to expand the NIGC's existing monitoring and enforcement authority.

Another comment suggested paragraph (i) be revised to include only a regulatory scheme for a federal agency role. One comment stated the NIGC is the proper monitoring and enforcement agency and other designation was unnecessary.

Another comment suggested the BIA is precluded from compelling a State to participate in monitoring and enforcement in the absence of a voluntary agreement.

Response: To accommodate the concerns raised by the comments, the term ''federal'' was deleted from paragraph (i) to make clear that if the tribe envisions the State to have a role in monitoring and enforcement by mutual and voluntary agreement, the tribe must submit this regulatory scheme to the Secretary in its Class III gaming procedures proposal. In addition, a new section 291.12 is added to the regulations to clarify the NIGC's monitoring and enforcement roles.

One comment suggested it was unreasonable for tribes to have to submit an accounting system under paragraph (j)(1). The comment recommended having the tribes submit a certification that it will operate its accounting system in accordance with the specified standards, principals and NIGC regulations.

One comment suggested the provision was perplexing because a tribe should not have to submit applicable NIGC regulations. The drafters did not intend either of these interpretations.

Response: Both recommendations were adopted, and the language and punctuation in paragraph (j)(1) was changed for clarification.

One comment recommended referencing the NIGC regulations for internal control standards in paragraph (j)(4).

Response: This recommendation was adopted.

Several comments suggested that the requirements under paragraph (j)(8) were beyond the statutory requirements, beyond NIGC regulatory requirements, and created low thresholds.

Response: These recommendations have been adopted, and paragraph (j)(8) has been amended to be more consistent with 25 U.S.C. 2710(b)(2)(D) and NIGC regulations.

A few comments suggested the Secretary will be inundated with background information documents, licensing documents and the like; but, the regulation only requires submission of rules governing these issues.

One comment recommended deleting the words ''all gaming activities . . . count rooms'' in paragraph (j)(10) as being duplicative because they were already covered under (j)(4).

Response: This recommendation was adopted.

Several comments addressed the need for flexibility in how tribes handle disputes under paragraph (j)(11).

One comment recommended adding the words ''and/or tribal judicial process'' in addition to the administrative process in paragraph (j)(11) to accommodate different tribal processes.

Response: This recommendation was adopted.

One comment under paragraph (j)(11) recommended adding a provision for tribes acquiring insurance and a waiver of tribal sovereign immunity thereunder.

Response: This recommendation was not adopted because it is beyond the scope of these regulations.

One comment under paragraph (j)(15) suggested adding language in case a tribe chooses not to serve liquor at the gaming facility.

Response: This recommendation was adopted. For clarification, reference to the statutory definition of liquor under a Secretarially approved ordinance/resolution was incorporated.

Several comments recommended deleting the word autonomous from paragraph (j)(16) as being confusing because tribal gaming commissions are to some degree subject to the jurisdiction of the Tribal Council or other tribal governing body, and the Secretary should not be making that determination.

Response: This recommendation was adopted and the language deleted for clarification.

Several comments suggested changing the word ''commission'' to accommodate the variety of tribal regulatory structures, such as departments, individuals, and offices.

Response: These recommendations were adopted and the word was changed to ''entity.''

One comment suggested paragraph (j)(17) is vague and recommended providing reasonable standards that dictate when a tribe must provide administrative appeal rights, including what facts trigger the process, what due process rights attach and remedies available.

Response: This recommendation was not adopted because the regulations should not impose particular administrative appeal processes on the tribes. The regulations provide for such an appeal process while accommodating tribal flexibility of its own administration.

One comment suggested paragraph (j)(17) was partially unnecessary because the NIGC already had enforcement and investigatory mechanisms.

Response: To clarify the intent of paragraph (j)(17), the word ''tribal'' was added to make clear this provision relates to tribal enforcement and investigatory mechanisms, not Federal or State. Paragraph (j)(18) was added in response to a comment on the duration of the Class III gaming procedures. See Summary of Comments under section 291.15.

Section 291.5 Where must the proposal requesting Class III gaming procedures be filed?

No comments were received on this section.

Section 291.6 What must the Secretary do upon receiving the proposal?

Several comments suggested changing the time frames in sections 291.3, 4 and 6 to be the same.

Response: In response to this comment, language has been added to make clear that the review in paragraph (a) is not substantive, but instead a limited review as to whether all the information required under section 291.4 is present in the application. The review in paragraph (b) is substantive and as such requires a longer period of time than the review in paragraph (a). A 60-day time frame is reasonable and necessary to make the substantive determination.

Section 291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?

Numerous comments recommended deleting the requirement that the State be notified once the Secretary determines the tribe is eligible for Class III gaming procedures.

One comment suggested it was beyond the Secretary's authority because IGRA explicitly provides for consultation with the tribe, but does not require consultation with the State.

Many commentors suggested that the State should not be involved in the Class III gaming procedures process because they believe it would give the State another opportunity to stonewall, delay or subvert the IGRA process after it already asserted its Eleventh Amendment immunity in the lawsuit.

Response: These recommendations were not adopted because IGRA does not prohibit the consultation of the States. Further, the regulations attempt to track the IGRA process in which the participation of all parties is contemplated.

Several comments supported section 291.7 as written to ensure and encourage State involvement in the process and to maintain fairness in the process as contemplated by IGRA.

One comment suggested that the Governor and Attorney General may not be the proper authorities in the particular State with whom to consult, and that the Governor and Attorney General may have opposing views.

Response: This recommendation was not adopted because the Attorney General is invited to participate in the procedures since he/she represented the State in the lawsuit which was dismissed due to the Eleventh Amendment immunity. It is anticipated that in situations where the Governor is not the proper official, the Governor may notify the Secretary if actual authority has been delegated and/or rests with another State official, department, commission, or other entity.

Several comments suggested that the 60 days in paragraph (b) is too long.

One comment recommended that absent good cause shown, the State should be allowed no more than 30 days.

Response: These recommendations were not adopted because 60 days allows time for the State to conduct a thorough and substantive review of the tribe's proposal.

Numerous comments were received on paragraph (b)(2) from both the states and tribes.

One comment suggested that by transferring to the Secretary the authority to determine a State's good faith, the tribes have no incentive to negotiate in good faith and will often proceed directly to the Class III gaming procedures.

Many comments suggested deleting this paragraph because the Secretary has no authority to pass judgment in a quasi-judicial determination upon the State's conduct.

Some comments suggested that the Secretary would not be able to make such a determination in the absence of cross-examining witnesses and judging credibility.

Some comments suggested a good faith determination by the Secretary will destroy the neutrality of the Class III gaming procedures.

One comment suggested the paragraph be deleted because the Secretary would be making a judicial determination without any of the safeguards of a judicial proceeding, contrary to the IGRA scheme.

Response: These recommendations have been adopted and paragraph (b)(2) has been deleted.

One comment noted that the regulations were ambiguous, and appeared to grant the Secretary authority to proceed with the Class III gaming procedures irrespective of the good faith determination outcome.

The comment suggested that the good faith determination be made at the outset in order to proceed with the procedures process.

One comment suggested the paragraph provided no standard for the Secretary to follow in making a good faith determination, and suggested placing the burden on the State to prove good faith.

Response: These recommendations were not adopted because the good faith determination has been deleted from the regulations.

One comment suggested deleting paragraph (b)(3) because State law does not apply to activities conducted on Indian lands except regarding the scope of gaming.

This recommendation was not adopted because the language in paragraph (b)(3) tracks the requirement and language in IGRA, section 2710 (d)(7)(B)(vii)(I).

One comment suggested revising paragraph (c) to require the State to address all the issues listed in section 291.4 when it submits an alternate proposal.

Response: This recommendation was not adopted because 291.4 is applicable only to the tribal applicant.

One comment suggested deleting paragraph (c) because the State should not be allowed to submit a proposal if the Secretary determines the State did not negotiate in good faith.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

Section 291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?

One comment suggested deleting the 60-day reference to the comment period in section 291.7.

Response: This recommendation was not adopted in order to retain clarity.

Several comments objected to the discussion of the ''scope of gaming'' as being either too broad, or too narrow.

Response: These recommendations were not adopted, because the applicable scope of gaming must be determined on a case-by-case basis. The summary of the law and the United States' position as set forth in the proposed rule remains the standard for analyzing the scope of gaming issue. 63 FR 3289, 3292–3293 (January 22, 1998).

Several comments suggested deleting paragraph (a)(4) as being troubling, unnecessary and inappropriate.

Response: These recommendations have not been adopted because this paragraph is consistent with the requirement as set forth in IGRA, section 2710(b)(7)(B)(vii)(I).

Numerous comments were received from both States and tribes under paragraph (a)(8) similar to those received under section 291.7(b)(2).

Several comments suggested eliminating this paragraph as being beyond the authority of the Secretary, unnecessary, unclear and irrelevant.

Several comments suggested the Secretary could not impartially and properly adjudicate the issue because of the trust responsibility to tribes, a conflict of interest, and a lack of knowledge concerning the intricacies of the negotiation between the State and tribe.

Response: These recommendations were adopted and paragraph (a)(8) has been deleted.

One comment suggested that the Secretary publish his/her determination on the good faith issue.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

One comment suggested paragraph (a)(8) appeared to be a drafting error.

Response: This comment's concern is alleviated because the paragraph has been deleted.

One comment suggested the paragraph be revised to include specific examples of State action which would be considered as evidence of bad faith.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

Several comments suggested changing the 60-day time frame in paragraph (b) because it was too long or unnecessary if a State does not submit an alternate proposal.

Response: These recommendations were not adopted because the 60-day time frame is reasonable for a substantive review if the State submits comments under section 291.7(b). If the State does not submit comments, the Secretary may not need the entire 60 days.

One comment suggested deleting the requirement that the Secretary notify the State.

Response: This recommendation was not adopted because the State is an involved party in the Class III gaming procedures process as contemplated by IGRA. Paragraph (b)(2) was deleted as unnecessary. If the Secretary determines that the State's alternative proposal contains no objections to the tribe's proposal, the proposal is approved. If the Secretary determines there are unresolved issues and areas of disagreement between the State's alternative proposal and the tribal proposal, then the parties will be invited to participate in an informal conference.

One comment suggested paragraph (b)(3) is confusing because if the State does not submit an alternative proposal, then how can the Secretary make a determination of unresolved issues and areas of disagreement.

Response: This recommendation was not adopted because the State can comment on the tribe's proposal under section 291.7(b) without necessarily submitting an alternative proposal. Further, if the Secretary makes a determination that there are no objections to the tribe's proposal, he/she can approve the proposal.

One comment suggested it was inappropriate under paragraph (b)(3) to invite the State to participate in an informal conference because the unresolved issues and areas of disagreement may be exclusively tribal.

Response: This recommendation was not adopted because the unresolved issues and areas of disagreement are between the parties.

One comment suggested revising paragraph (b)(3) to include a time frame in which the informal conference would be held.

Response: This recommendation was adopted and language was added to state that the parties will be invited to participate in an informal conference within 30 days of receiving the Secretary's notice.

Several comments suggested the 30-day time frame in paragraph (c) was excessive and should be shortened.

Response: This recommendation was not adopted because 30 days is reasonable and necessary for the Secretary to prepare a written report summarizing the informal conference and making a final decision either setting forth the procedures or disapproving the proposal.

One comment suggested deleting the requirement that the Secretary prepare and mail the report and final decision to the State in paragraph (c).

Response: This recommendation was not adopted because the State is an involved party in the Class III gaming procedures process as contemplated by IGRA.

Section 291.9 What must the Secretary do at the end of the 60-day comment period if the State provides comments offering an alternative proposal for Class III gaming procedures?

Several comments suggested deleting section 291.9 as unnecessary and inconsistent with the IGRA scheme.

One comment suggested it served no legitimate purpose since it adds an additional 60 days to a process which

will ultimately end up in mediation anyway where the parties can present their objections and counter-proposals.

Reponse: These recommendations were adopted and the section has been deleted and rewritten to provide automatic appointment of a mediator.

One comment received under 291.10 recommended specifying the number of days in which the mediator will be appointed.

Response: This recommendation was adopted under the newly revised Section 291.9 and language was added saying the mediator shall be appointed within 30 days of the Secretary receiving the State's alternative proposal. See Summary of Comments under section 291.10.

Section 291.10 What must the Indian tribe do when it receives the State's alternative proposal for Class III gaming procedures?

Several comments recommended this section be deleted as unnecessary and inconsistent with the IGRA scheme or be revised to provide for automatic appointment of a mediator.

Response: The recommendation to delete as unnecessary and inconsistent was adopted, and the recommendation to revise is adopted under the new revised section 291.9.

The comment further recommended to revise the section and specify the number of days in which the mediator will be appointed.

Response: This recommendation was adopted and language was added to the new revised section 291.9 saying the mediator shall be appointed within 30 days of receiving the State's alternative proposal. See Summary of Comments under section 291.9.

One comment recommended revising the section to provide for a mechanism that establishes procedures if the Secretary disapproves the State's alternative proposal.

Response: This comment was not adopted because this paragraph has been deleted.

Section 291.11 What must the Secretary do if the Indian tribe files timely objections to the State's alternative proposal?

Several comments recommended setting forth qualifications of the mediator. One comment recommended requiring the mediator have familiarity and knowledge of IGRA.

Response: This recommendation was not adopted because it is unnecessary.

One comment recommended that the tribe have considerable input into the Secretary's selection.

Response: This recommendation was not adopted to maintain a fairness and timeliness in the process.

One comment recommended conflict of interest standards.

Response: This recommendation was adopted and the new revised section 291.9 includes such standards.

Several comments recommended the section be revised to include a specific time period in which the Secretary must appoint the mediator. One comment recommended 20 days.

Response: These recommendations were partially adopted, and the new revised section 291.9 includes a 30-day time period as being reasonable and necessary.

One comment suggested revising the section to include a time frame in which the mediator issues a decision.

Response: This recommendation was not adopted in order to remain consistent with IGRA requirements, to maintain flexibility in the mediation process and to avoid imposition of time constraints on the mediator. During the mediation process, the parties are free to mutually consent to self-imposed time constraints. The IGRA does not impose such constraints on the mediator or mediation process. This section was deleted as unnecessary due to the automatic appointment of a mediator under revised section 291.9 and the sections were renumbered accordingly.

Section 291.12 What is the role of the mediator appointed by the Secretary?

This section was renumbered section 291.10 due to the deletion of sections 291.9 and 291.10 of the proposed rule.

Several comments recommended imposing specific procedural guidelines and specific time lines on the mediator and mediation process.

Response: These recommendations were not adopted in order to be consistent with IGRA and to maintain flexibility in the mediation process. During the mediation process, the parties are free to mutually consent to self-imposed procedures and/or time lines. The IGRA does not impose procedures or deadlines on the mediator or mediation process.

One comment recommended revising the section to include the requirement that the mediator apply the canons of construction by which all ambiguities should be resolved in favor of the tribe.

Response: This recommendation was not adopted because the mediator's discharge of his or her responsibilities will be guided by applicable law, including canons of statutory construction which will be applied by the mediator as applicable.

One comment suggested the words ''opportunity to be heard'' as being ambiguous and recommended specifying whether it requires an oral hearing unless the parties waive the requirement.

Response: This recommendation was not adopted because the mediation process is not a formal administrative or adjudicatory process. The mediation process requires flexibility and the parties are free to mutually consent to self-imposed procedures.

Section 291.13 What must the Secretary do upon receiving the proposal selected by the mediator?

This section was renumbered section 291.11 due to the deletion of sections 291.9 and 291.10 of the proposed rule.

One comment suggested changing the 60-day requirement to 45 days which IGRA provides for approval or disapproval of gaming compacts.

Response: This recommendation was not adopted because 60 days is reasonable and necessary to make substantive determinations regarding the mediator's selected proposal.

One comment recommended that paragraph (b) be revised to list only the disapproval criteria for compacts as set forth in IGRA, section 2710(b)(8).

Response: This recommendation was not adopted because the Class III gaming procedures must comply not only with section 2710(b)(8) of IGRA but also must comply with the requirements for Class III gaming procedures in section 291.4 and the requirements in section 2710(b)(7)(B)(vii).

One comment recommended providing for automatic approval of the mediator's selected proposal because under IGRA, the compact must be approved except for enumerated reasons set forth in section 2710(b)(8).

Response: This recommendation was not adopted because the Class III gaming procedures must comply not only with section 2710(b)(8) of IGRA, but also with the requirements for Class III gaming procedures in section 291.4 and the requirements in section 2710(b)(7)(B)(vii) of IGRA.

One comment recommended revising the section to include the requirement that when deciding whether to approve or disapprove the proposal selected by the mediator, the Secretary must apply the canons of construction by which all ambiguities should be resolved in favor of the tribe.

Response: This recommendation was not adopted because the Secretary's discharge of his or her responsibilities will be guided by applicable law, including canons of statutory

construction which will be applied by the Secretary as applicable.

Several comments recommended changing paragraph (c) to require the Secretary to issue procedures if the mediator's proposal is rejected.

Response: This recommendation was adopted and the word ''may'' in paragraph (c) was replaced by the word ''shall'' to more closely track the statutory language in 25 U.S.C. 2710(d)(7)(B)(vii).

One comment recommended specifying a time frame within which the Secretary prescribes procedures under paragraph (c).

Response: This recommendation was adopted and a 60-day requirement has been added.

One comment suggested paragraph (c) was confusing because it appeared the Secretary was adopting the mediator's selected proposal even though he/she was rejecting it.

Response: This recommendation was adopted and language was added to clarify that the Secretary will use the mediator's selected proposal as much as possible while comporting with IGRA and relevant provisions of State law.

One comment recommended under paragraph (c) the Secretary be required to explain in writing the specific reasons for disapproval.

Response: This recommendation was not adopted because that requirement is already specified in paragraph (a). The words ''in the event'' were changed to ''if'' for clarification.

Section 291.14 When do Class III gaming procedures for an Indian tribe become effective?

This section was renumbered section 291.13 due to the deletions of sections 291.9 and 291.10 of the proposed rule.

Language referencing section 291.10(b)(1) was deleted because section 291.10 has been deleted due to the new revised section 291.9.

One comment recommended specifying that the Secretary shall have 15 days to publish the procedures in the **Federal Register**.

Another comment recommended adding the words ''as soon as possible'' to make sure there is no delay.

Response: These recommendations were not adopted as being unnecessary or too vague, and to remain consistent with IGRA's language. The IGRA does not provide for a specific publication time, but it is the Secretary's intention to publish the notice expeditiously.

Section 291.15 How can Class III gaming procedures approved by the Secretary be amended?

This section was renumbered section 291.14 due to the deletions of sections 291.9 and 291.10 of the proposed rule.

One comment suggested the section is unwieldy if the regulations do not take the States out of the Class III gaming procedures process.

Response: This recommendation was not adopted because it cannot be assumed that the States will fail to participate in amendments. States are involved parties as contemplated by IGRA.

One comment suggested this section erroneously made amendments to the Class III gaming procedures subject to the process in section 291.3.

Response: This recommendation was adopted and the section was clarified to explicitly exclude procedures amendments to the requirements of section 291.3.

One comment recommended a two-tiered approach to Class III gaming procedures amendments.

Response: This recommendation was not adopted in order to keep the same process applicable to amendments as to original proposals.

One comment suggested specifying the duration of Class III gaming procedures. The comment recommended stating the procedures would be valid in perpetuity or for a term certain, unless the Secretary either approves an amendment to the procedures or repeals them, or unless the Indian tribe requires cancellation. The comment recommended that procedures remain in effect regardless of any changes in state law during the length of the term.

Response: This recommendation was partially adopted and a new section 291.15 was added to provide that procedures will remain in effect for the duration specified in the procedures themselves, or until amended. In addition, section 291.4(j) was amended to require the Indian tribe's proposal to address the length of time the procedures will remain in effect. Finally, this new section will not address the effect of any changes in state law on existing procedures because the effect of any such change is not explicitly resolved by IGRA, and has not been settled by the courts. Accordingly, the Department has determined not to take a position on this issue in these regulations.

One comment suggested the regulations do not state whether the Secretary's decisions can be appealed or if the decisions are considered final.

Response: This recommendation was not adopted because the Department of the Interior (Department) already has regulations specifying appealability in 25 CFR § 2 *et seq.*

Executive Order 12866

This is a significant rule under Executive Order (E.O.) 12866 and has been reviewed by Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered to be small entities for purposes of this Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability to U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Act of 1995

This regulation imposes no unfunded mandate on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Executive Order 12630

The Department has determined that this rule does not have significant ''takings'' implications. The rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects.

As explained above, the Secretary has determined that he has the statutory authority to adopt procedures to permit Indian gaming in appropriate circumstances. Secretarial authority was expressly provided in IGRA with respect to the judicially-supervised mediation scheme. It would be exercised under the rule in a manner consistent with the statutory directive

and congressional intent. The rule provides the opportunity for States to voluntarily participate in a mediation process under the auspices of the Secretary. As the Supreme Court noted in *Seminole*, Congress may, under the Constitution, choose to withhold from States any authority over Indian gaming. Under the rule, the Secretary would be tracking the scheme set forth by Congress and the rule would afford the States as much opportunity to participate as where it does not claim immunity from suit.

Executive Order 12988

The Department has certified to OMB that these regulations meet the applicable standards provided in sections (3)(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

Sections 291.4, 291.10, 291.12, and 291.15 contain information collection requirements. The BIA has submitted a request for emergency clearance by OMB for this collection of information.

The information requested will be unique for each tribe and may be changed when necessary to fit the needs of the tribe.

All information is to be collected upon the submission of a request by a tribe for Class III gaming procedures. The annual reporting and record keeping burden for the collection of information is estimated to average 1,000 hours for each response and we estimate there will be approximately 12 respondents. The collection will include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. The total annual burden is estimated to be 12,000 hours.

The Paperwork Reduction Act of 1995 requires us to tell you that a Federal 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.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Drafting Information: The primary author of this proposed rule is George Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 291

Indians—business and finance, Indians—Gaming

For the reasons given in the preamble, part 291 is added to Title 25, Chapter 1 of the Code of Federal Regulations to read as set forth below.

PART 291—Class III Gaming Procedures

Sec.

291.1 Purpose and scope.
291.2 Definitions.
291.3 When may an Indian tribe ask the Secretary to issue Class III gaming procedures?
291.4 What must a proposal requesting Class III gaming procedures contain?
291.5 Where must the proposal requesting Class III gaming procedures be filed?
291.6 What must the Secretary do upon receiving a proposal?
291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?
291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?
291.9 What must the Secretary do at the end of the 60-day comment period if the State offers an alternative proposal for Class III gaming procedures?
291.10 What is the role of the mediator appointed by the Secretary?
291.11 What must the Secretary do upon receiving the proposal selected by the mediator?
291.12 Who will monitor and enforce tribal compliance with the Class III gaming procedures?
291.13 When do Class III gaming procedures for an Indian tribe become effective?
291.14 How can Class III gaming procedures issued by the Secretary be amended?
291.15 How long do Class III gaming procedures remain in effect?

Authority: 5 U.S.C. 301; 25 U.S.C. sections 2,9 and 2710.

§ 291.1 Purpose and scope.

The regulations in this part establish procedures that the Secretary will use to promulgate rules for the conduct of Class III Indian gaming when:

(a) A State and an Indian tribe are unable to voluntarily agree to a compact and;

(b) The State has asserted its immunity from suit brought by an Indian tribe under 25 U.S.C. 2710(d)(7)(B).

§ 291.2 Definitions

(a) All terms have the same meaning as set forth in the definitional section of IGRA, 25 U.S.C. section 2703(1)–(10).

(b) The term ''compact'' includes renewal of an existing compact.

§ 291.3 When may an Indian tribe ask the Secretary to issue Class III gaming procedures?

An Indian tribe may ask the Secretary to issue Class III gaming procedures when the following steps have taken place:

(a) The Indian tribe submitted a written request to the State to enter into negotiations to establish a Tribal-State compact governing the conduct of Class III gaming activities;

(b) The State and the Indian tribe failed to negotiate a compact 180 days after the State received the Indian tribe's request;

(c) The Indian tribe initiated a cause of action in Federal district court against the State alleging that the State did not respond, or did not respond in good faith, to the request of the Indian tribe to negotiate such a compact;

(d) The State raised an Eleventh Amendment defense to the tribal action; and

(e) The Federal district court dismissed the action due to the State's sovereign immunity under the Eleventh Amendment.

§ 291.4 What must a proposal requesting Class III gaming procedures contain?

A proposal requesting Class III gaming procedures must include the following information:

(a) The full name, address, and telephone number of the Indian tribe submitting the proposal;

(b) A copy of the authorizing resolution from the Indian tribe submitting the proposal;

(c) A copy of the Indian tribe's gaming ordinance or resolution approved by the NIGC in accordance with 25 U.S.C. 2710, if any;

(d) A copy of the Indian tribe's organic documents, if any;

(e) A copy of the Indian tribe's written request to the State to enter into compact negotiations, along with the Indian tribe's proposed compact, if any;

(f) A copy of the State's response to the tribal request and/or proposed compact, if any;

(g) A copy of the tribe's Complaint (with attached exhibits, if any); the State's Motion to Dismiss; any Response by the tribe to the State's Motion to Dismiss; any Opinion or other written documents from the court regarding the State's Motion to Dismiss; and the Court's Order of dismissal;

(h) The Indian tribe's factual and legal authority for the scope of gaming specified in paragraph (j)(13) of this section;

(i) Regulatory scheme for the State's oversight role, if any, in monitoring and enforcing compliance; and

(j) Proposed procedures under which the Indian tribe will conduct Class III gaming activities, including:

(1) A certification that the tribe's accounting procedures are maintained in accordance with American Institute of Certified Public Accountants Standards for Audits of Casinos, including maintenance of books and records in accordance with Generally Accepted Accounting Principles and applicable NIGC regulations;

(2) A reporting system for the payment of taxes and fees in a timely manner and in compliance with Internal Revenue Code and Bank Secrecy Act requirements;

(3) Preparation of financial statements covering all financial activities of the Indian tribe's gaming operations;

(4) Internal control standards designed to ensure fiscal integrity of gaming operations as set forth in 25 CFR Part 542;

(5) Provisions for records retention, maintenance, and accessibility;

(6) Conduct of games, including patron requirements, posting of game rules, and hours of operation;

(7) Procedures to protect the integrity of the rules for playing games;

(8) Rules governing employees of the gaming operation, including code of conduct, age requirements, conflict of interest provisions, licensing requirements, and such background investigations of all management officials and key employees as are required by IGRA, NIGC regulations, and applicable tribal gaming laws;

(9) Policies and procedures that protect the health and safety of patrons and employees and that address insurance and liability issues, as well as safety systems for fire and emergency services at all gaming locations;

(10) Surveillance procedures and security personnel and systems capable of monitoring movement of cash and chips, entrances and exits of gaming facilities, and other critical areas of any gaming facility;

(11) An administrative and/or tribal judicial process to resolve disputes between gaming establishment, employees and patrons, including a process to protect the rights of individuals injured on gaming premises by reason of negligence in the operation of the facility;

(12) Hearing procedures for licensing purposes;

(13) A list of gaming activities proposed to be offered by the Indian tribe at its gaming facilities;

(14) A description of the location of proposed gaming facilities;

(15) A copy of the Indian tribe's liquor ordinance approved by the Secretary if intoxicants, as used in 18 U.S.C. 1154, will be served in the gaming facility;

(16) Provisions for a tribal regulatory gaming entity, independent of gaming management;

(17) Provisions for tribal enforcement and investigatory mechanisms, including the imposition of sanctions, monetary penalties, closure, and an administrative appeal process relating to enforcement and investigatory actions;

(18) The length of time the procedures will remain in effect; and

(19) Any other provisions deemed necessary by the Indian tribe.

§ 291.5 Where must the proposal requesting Class III gaming procedures be filed?

Any proposal requesting Class III gaming procedures must be filed with the Director, Indian Gaming Management Staff, Bureau of Indian Affairs, U.S. Department of the Interior, MS 2070-MIB, 1849 C Street NW, Washington, DC 20240.

§ 291.6 What must the Secretary do upon receiving a proposal?

Upon receipt of a proposal requesting Class III gaming procedures, the Secretary must:

(a) Within 15 days, notify the Indian tribe in writing that the proposal has been received, and whether any information required under § 291.4 is missing;

(b) Within 30 days of receiving a complete proposal, notify the Indian tribe in writing whether the Indian tribe meets the eligibility requirements in § 291.3. The Secretary's eligibility determination is final for the Department.

§ 291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?

(a) If the Secretary determines that the Indian tribe is eligible to request Class III gaming procedures and that the Indian tribe's proposal is complete, the Secretary must submit the Indian tribe's proposal to the Governor and the Attorney General of the State where the gaming is proposed.

(b) The Governor and Attorney General will have 60 days to comment on:

(1) Whether the State is in agreement with the Indian tribe's proposal;

(2) Whether the proposal is consistent with relevant provisions of the laws of the State;

(3) Whether contemplated gaming activities are permitted in the State for any purposes, by any person, organization, or entity.

(c) The Secretary will also invite the State's Governor and Attorney General to submit an alternative proposal to the Indian tribe's proposed Class III gaming procedures.

§ 291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?

(a) Upon expiration of the 60-day comment period specified in § 291.7, if the State has not submitted an alternative proposal, the Secretary must review the Indian tribe's proposal to determine:

(1) Whether all requirements of § 291.4 are adequately addressed;

(2) Whether Class III gaming activities will be conducted on Indian lands over which the Indian tribe has jurisdiction;

(3) Whether contemplated gaming activities are permitted in the State for any purposes by any person, organization, or entity;

(4) Whether the proposal is consistent with relevant provisions of the laws of the State;

(5) Whether the proposal is consistent with the trust obligations of the United States to the Indian tribe;

(6) Whether the proposal is consistent with all applicable provisions of IGRA; and

(7) Whether the proposal is consistent with provisions of other applicable Federal laws.

(b) Within 60 days of the expiration of the 60-day comment period in § 291.7, the Secretary must notify the Indian tribe, the Governor, and the Attorney General of the State in writing that he/she has:

(1) Approved the proposal if the Secretary determines that there are no objections to the Indian tribe's proposal; or

(2) Identified unresolved issues and areas of disagreements in the proposal, and invite the Indian tribe, the Governor and the Attorney General to participate in an informal conference, within 30 days of notification unless the parties agree otherwise, to resolve identified unresolved issues and areas of disagreement.

(c) Within 30 days of the informal conference, the Secretary must prepare and mail to the Indian tribe, the Governor and the Attorney General:

(1) A written report that summarizes the results of the informal conference; and

(2) A final decision either setting forth the Secretary's proposed Class III gaming procedures for the Indian tribe, or disapproving the proposal for any of the reasons in paragraph (a) of this section.

§ 291.9 What must the Secretary do at the end of the 60-day comment period if the State offers an alternative proposal for Class III gaming procedures?

Within 30 days of receiving the State's alternative proposal, the Secretary must appoint a mediator who:

(a) Has no official, financial, or personal conflict of interest with respect to the issues in controversy; and

(b) Must convene a process to resolve differences between the two proposals.

§ 291.10 What is the role of the mediator appointed by the Secretary?

(a) The mediator must ask the Indian tribe and the State to submit their last best proposal for Class III gaming procedures.

(b) After giving the Indian tribe and the State an opportunity to be heard and present information supporting their respective positions, the mediator must select from the two proposals the one that best comports with the terms of IGRA and any other applicable Federal law. The mediator must submit the proposal selected to the Indian tribe, the State, and the Secretary.

§ 291.11 What must the Secretary do upon receiving the proposal selected by the mediator?

Within 60 days of receiving the proposal selected by the mediator, the Secretary must do one of the following:

(a) Notify the Indian tribe, the Governor and the Attorney General in writing of his/her decision to approve the proposal for Class III gaming procedures selected by the mediator; or

(b) Notify the Indian tribe, the Governor and the Attorney General in writing of his/her decision to disapprove the proposal selected by the mediator for any of the following reasons:

(1) The requirements of § 291.4 are not adequately addressed;

(2) Gaming activities would not be conducted on Indian lands over which the Indian tribe has jurisdiction;

(3) Contemplated gaming activities are not permitted in the State for any purpose by any person, organization, or entity;

(4) The proposal is not consistent with relevant provisions of the laws of the State;

(5) The proposal is not consistent with the trust obligations of the United States to the Indian tribe;

(6) The proposal is not consistent with applicable provisions of IGRA; or

(7) The proposal is not consistent with provisions of other applicable Federal laws.

(c) If the Secretary rejects the mediator's proposal under paragraph (b) of this section, he/she must prescribe appropriate procedures within 60 days under which Class III gaming may take place that comport with the mediator's selected proposal as much as possible, the provisions of IGRA, and the relevant provisions of the laws of the State.

§ 291.12 Who will monitor and enforce tribal compliance with the Class III gaming procedures?

The Indian tribe and the State may have an agreement regarding monitoring and enforcement of tribal compliance with the Indian tribe's Class III gaming procedures. In addition, under existing law, the NIGC will monitor and enforce tribal compliance with the Indian tribe's Class III gaming procedures.

§ 291.13 When do Class III gaming procedures for an Indian tribe become effective?

Upon approval of Class III gaming procedures for the Indian tribe under either § 291.8(b), § 291.8(c), or § 291.11(a), the Indian tribe shall have 90 days in which to approve and execute the Secretarial procedures and forward its approval and execution to the Secretary, who shall publish notice of their approval in the **Federal Register**. The procedures take effect upon their publication in the **Federal Register**.

§ 291.14 How can Class III gaming procedures approved by the Secretary be amended?

An Indian tribe may ask the Secretary to amend approved Class III gaming procedures by submitting an amendment proposal to the Secretary. The Secretary must review the proposal by following the approval process for initial tribal proposals, except that the requirements of § 291.3 are not applicable and he/she may waive the requirements of § 291.4 to the extent they do not apply to the amendment request.

§ 291.15 How long do Class III gaming procedures remain in effect?

Class III gaming procedures remain in effect for the duration specified in the procedures or until amended pursuant to § 291.14.

Dated: April 1, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–8910 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 863

Leasing U.S. Air Force Aircraft and Related Equipment to Nongovernment Organizations

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending the Code of Federal Regulations (CFR) by removing its rule on Leasing U.S. Air Force Aircraft and Related Equipment to Nongovernmental Organizations. This rule is removed, as the current information contained in it does not reflect current policy of AFI 64–103, May 1997.

EFFECTIVE DATE: April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Kattner, Headquarters, U.S. Air Force, SAF/AQCP, 1500 Wilson Blvd., 7th Floor, Arlington, VA 22209–2404, (703) 588–7059.

List of Subjects in 32 CFR Part 863

Aircraft, Government Property

PART 863—[REMOVED]

Accordingly, and under the authority of 10 U.S.C. 2667, 32 CFR, Chapter VII is amended by removing Part 863.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8981 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 68–7143–a; FRL–6322–5]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the revisions to the Washington State Implementation Plan (SIP) submitted by the Washington Department of Ecology on March 2, 1999 amending two portions of the Spokane County Air Pollution Control Agency's (SCAPCA) Regulation I, Article IV. The revisions to the SIP for the Spokane particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) nonattainment area simply adds a

definition so that previously approved control measures would continue to be implemented should the area be redesignated as attainment or the pre-existing PM–10 standard is revoked.

DATES: This direct final rule is effective on June 11, 1999 without further notice, unless EPA receives adverse comment by May 12, 1999. If adverse comment is 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: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and State of Washington Department of Ecology, 300 Desmond Drive, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–6511.

SUPPLEMENTARY INFORMATION:

I. Background

Spokane, Washington, was designated a PM–10 nonattainment area on November 15, 1990. The major sources of particulate air pollution are fugitive dust and residential wood combustion. Industrial emissions are a minor source of PM–10 within the nonattainment area. On January 27, 1997, see 62 FR 3800, EPA approved the SIP for PM–10 for the Spokane nonattainment area. The approved attainment plan contains specific regulations which implement control measures for residential wood combustion, paved surfaces, unpaved roads, and other measures. These measures are being fully implemented and the area has not monitored PM–10, 24-hour or annual, violations since 1994. Some of the control measures in the approved SIP are contained in the Spokane County Air Pollution Control Authority (SCAPCA) regulations. Specifically SCAPCA Regulation I , includes standards of control for particulate matter on paved and unpaved surfaces and roads.

II. Summary of Action

SCAPCA amended SCAPCA Regulation I (effective February 13, 1999) and submitted the amendments to Ecology for inclusion in the SIP. The changes will preserve the applicability of Section 6.14 Standards for Control of Particulate Matter on Paved Surfaces, and Section 6.15 Standards for Control of Particulate Matter on Unpaved Roads, should the area be redesignated attainment or the pre-existing PM–10 standard be revoked for Spokane. SCAPCA has added a definition to both sections that requires continued implementation of the control measures in the Spokane PM–10 nonattainment area even if EPA were to redesignate the area to attainment or revoke the pre-existing PM–10 standard. On February 26, 1999, after full public hearing, Ecology adopted the revisions as part of the SIP and on March 2, 1999, submitted the revisions to EPA for approval.

EPA has reviewed the proposed SIP revision and determines that it is consistent with the Clean Air Act and applicable regulations and requirements. Therefore, EPA is approving the two minor rule changes to the SCAPCA Regulation I as a revision to the Washington PM–10 SIP for the Spokane nonattainment area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 adverse comments be filed. This rule will be effective June 11, 1999 without further notice unless the Agency receives adverse comments by May 12, 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. 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 June 11, 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 Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 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, 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 June 11, 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, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 31, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the 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 WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(79) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(79) February 22, 1999, letter from WDOE submitting a revision and replacement pages to the State Implementation Plan for the Spokane PM–10 Attainment Plan that will preserve the applicability of Section 6.14 Standards for Control of Particulate Matter on Paved Surfaces, and Section 6.15 Standards for Control of Particulate Matter on Unpaved Roads, should the area be redesignated as attainment or the pre-existing PM–10 standard is revoked for Spokane.

(i) Incorporation by reference.

(A) Spokane County Air Pollution Control Authority's Regulation I., Article VI: Section 6.14 Standards for Control of Particulate Matter on Paved Surfaces and; Section 6.15 Standards for Control of Particulate Matter on Unpaved Roads, effective February 13, 1999.

[FR Doc. 99–8942 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 068–1068a; FRL–6322–1]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision approves numerous updates of the state's air program rules and ensures that the state's SIP is current with Federal requirements. The effect of this action is to ensure Federal enforceability of the state's air program rule revisions.

DATES: This direct final rule is effective on June 11, 1999 without further notice, unless EPA receives adverse comment by May 12, 1999. If adverse comment is 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: Comments may be addressed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this notice?
What action is the EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgations of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Being Addressed in This Notice?

The Iowa Department of Natural Resources (IDNR) revised a number of its rules in order to maintain equivalency with Federal requirements, to update adoption by reference to Federal rules, to provide clarifications, to remove obsolete rules, and to correct internal citations. The revised rule chapters are: Chapter 20, ''Scope of Title—Definitions—Forms—Rules of Practice''; Chapter 22, ''Controlling Pollution''; Chapter 23, ''Emissions Standards for Contaminants''; Chapter 24, ''Excess Emission''; Chapter 25, ''Measurement of Emissions''; Chapter 29, ''Qualifications in Visual Determinations of the Opacity of Emissions''; and Chapter 31, ''Nonattainment Areas,'' 567 Iowa Administrative Code. Specific Chapter paragraphs and subparagraphs which were revised are: 20.1, 20.2, 20.3(4), 20.3(6)—rescinded, 22.1(1), 22.1(2), 22.1(3), 22.1(4), 22.4, 22.4(1), 22.4(3), 22.5(2), 22.5(4), 22.5(6), 22.5(10), 22.8(1), 22.203(1), 22.300(2), 22.300(8), 23.1(6), 23.2(3), 23.3(2), 24.1(2), 25.1(7), 25.1(9), 25.1(10), 25.1(12), 29.1, and 31.2.

The general subject matter of the revisions included, but was not limited to, updating the definition of ''volatile organic compound,'' updating the reference to EPA Guideline on Air Quality Models (Revised), updating the reference to the Federal prevention of significant deterioration program at 40 CFR 52.21, providing additional restrictions in the open burning rule, and updating the reference to EPA opacity method at 40 CFR part 60.

These revisions to the Iowa SIP were submitted by Larry Wilson, IDNR Director, on August 12, 1998. The state effective date for these revisions is May 13, 1998.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR section 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine revisions to the existing

rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Conclusion

Final Action

EPA is taking final action to approve, as an amendment to the Iowa SIP, rule revisions submitted by the state of Iowa on August 12, 1998.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 adverse comments be filed. This rule will be effective June 11, 1999 without further notice unless the Agency receives adverse comments by May 12, 1999.

If EPA receives such comments, then EPA will publish a document 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. EPA will not institute a second comment period. 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 June 11, 1999, and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. E.O. 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, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to 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, 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. E.O. 13045

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

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to 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, 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. 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 Act (RFA)

The 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 CAA 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a

Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting 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 U.S. Comptroller General 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

Chapter I, Title 40 of the 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 Q—Iowa

2. In § 52.820 the following entries for paragraph (c), EPA-approved regulations, are revised to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA–APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice				
567–20.1	Scope of Title	5/3/98	April 12, 1999 [FR cite].	
567–20.2	Definitions	5/3/98	April 12, 1999 [FR cite].	
567–20.3	Air Quality Forms Generally	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	5/3/98	April 12, 1999 [FR cite].	
567–22.5	Special Requirements for Nonattainment Areas	5/3/98	April 12, 1999 [FR cite].	
567–22.8	Permit by Rule	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
567–22.203	Voluntary Operating Permit Applications	5/3/98	April 12, 1999 [FR cite].	
*	* * *	*	* *	*
567–22.300	Operating Permit by Rule for Small Sources	5/3/98	April 12, 1999 [FR cite].	
Chapter 23—Emission Standards for Contaminants				
567–23.1	Emission Standards	5/3/98	April 12, 1999 [FR cite] ..	Sections 23.1(2)–(5) are not approved in the SIP
567–23.2	Open Burning	5/3/98	April 12, 1999 [FR cite].	
567–23.3	Specific Contaminants	5/3/98	April 12, 1999 [FR cite] ..	Section 23.3(3)(d) is not part of the approved SIP.

EPA–APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
Chapter 24—Excess Emissions				
567–24.1	Excess Emission Reporting	5/3/98	April 12, 1999 [FR cite].	
*	*	*	*	*
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment.	5/3/98	April 12, 1999 [FR cite].	
*	*	*	*	*
Chapter 29—Qualification in Visual Determination of the Opacity of Emissions				
567–29.1	Methodology and Qualified Observer	5/3/98	April 12, 1999 [FR cite].	
Chapter 31—Nonattainment Areas				
*	*	*	*	*
567–31.2	Conformity of General Federal Actions to the Iowa SIP or Federal Implementation Plan.	5/8/98	April 12, 1999 [FR cite].	
*	*	*	*	*

[FR Doc. 99–8940 Filed 4–9–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[GA–42–1–9908a; FRL–6321–1]

Implementation Plan and Redesignation Request for the Muscogee County, Georgia Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is simultaneously approving the lead state implementation plan (SIP) and redesignation request for the Muscogee County, Georgia, lead nonattainment area. Both plans dated September 28, 1998, were submitted by the State of Georgia for the purpose of demonstrating that the Muscogee County area has attained the lead National Ambient Air Quality Standard (NAAQS).

DATES: This direct final rule is effective June 11, 1999 without further notice, unless EPA receives adverse comment by May 12, 1999. If adverse comment is 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: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by Georgia Environmental Protection Division (EPD) may be examined during normal business hours at the following locations:

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

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Georgia Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404)562–9038.

SUPPLEMENTARY INFORMATION:

I. Background—Lead SIP

Section 107(d)(5) of the Clean Air Act as amended in 1990 (CAA) provides for areas to be designated as attainment, nonattainment, or unclassifiable with respect to the lead NAAQS. Governors are required to submit recommended designations for areas within their states. When an area is designated nonattainment, the state must prepare and submit a SIP pursuant to sections 110(a)(2) and 172(c) of the CAA showing how the area will be brought into attainment.

On January 6, 1992, EPA designated the portion of Muscogee County around the GNB, Inc., lead smelter and battery production facility as nonattainment for lead. This nonattainment designation was based on lead NAAQS violations from monitors located near the GNB facility that were recorded the first, second, and fourth quarter of the calendar year 1991.

On July 23, 1993, Georgia EPD submitted a lead SIP for attaining the NAAQS in the Muscogee County lead nonattainment area. EPA found the SIP to be inadequate because it did not meet the requirements of section 172(c) of the CAA and requested that Georgia EPD make the necessary corrections and submit supplemental information to address the deficiencies. To comply, Georgia EPD submitted a supplemental modeling demonstration for the base

year 1996. Significant changes in the emission sources occurred at the GNB lead facility rendering the modeling inappropriate for the 1993 SIP submittal and inapplicable for the redesignation request. Specifically, the 1996 modeling showed a relaxation of the limits, the addition of new emission sources, revised stack heights, deleted sources, and relocated sources not addressed in the 1993 SIP submittal. Even though the total facility emissions and maximum modeling impacts decreased somewhat, the inventory was not reflective of the 1993 SIP inventory and the SIP emission limits were relaxed. As a result, Georgia EPD requested that the 1993 lead SIP be withdrawn and replaced with the new lead SIP submittal and redesignation request dated September 28, 1998.

II. Analysis of the State Submittal

The 1998 SIP revision was reviewed using the criteria established by the CAA in section 110(a)(2). Section 172(c) of the CAA specifies the provisions applicable to areas designated as nonattainment for any of the NAAQS. EPA has also issued a General Preamble describing how EPA will review SIPs and SIP revisions submitted under Title I of the CAA, including those state submittals containing lead nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's approval and the supporting rationale (57 FR 13549, April 16, 1992).

A. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Muscogee County area was effective on January 6, 1992; therefore, the latest attainment date permissible by statute would be January 6, 1997. The Muscogee County area has air quality data showing attainment of the lead NAAQS for the years 1992 through 1998 and to date for 1999, which meets the statutory requirement.

To demonstrate that the area will continue to be in attainment with the lead NAAQS, emission limits were obtained from the application of reasonable achievable control technologies (RACT) and workplace standards at the GNB facility. The emission limits were evaluated using air dispersion modeling. This modeling predicts the impact of emissions on the environment surrounding the facility and whether or not the area will attain the lead NAAQS. The modeling demonstration submitted by Georgia EPD for the GNB facility shows a predicted maximum ambient air lead concentration of 0.98 micro grams per cubic meter ($\mu g/m^3$) which is below the NAAQS for lead of 1.5 ($\mu g/m^3$)

B. Emissions Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because it is necessary to support an area's attainment demonstration, the emission inventory must be received with the SIP submission.

Georgia EPD submitted an emissions inventory for the base year 1996. The inventory identifies the secondary lead smelter owned and operated by GNB as the sole major source of lead emissions in the Muscogee County area when violations were recorded. The EPA is approving the emissions inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of the CAA.

C. Reasonably Available Control Measures (RACM) (Including Reasonably Available Control Technology (RACT))

States with lead nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented (see sections 172(c)(1)). Control measures have already been implemented at the GNB facility and include baghouses on several emissions points, environmental controls on blast furnaces, and improved lead related work practices and controls to minimize fugitive lead dust emissions. The control measures employed at the GNB facility were evaluated for reasonableness and technological and economical feasibility. EPA has determined that requirements for RACM (including RACT) have been met.

D. Other Measures including Emission Limitations, and Timetables

Pursuant to 172(c)(6) of the CAA, all nonattainment SIPs must contain enforceable emission limitations, other control measures, and schedules and timetables for compliance.

The emission limits for the GNB facility were submitted as a part of the lead SIP and used in the modeling study. The facility-wide emissions of lead for GNB are limited to 1.612 pounds per hour (lbs/hr). Any relaxation of the emission limits which results in a computer modeling prediction of a maximum quarterly lead concentration off the GNB plant property exceeding 0.98 $\mu g/m^3$ will require a revision of this lead SIP.

The CAA also requires that nonattainment SIPs include other measures and schedules and timetables for compliance that may be needed to ensure the attainment of the relevant NAAQS by the applicable attainment date. Because the Muscogee County area has been attaining the lead NAAQS since 1992 and met the attainment date of January 6, 1997, it was not necessary to require other control measures or a schedule and timetable for compliance with the NAAQS.

E. Computer Modeling

Section 110(a)(2)(K) of the CAA requires the use of air quality modeling to predict the effect on ambient air quality from any emissions of an air pollutant for which a NAAQS has been established. Therefore, Georgia EPD was required to submit a modeling demonstration with the lead SIP. Georgia EPD used the current long-term ISCLT3 and short-term ISCST3 models. The 1996 modeling results reveal that the maximum quarterly lead concentration was 0.98 $\mu g/m^3$ which is below the 1.5 $\mu g/m^3$ lead NAAQS. Furthermore, it is predicted that the maximum quarterly lead concentration in the year 2009, which is the required year for maintenance, shall be either at or below the 1996 value.

F. Reasonable Further Progress (RFP)

The SIP must provide for RFP, defined in section 171(1) of the CAA as such reductions in emissions of the relevant air pollutant as are required by section 172(c)(2), or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The EPA reviewed the attainment demonstration for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the lead NAAQS. The EPA found that the emission controls which have been implemented at the GNB facility in response to the 1991 NAAQS violations, have resulted in swift improvement in air quality in the Muscogee County nonattainment area. Furthermore, the air quality monitoring data indicates no exceedances of the

lead NAAQS since 1991 and the modeling study predicts no future exceedances. Therefore, no additional incremental reductions in emissions are needed.

G. New Source Review (NSR)

Section 172(c)(5)of the CAA requires that the submittal include a permit program for the construction and operation of new and modified major stationary sources. The federally approved Rule 391–3–1–.03—subsection (8)(c) of the Georgia Rules for Air Quality Control identifies the current specific permitting requirements for nonattainment areas in the State of Georgia. The federally approved Rule 391–2–1–.02 subsection (7)—Prevention of Significant Deterioration of Air Quality will replace this rule once the Muscogee County lead nonattainment area is redesignated to attainment. An analysis of the redesignation request is discussed later in this document. This rule meets the requirements of the CAA.

H. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

The Georgia lead SIP contains the following three contingency measures: (1) speed breaker control of truck speed and minimization of re-entrainment of fugitive dust on the roadway; (2) enclosure of the drum dump for the oxide vacuum system, smelter vacuum system, and fugitive baghouses to contain any lead dust generated during cleaning; and (3) connection of the discharge from both vacuum systems to baghouses to provide secondary filtration. The SIP provides that all three measures be implemented within 60 days after notification to GNB by Georgia EPD that the NAAQS has been violated in the Muscogee County area.

The EPA is approving the lead SIP for Muscogee County, Georgia because it meets the requirements set forth in section 110(a)(2) and 172(c) of the CAA.

III. Background and Analysis of the Redesignation Request

On February 23, 1994, Georgia EPD submitted a request to redesignate the Muscogee County area to attainment for lead. The EPA could not approve this request because it did not meet the requirements sets forth in the CAA for redesignation requests. Subsequently, Georgia EPD requested that EPA withdraw the 1994 redesignation request and approve the new request dated September 28, 1998.

Pursuant to section 107(d)(3)(E) of the CAA, five requirements must be met before a nonattainment area can be redesignated to attainment. The following describes how each of the five requirements has been achieved.

A. Attainment of the Lead NAAQS

The EPA requires eight consecutive quarters or 2 calendar years of air quality monitoring data showing attainment to justify a redesignation to attainment. To demonstrate that the Muscogee County area is in attainment with the NAAQS for lead, Georgia EPD included air quality data for the years 1992–1998 in the submittal. The data has been quality assured, and can be found in EPA's Aerometric Information Retrieval System. This monitoring data which covers over 25 consecutive quarters without an exceedance, is adequate to demonstrate attainment of the lead NAAQS.

Modeling is also required to redesignate an area to attainment. The EPA believes that the modeling analysis included in the 1998 lead SIP also being approved in this document satisfies this requirement. Georgia EPD will continue to monitor the air quality of the Muscogee County area to verify continued maintenance of the lead NAAQS.

B. Section 110(k) SIP Approval

The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area. Approval actions on SIP elements and the redesignation request may occur simultaneously as in the case of this lead SIP and redesignation request. The SIP elements for the lead SIP were discussed previously in the ''Analysis of the State Submittal'' section of this document. The EPA has determined that the approval of the lead SIP for the Muscogee County area meets the requirements of section 110(k).

C. Permanent and Enforceable Improvement in Air Quality

A state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. The implementation of RACM (including RACT) by the GNB facility provides enforceable and permanent emission reductions needed to attain and maintain the lead NAAQS. This is evidenced by the area having more than 25 consecutive quarters of clean air quality data. Furthermore, the modeling study shows that the area will remain in attainment through the year 2009. Subsequently, EPA has determined that there is a permanent and enforceable improvement in the air quality in Muscogee County.

D. Compliance With Sections 110(a)(2) and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110(a)(2) and Part D of the CAA. The EPA has determined that the lead SIP for the Muscogee County area of Georgia meets the requirements of section 110(a)(2) and Part D of the CAA and is approving the submittal in this document. A detailed explanation of the requirements can be found in the ''Analysis of the State Submittal'' section of this document.

E. Maintenance Plan

Section 175(A) of the CAA requires states that submit a redesignation request to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, states must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as the Administrator deems necessary to assure that a state will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions are to include a requirement that a state will implement all measures for controlling the air pollutant concerned that were contained in the SIP prior to redesignation.

Georgia EPD demonstrated that the lead SIP also being approved in this action is adequate to maintain compliance with the lead NAAQS for at least ten years. The EPA agrees that the lead SIP satisfies the requirements of section 175(A) of the CAA to show maintenance of the lead NAAQS. The control measures and lead emission limits included in the SIP have been implemented at the GNB facility to ensure the continued attainment of the lead NAAQS. The modeling demonstration supporting the lead SIP shows maintenance of the lead standard through 2009, meeting the requirement to show maintenance for ten years. The lead SIP also includes contingency

measures that will take effect if a violation of the lead NAAQS occurs. Since these measures were not implemented to attain the lead NAAQS, they can be used as contingency measure for maintenance. Georgia EPD has committed to submit a demonstration of maintenance for an additional ten years within eight years of approval of the redesignation request.

IV. Final action

EPA is approving the lead SIP and redesignation of the Muscogee County lead nonattainment area to attainment because the submittal meets the requirements of the CAA as discussed in this document. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 adverse comments be filed. This rule will be effective June 11, 1999 without further notice unless the Agency receives adverse comments by May 12, 1999.

If the EPA receives such comments, then EPA will publish a document 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. 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 June 11, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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 Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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 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 Act

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

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective

and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 June 11, 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

40 CFR Part 52

Environmental protection, Air pollution control, Lead, Incorporation by reference, Intergovernmental relation, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 18, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

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 L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(45) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(45) The State of Georgia submitted a lead SIP for the Muscogee County lead nonattainment area dated September 28, 1998.

(i) Incorporation by reference.

State Implementation Plan for Lead Columbus, Georgia Muscogee County, Requirements for the GNB facility that were adopted on September 28, 1998.

(ii) Other material. None.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.311, the attainment status table for lead is amended by revising the designation type and date entry for Muscogee County (part).

§ 81.311 [Amended]

GEORGIA—LEAD

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Muscogee County (part)—That portion of the county which includes a circle with a radius of 2.3 kilometers with the GNB, Inc., lead smelting and battery production facility in the center.	June 11, 1999	Attainment		
* * *	*	*	*	*

[FR Doc. 99–8944 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6322–8]

National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; interpretation and technical amendments.

SUMMARY: Under the Clean Air Act (Act), EPA issued a final rule (63 FR 18504, April 15, 1998) to reduce hazardous air pollutant (HAP) emissions from the pulp and paper production source category. That rule (known as the Pulp and Paper national emission standard for hazardous air pollutants or pulp and paper NESHAP) is the air component of the integrated air and water rules for the pulp and paper industry (known as the Pulp and Paper Cluster Rules). The rule applies to pulp and paper production processes

included under Standard Industrial Classification (SIC) code 26.

This action makes interpretive amendments to certain regulatory text in the 1998 pulp and paper NESHAP. We are making these amendments to make certain that the rule's language reflects our stated intent and also to correct certain inadvertent omissions and minor drafting errors.

DATES: These amendments are effective April 12, 1999. The incorporation by reference of the publication listed in the amendments is approved by the Director of the Federal Register as of April 12, 1999.

ADDRESSES: Docket No. A–92–40, containing the supporting information for the original and amendments to 1998 NESHAP and this action, is available for your inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shedd, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5397 or e-mail at shedd.steve@epa.gov. For questions on compliance and applicability determinations, contact Mr. Seth Heminway, Office of Enforcement and Compliance Assessment (2223A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; telephone (202) 564–7017 or e-mail at heminway.seth@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action include:

Category	SIC code	Examples of regulated entities
Industry	26	Pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber.

This table is not exhaustive. It lists the types of entities that we are now aware might be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in part 63, subparts A and S of title 40 of the Code of Federal Regulations.

Information Contacts. If you have questions about how this action applies to a particular situation or questions about compliance approaches, permitting, enforcement, and rule determinations, please contact the appropriate regional representative below.

Region I: Greg Roscoe, Chief, Air Pesticides and Toxics Enforcement Office, Office of Environmental Stewardship, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203; (617) 565–3221. Technical Contact for Applicability Determination, Susan Lancey, (617) 565–3587, (617) 565–4940 (Fax).

Region II: Mosey Ghaffari, Air Compliance Branch, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866; (212) 637–3925, (212) 637–3998 (Fax).

Region III: Makeba Morris, U.S. EPA, Region III, 3AT10, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2187.

Region IV: Lee Page, U.S. EPA, Region IV, Atlanta Federal Center, 100 Alabama Street, Atlanta, GA 30303; (404) 562–9131.

Region V: Christina Prasinos (AE–17J), U.S. EPA, Region V, 77 West Jackson Street, Chicago, IL 60604–3590; (312) 886–6819, (312) 353–8289 (Fax).

Region VI: Michelle Kelly, Air Enforcement Branch (6EN–AA), U.S. EPA, Region VI, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733; (214) 665–7580, (214) 665–7446 (Fax).

Region VII: Gary Schlicht, Air Permits and Compliance Branch, U.S. EPA, Region VII, ARTD/APCO, 726 Minnesota Avenue, Kansas City, KS 66101; (913) 551–7097.

Region VIII: Tami Thomas-Burton, Air Toxics Coordinator, U.S. EPA, Region VIII, Suite 500, 999 18th Street, Denver, CO 80202–2466; (303) 312–6581, (303) 312–6064 (Fax).

Region IX: Ken Bigos, U.S. EPA, Region IX, A–5, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1240.

Region X: Andrea Wallenweber, Office of Air Quality, U.S. EPA, Region X, OFFICE OF AIR QUALITY PLANNING AND STANDARDS–107, 1200 Sixth Avenue, Seattle, WA 98101; (206) 553–8760, (206) 553–0404 (Fax).

Technology Transfer Network. The Technology Transfer Network (TTN) is a network of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. Information regarding the basis and purpose of this action, the rule and other relevant documents can be found on the pulp and paper page of EPA's Unified Air Toxics World Wide Web site (UATW) at ''http://www.epa.gov/ttn/uatw/pulp/pulppg.html''. For more information on the TTN, call the HELP line at (919) 541–5384.

Outline. The technical amendments discussed in this preamble are grouped according to rule sections: emission standards and testing, and monitoring and recordkeeping.

The preamble is organized as follows:

I. Description of the Amendments and Interpretations
A. Emission Standards and Testing
1. May process modifications be used instead of add-on control devices to meet the bleaching system standards (§ 63.445)?
2. Must evaporator feed stage vapor and vacuum system condensates be controlled (§ 63.446)?
3. May a direct injection gas chromatography/flame ionization detection test method be used to measure methanol in liquid streams (§ 63.14 and § 63.457(c)(3))?
4. What are the minimum length and number of test runs required to demonstrate initial compliance (§ 63.457)?
B. Monitoring and Recordkeeping
1. Must continuous monitors for residence time and concentration be used for some control device alternatives (§ 63.453)?
2. What is the condensate tank ''no detectable'' emissions test frequency (§ 63.453)?
3. What must be done if the tests for condensate tanks indicate emissions (§ 63.453)?
4. May the repair period for closed-vent systems extend beyond 15 days as implied in the recordkeeping requirements (§ 63.453)?
5. Do the recordkeeping requirements in subpart RR apply to closed collection systems (§ 63.453)?
C. Typographical Corrections
II. Administrative Requirements
III. Legal Authority

I. Description of the Amendments and Interpretations

In today's action, we are amending several sections of the national emission standard for hazardous air pollutants from the pulp and paper industry issued

on April 15, 1998 (the ''1998 NESHAP'') in title 40, part 63, subpart S. These amendments clarify the intent and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. This section presents a description of each of the amendments.

A. Emission Standards and Testing

1. *May process modifications be used instead of add-on control devices to meet the bleaching system standards (§ 63.445)?*

Today's action revises the bleaching system standards (§ 63.445) to make clear that process modifications (e.g., 100 percent substitution of chlorine dioxide for chlorine and elimination of hypochlorite) may be used to achieve compliance with the chlorinated HAP emission limits for the bleaching system standards. The 1998 NESHAP requires equipment at subject bleaching stages to be enclosed and vented into a closed-vent system and routed to a control device that meets the specified emission limits (see § 63.445(c)).

Following promulgation of the 1998 NESHAP, commenters indicated that some mills may be able to achieve the concentration or mass emission limits specified in § 63.445(c) by process modifications without the use of an add-on control device. The commenters stated that as written, the 1998 NESHAP would preclude mills from using process modifications (e.g., 100 percent chlorine dioxide substitution for chlorine and elimination of hypochlorite) because the 1998 NESHAP specifies that the emissions must be captured and routed to a control device.

We did not intend to prevent you (owner or operator of the mill or reader, as appropriate) from using process modifications to achieve compliance with the standards for chlorinated HAP emissions. The outlet concentration control option was provided in the 1998 NESHAP in response to comments on the December 17, 1996 proposal (Pulp, Paper, and Paperboard Industry—Background Information for Promulgated Air Emission Standards, EPA–453/R–93–050b, pages 6–1 and 6–2) indicating that bleaching systems using high levels of chlorine dioxide substitution could have difficulty meeting a percent reduction limit due to low chlorine concentrations at the process equipment outlet. Also, the mass emission limit for bleaching system vents in the 1998 NESHAP was developed in response to comments on the March 8, 1996 supplemental **Federal Register** document (61 FR 9394, second column) indicating that new low-flow rate bleaching system technologies would not be able to meet either the percent reduction or outlet concentration limits (Air Docket A–92–40, item IV–B–29). Therefore, we provided for two standards to allow process modifications without the need for add-on controls. Thus, we do not intend to require enclosures and closed-vent systems for process equipment that achieve compliance using process modifications. A temporary enclosure may be necessary to measure the outlet concentration or mass emission limit during the initial performance test and other compliance demonstrations. It should be noted that the percent reduction alternative emission limit was not included in the amended language since this reduction alternative is inherently based on the use of an add-on control device.

2. *Must evaporator feed stage vapor and vacuum system condensates be controlled (§ 63.446)?*

Evaporator feed stage vapor and vacuum system condensates must be controlled. Today's action revises the standards for kraft pulping process condensates in the 1998 NESHAP (§ 63.446) to clarify which condensate streams from evaporator system weak liquor feed stages are subject to the standards. Our intention in the 1998 NESHAP was to collect all condensate streams from evaporator system stages where the majority of HAPs are discharged. The discussion in the next four paragraphs is intended to present the reader with a brief description of the evaporation process and provide background for identifying the regulated condensate streams.

The 1998 NESHAP (§ 63.446(b)(3)) specifies that the standards apply to certain kraft pulping process condensate streams. For the evaporator system, the 1998 NESHAP specifies that regulated streams are condensates from ''each evaporator stage where weak liquor is introduced (feed stages).'' The 1998 NESHAP defines the evaporator system as

> * * * all equipment associated with increasing the solids content and/or concentrating spent cooking liquor from the pulp washing system including pre-evaporators, multi-effect evaporators, concentrators, and vacuum systems, as well as associated condensers, hotwells, and condensate streams, and any other equipment serving the same function as those previously listed.

Evaporators are used to remove water and volatile contaminants (including HAPs) from weak liquor so that the spent cooking chemicals can be economically recovered and reused. After passing through the evaporator system, concentrated weak liquor (i.e., heavy or strong liquor) is burned in the recovery furnace to recover spent cooking chemicals and heat value contained in organic compounds remaining in the concentrated liquor.

An evaporator system is a series of interconnected evaporator stages called ''effects'' (thus the industry term ''multi-effect evaporator). Each stage is operated at different pressures to evaporate water and contaminates (HAPs) from weak liquor. The evaporated vapors from one stage heat the next stage. Thus, the condenser of each stage condenses vapors from this and previous stages. These vapors typically do not exit the evaporator system until after entering the next stage or stages. Additionally, the vapors from the weak liquor feed stages have the highest HAP content since this is the initial contact of the weak liquor with heat. Later stages contain less HAPs (unless more weak liquor is fed into the effect) since the majority of HAPs are evaporated from the liquor in the previous stage(s).

The liquor feed stages in the evaporator system are operated under very high vacuum, usually maintained by steam ejectors or vacuum pumps. The condensates generated by these vacuum devices and their associated condensers also have high HAP content due to volatilization of compounds from the individual liquor feed stages.

Following issuance of the 1998 NESHAP, we received requests to clarify the 1998 NESHAP language regarding the subject condensates from evaporator system weak liquor feed stages. We intended to include the condensates from weak liquor feed stage vapors and condensates from weak liquor feed stage vacuum systems in the list of subject kraft pulping process condensates specified in the 1998 NESHAP (§ 63.446(b)). However, the 1998 NESHAP language used to describe the weak liquor feed stage vapor condensates was not accurate and the 1998 NESHAP language omitted weak liquor feed stage vacuum system condensates. Our intent is evident in EPA's analysis of the condensate characterization data (Air Docket A–92–40, item IV–B–9) submitted following proposal, the supplemental **Federal Register** document (March 8, 1996; 61 FR 9383; page 9390, second column), and communications between EPA and industry stakeholders (Air Docket A–92–40, items IV–E–65 and IV–E–71) following publication of the proposed rule.

Accordingly, we are amending § 63.446(b) to clarify that condensates from the vapors and vacuum systems for weak liquor feed stages are subject to the kraft pulping process condensate

standards. As noted above, the vapors from weak liquor feed stages may not be condensed in some evaporative systems until the following stage or stages. In this case, you must collect and control the condensates from these evaporator stages.

3. *May a direct injection gas chromatography/flame ionization detection test method be used to measure methanol in liquid streams (§ 63.14 and § 63.457(c)(3))?*

A specific direct injection gas chromatography/flame ionization detection (GC/FID) test method is being included in today's action as an additional and alternative test method for determining the methanol content of liquid streams. We are amending the test methods and procedures section of the 1998 NESHAP (§ 63.457(c)(3)) and the incorporation-by-reference section of the NESHAP general provisions (§ 63.14) to incorporate this test method.

As presented in the April 15, 1998 NESHAP preamble (63 FR 18529), the 1998 NESHAP specifies EPA Reference Method 305 for determining methanol content of liquid streams. As the 1998 NESHAP preamble notes, however, the GC/FID test method developed by the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI) had not been validated using EPA procedures (Method 301). However, we stated in the 1998 NESHAP preamble that if we approve this method using the Method 301 validation procedures, then the NCASI method would be approved as either an alternative or a replacement for Method 305 with a supplemental **Federal Register** document.

On February 18, 1998, the director of EPA's Emissions, Monitoring and Analysis Division (EMAD) approved NCASI's test method as an alternative test method to EPA Method 305 for measuring methanol in condensates. Since clarifying amendments to the 1998 NESHAP are being published in today's action, we decided to incorporate this NCASI test method into the 1998 NESHAP language to ease implementation and referencing.

Either EPA Method 305 or the NCASI method may be used for measuring the methanol content of liquid streams. However, the NCASI test method has been validated for only one HAP compound: methanol. So while this NCASI method can be used in other parts of the 1998 NESHAP where methanol is specified as a surrogate for HAP, this method may not be used for certain test requirements for biological treatment where we require a total measurement of all HAP compounds (not just methanol).

4. *What are the minimum length and number of test runs required to demonstrate initial compliance (§ 63.457)?*

For the initial performance tests, a minimum of three 1-hour test runs must be conducted during which either an integrated sample or four grab samples must be taken. Today's action clarifies the terminology used for test runs and samples in the vent sampling requirements in § 63.457(b)(5) and (b)(6) and adds the 1-hour test length specification to the liquid sampling requirements in § 63.457(c)(3).

Commenters to the 1998 NESHAP indicated that the language regarding the minimum length of the test run and number of test runs required by the NESHAP was unclear. In reviewing the 1998 NESHAP, we found two sections where clarification of the terminology used to describe test runs and samples is needed. Additionally, we inadvertently omitted specifying the minimum test run length for liquid sampling. The following discussion identifies the 1998 NESHAP language in question and the amendments in today's action to correct the rule language.

Performance tests are used to demonstrate compliance with a relevant standard based on conditions that reflect normal operations. As specified in the performance testing requirements section of the NESHAP general provisions (§ 63.7(e)(1)):

> Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source.

The NESHAP general provisions (§ 63.7(e)(3)) also specify:

> * * * For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply.

For pulping and bleaching system vent standards, the 1998 NESHAP specifies in the test methods and procedures section (§ 63.457(b)(5)) that owners or operators must collect a minimum of three samples that are representative of normal conditions and average the results to determine vent gas pollutant concentrations. However, the terminology used in the 1998 NESHAP for vent sampling was incorrect since the term ''samples'' was used instead of the phrase ''test runs.'' Section 63.457(b)(5) should have used the phrase ''test runs'' since the subsequent language in § 63.457(b)(6) refers the minimum sampling time for the test runs and also specifies the number of samples to be taken during the run. Therefore, we are changing the word ''samples'' to ''test runs'' in § 63.457(b)(5). Also, for additional clarity, we are adding the word ''test'' in front of the word ''run'' in § 63.457(b)(6).

For liquid stream sampling, the 1998 NESHAP specifies in the test methods and procedures section (§ 63.457(c)(3)) that owners or operators must collect a minimum of three samples that are representative of normal conditions and average the results to determine liquid stream total HAP or methanol concentrations. In drafting the 1998 NESHAP, we inadvertently omitted the minimum sampling time of each test run for liquid stream sampling. Although the liquid stream test methods referenced in the 1998 NESHAP (§ 63.457(c)(3)(i) and (c)(3)(ii)) are batch tests, we intended for the samples (either grab samples or composite samples) to be collected over a minimum period of 1 hour. Our intent for liquid stream sampling length is found in the test methods and procedures section (§ 63.451(i)(2)(iv)) of the December 17, 1993 proposal (63 FR 66181). Today's action corrects this omission and inserts the 1-hour sampling period language into § 63.457(c)(3).

Today's action amends the 1998 NESHAP to clarify that the initial performance tests for vent and liquid streams must consist of a minimum of three test runs and that the minimum sampling time for each test run is 1 hour. However, additional performance tests or longer sampling times may be needed to demonstrate compliance under normal operating conditions for equipment systems that have multiple operating scenarios or modes.

With regard to continuous compliance, the 1998 NESHAP did not specify frequencies and averaging periods for continuous monitoring since we intended to provide you flexibility in developing appropriate continuous monitoring strategies. As specified in the monitoring section of the 1998 NESHAP (§ 63.453(n)(4)), you must provide for the Administrator's approval the rationale for the selected operating parameter value, monitoring frequency, and averaging time. Since we have delegated this authority to State agencies, you have the flexibility to work out the specifics of continuous monitoring strategies with your permitting agencies. Additionally, we continue to hold workshops to discuss and identify continuous monitoring strategies with stakeholders.

B. Monitoring and Recordkeeping

1. *Must continuous monitors for residence time and concentration be used for some control device alternatives (§ 63.453)?*

Thermal oxidizers meeting the outlet concentration standard may continuously monitor either combustion temperature or outlet concentration. Today's action clarifies the monitoring requirements in the 1998 NESHAP (§ 63.453(b)) for thermal oxidizers used to control pulping system vent emissions. Additionally, today's action clarifies that residence time is an operating parameter to be demonstrated initially and when process changes occur that will impact residence time.

The 1998 NESHAP (§ 63.443(d)) contains the following alternative emission limits for thermal oxidizers:

(1) Reduce total HAP emissions by 98 percent or more by weight;

(2) Reduce the total HAP concentration at the outlet of the thermal oxidizer to 20 parts per million or less by volume (ppmv), corrected to 10 percent oxygen on a dry basis;

(3) Reduce total HAP emissions using a thermal oxidizer designed and operated at a minimum temperature of 871 °C (1600 °F) and a minimum residence time of 0.75 seconds; or

(4) Reduce total HAP emissions using a boiler, lime kiln, or recovery furnace by introducing the HAP emission stream with the primary fuel or into the flame zone.

The monitoring requirements for thermal oxidizers (§ 63.453(b)) specify that a continuous monitoring system (CMS) must be operated to measure the temperature in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs. This applies to each thermal oxidizer used to comply with the percent reduction, outlet concentration, and minimum design specification requirements. When complying with the outlet concentration or the minimum design requirements, you must monitor for the parameter specified and for the temperature and concentration limits specified.

In drafting the 1998 NESHAP, we intended that continuous compliance with each emission limit alternative (with the exception of using a boiler, lime kiln, or recovery furnace) be demonstrated by monitoring only the thermal oxidizer operating temperature as evidenced by the December 17, 1993 proposal (§ 63.453(b)) and the 1998 NESHAP preamble (63 FR 18511). As an option for monitoring temperature, we intended to allow you to continuously monitor only the thermal oxidizer outlet concentration if you are complying with the 20 ppmv outlet concentration emission limit (§ 63.443(d)(2)). However, the language in § 63.453(b) of the 1998 NESHAP is unclear. It incorrectly indicates that owners or operators complying with the 20 ppmv outlet concentration must continuously monitor the outlet concentration and temperature, and that owners or operators complying with the temperature and residence time specifications must continuously monitor the thermal oxidizer operating temperature, residence time, and HAP concentration.

Today's action amends the 1998 NESHAP to achieve the original intent as stated in the preamble (63 FR 18511). The amendment clarifies that mills that comply with the 20 ppmv emission limit must monitor either HAP concentration or temperature, but not both. The amendment also clarifies that monitoring of operating temperature is the only monitoring parameter requirement for demonstrating continuous compliance with the minimum temperature and residence time specification (§ 63.443(d)(3)). For the residence time requirement, you must demonstrate that the minimum residence time is being achieved (along with the operating temperature) and provide documentation to demonstrate this in the notification of compliance status. The minimum residence time must also be performed if the vent gas flow rate sent to the thermal oxidizer is increased above the flow rate established in the notification of compliance status.

2. *What is the condensate tank ''no detectable'' emissions test frequency (§ 63.453)?*

Today's action amends the monitoring requirements for closed collection systems (§ 63.453(l)) to clarify tests to determine ''no detectable'' emissions are to be conducted initially and annually.

In the standards for kraft pulping process condensates (§ 63.446(d)(2)(i)), the 1998 NESHAP specifies that condensate tanks used in the closed collection system for regulated condensate streams must be operated and designed with no detectable emissions as indicated by an instrument reading of less than 500 parts per million above background using EPA Reference Method 21. However, we inadvertently neglected to specify the schedule for conducting this Method 21 test. We intended this compliance monitoring to be conducted at the same frequency as that required for the closed-vent system Method 21 tests since the same test equipment and personnel are being used. Closed-vent systems are required to be tested initially and annually (§ 63.453(k)(3)). Today's amendment specifies that the ''no detectable'' emissions tests for closed collection systems must also be performed initially and annually.

For additional clarity and to better incorporate additional changes being made in today's action (see sections I.B.3 and I.B.5 of this preamble), we restructured the NESHAP paragraph where the monitoring requirements for closed collection systems are specified (§ 63.453(l)). We are changing the structure of § 63.453(l) to parallel that used for the enclosure and closed-vent system monitoring requirements (§ 63.453(k)). Consequently, several subsections are being added to § 63.453(l). These revisions are contained in amended § 63.453(l)(2). Additional changes to § 63.453(l) are discussed in sections I.B.3 and I.B.5 of this preamble.

3. *What must be done if the tests for condensate tanks indicate emissions (§ 63.453)?*

We are amending the closed collection system monitoring requirements (§ 63.453(l)) to clarify that pulp and paper mills must comply with the repair schedule requirements of subpart RR of this part (§ 63.964(b)) if condensate tank ''no detectable'' emissions tests indicate emissions. All detectable emissions measured on condensate tanks must be repaired according to the repair schedule in subpart RR of this part.

The kraft pulping process condensate standards of the 1998 NESHAP (§ 63.446(d)(2)(i)) state that condensate tanks used in the closed collection system must be designed and operated with no detectable emissions. The 1998 NESHAP (§ 63.453(l)) specifies that closed collection systems (which include condensate tanks) must meet the inspection and monitoring requirements of subpart RR of this part (§ 63.964) which provide a repair schedule. Section 63.964(b) of subpart RR of this part states:

(b) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 15 calendar days after detection except as provided in paragraph (b)(2) of this section.

(2) Repair of a defect may be delayed beyond 15 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the individual drain system and no alternative capacity is available at the facility site to accept the wastewater normally managed in the individual drain system. In this case, the owner or operator shall repair the defect at the next time the process or unit that is generating the wastewater managed in

the individual drain system stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

We inadvertently omitted rule text in the 1998 NESHAP specifying that you must follow the repair schedule if the condensate tank tests indicate emissions. Our intent is evident since we included the repair schedule for defects in the continuous monitoring section (§ 63.453(f)(3)) of the December 17, 1993 proposal (58 FR 66182). In today's action, we are clarifying the 1998 NESHAP by explicitly specifying that the repair schedule requirements in subpart RR of this part (§ 63.964(b)(1) and (b)(2)) are triggered if the condensate tank ''no detectable'' emissions tests identify emissions.

As discussed previously in section I.B.2 of this preamble, the structure of the paragraph in the 1998 NESHAP specifying the monitoring requirements for closed collection systems (§ 63.453(l)) is being revised to parallel that used for the enclosure and closed-vent system monitoring requirements (§ 63.453(k)). As part of that restructuring, the revisions discussed in today's action regarding the repair schedule specified in subpart RR of this part for both condensate tanks and the rest of the closed collection system are contained in § 63.453(l)(3). One additional change to § 63.453(l) is discussed in section I.B.5 of this preamble.

4. *May the repair period for closed-vent systems extend beyond 15 days as implied in the recordkeeping requirements (§ 63.453)?*

Corrective actions or repairs of closed-vent system defects or leaks, under certain circumstances, may extend beyond the 15 calendar days specified in the 1998 NESHAP. Today's action corrects a drafting oversight in the requirements for inspection and repair of enclosures and closed-vent systems (§ 63.453(k)(6)(ii)).

In the monitoring requirements for enclosures and closed-vent systems (§ 63.453(k)(6)(ii)), the 1998 NESHAP specifies that corrective actions or repairs for enclosure and closed-vent system defects and leaks must be completed no later than 15 calendar days after the problem is identified. However, certain equipment may require more than the 15 calendar days to repair. It is not our intent to create a violation in cases where the failure to repair is beyond the control of the owner or operator, or where immediate repair would create greater emissions. The Agency's intent is evident since specific recordkeeping requirements (§ 63.454(b)(8) through (b)(10)) are triggered when repairs or corrective actions require more than 15 calendar days to complete indicating that the rule contemplates situations where it will take longer than 15 days to complete repairs. For these cases, owners or operators must record the reason for the delay in repair, the expected date of successful repair, and the actual date of successful repair. If the reasons for delaying the repair meet the conditions specified in the rule and the recordkeeping requirements are met, then repairs or corrective actions that require longer than 15 calendar days are allowed.

Today's action adds clarifying sentences to the monitoring requirements for enclosures and closed-vent systems (§ 63.453(k)(6)(ii)). Delays in corrective actions or repairs beyond 15 calendar days are allowed in cases where the corrective actions or repairs are technically infeasible without a process unit shutdown or where the emissions resulting from immediate repair would be greater than the emissions likely to result from the delay of repair. This language addressing corrective actions and repairs is consistent with provisions in the national emission standards, specifically for oil-water separators and organic water separators (§ 63.1047(d)(2) of subpart VV of this part) and in the national emission standards for organic hazardous air pollutants for equipment leaks (§ 63.172(i) of subpart H of this part).

5. *Do the recordkeeping requirements in subpart RR apply to closed collection systems (§ 63.453)?*

The recordkeeping requirements of subpart RR of this part do not apply to closed collection systems. Today's action amends the monitoring requirements for closed collection systems (§ 63.453(l)) to clarify that the recordkeeping requirements of subpart RR of this part are not in effect. Certain provisions of the national emission standards for individual drain systems (subpart RR of this part) are referenced in the 1998 NESHAP for convenience. In developing the 1998 NESHAP, we identified areas of overlap between subpart RR of this part and the pulp and paper NESHAP. However, additional overlap was identified since promulgation.

The closed collection system monitoring requirements in the 1998 NESHAP (§ 63.453(l)) specify that each closed collection system must comply with the inspection and monitoring requirements of subpart RR of this part (§ 63.964). However, the monitoring requirement section of subpart RR of this part contains references (§ 63.964(a)(1)(vi) and (b)(3)) to the recordkeeping requirements of subpart RR of this part (§ 63.965).

Today's action amends the pulp and paper 1998 NESHAP to specify that owners or operators are required to comply only with the closed collection system recordkeeping requirements specified in the pulp and paper 1998 NESHAP (§ 63.454) since the recordkeeping requirements specified in subpart RR of this part are redundant. As discussed previously in sections I.B.2 and I.B.3 of this preamble, the structure of the paragraph in the 1998 NESHAP specifying the monitoring requirements for closed collection systems (§ 63.453(l)) is being revised to parallel that used for the enclosure and closed-vent system monitoring requirements (§ 63.453(k)). The revisions to identify the overlap between the monitoring requirements of subpart RR of this part and the pulp and paper NESHAP discussed in this section are contained in § 63.453(l)(1)(i).

C. Typographical Corrections

Minor drafting errors and inadvertent omissions were identified in the 1998 NESHAP after promulgation. Today's action makes the following corrections:

- Changes ''HAP's'' to ''HAPs'' in the following sections: the definition of process wastewater treatment system (§ 63.441); the standards for kraft pulping process condensates section (§ 63.446(e)(3)); and the test methods and procedures section (§ 63.457(f)(1) and § 63.457(h)).
- Changes the word ''sources'' to ''source'' in the standards for the pulping system at kraft, soda, and semi-chemical processes (§ 63.443(b)(1)).
- Changes the word ''uses'' to ''use'' in the standards for the bleaching system (§ 63.445(a)(2)).
- Corrects text for the closed collection system design specifications in the standards for kraft pulping process condensates. In § 63.446(d)(l), delete the word ''for'', changes the words ''closed'' and ''vent'' to ''closed-vent'', and deletes the phrase ''§ 63.693 as specified in.''
- Corrects text for the clean condensate alternative standards (§ 63.447). In § 63.447(e)(2), delete the word ''that'', add the word ''and'' at the end of the paragraph in § 63.447(g)(1)(ii), and add the word ''of'' to § 63.447(g)(2) between the words ''requirements'' and ''paragraphs.''
- Corrects wording for the standards for enclosures and closed-vent systems (§ 63.450). In the § 63.450(b), add the word ''in'' before ''§ 63.45(e).''
- Corrects wording for test methods and procedures section (§ 63.457). In § 63.457(b)(5)(ii)(C), change the word

''project'' to ''protect.'' In § 63.457(b)(5)(ii)(E)(*7*), change the word ''an'' to ''a.'' In § 63.457(c)(2), the change the semicolon at the end of the paragraph to a period. Add the word ''an'' to § 63.457(c)(4)(i) between the words ''into'' and ''Erlenmeyer'' in the first sentence of the paragraph.

• Changes the acronym ''CEM's'' to ''CEMs'' in the comment column for the reference § 63.8(f)(6) in table 1 of the 1998 NESHAP (general provisions applicability to subpart S).

II. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket except for certain interagency documents will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Paperwork Reduction Act

The EPA already submitted the information requirements of the 1998 NESHAP to the Office of Management and Budget (OMB) on April 27, 1998 for approval under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1657.03), and a copy may be obtained from Sandy Farmer, Office of Policy, Planning, and Evaluation Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street SW, Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

Today's amendments to the NESHAP will have no impact on the information collection burden estimates made previously. The amendments clarify the intent of the 1998 NESHAP and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. Consequently, the ICR has not been revised.

C. Executive Order 12866: ''Significant Regulatory Action'' Determination

Under Executive Order 12866, EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines ''significant'' regulatory action as one that is likely to lead to 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, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The NESHAP published on April 15, 1998 was considered significant under Executive Order 12866, and EPA accordingly prepared a regulatory impact analysis (RIA). The amendments published today clarify the intent of the 1998 NESHAP and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. The OMB evaluated this action and determined it to be nonsignificant; thus, it did not require OMB review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking 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. The EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action. These amendments would not result in increased impacts to small entities and the changes to the 1998 NESHAP in today's action do not add new control requirements.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 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 the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today 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. Therefore, the requirements of the Unfunded Mandates Act do not apply to today's action.

F. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the 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.''

While the final rule published on April 15, 1998 (1998 NESHAP) does not create mandates upon State, local, or tribal governments, EPA involved State and local governments in its development. Because today's action clarifies the intent of the 1998 NESHAP and corrects inadvertent omissions and minor drafting errors, today's action does not create a mandate upon State, local, or tribal governments.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If

the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the order has the potential to influence the regulation. This rule falls into that category only in part: the minimum rule stringency is set according to a congressionally mandated, technology-based lower limit called the ''floor,'' while a decision to increase the stringency beyond this floor can be partly based on risk considerations.

No children's risk analysis was performed for the 1998 NESHAP rulemaking because no alternative technologies exist that would provide greater stringency at a reasonable cost, and therefore the results of any such analysis would have no impact on the stringency decision. Today's action is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13084: Consultations and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or if EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the 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. The final rule published on April 15, 1998 (1998 NESHAP) does not create mandates upon tribal governments. Because today's action clarifies the intent of the 1998 NESHAP and corrects inadvertent omissions and minor drafting errors, today's action does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their 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) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through the OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

Although this action does not involve any new technical standards, today's action does include the incorporation by reference of an alternative test method. The method was developed by NCASI, however, NCASI is not a voluntary consensus standards body. No voluntary consensus standards were identified for measuring methanol in pulping process condensates.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C 804(2). These technical amendments will be effective April 12, 1999.

K. Immediate Effective Date

The EPA is making today's action effective immediately. The EPA has determined that the rule amendments being made in today's action are interpretive rules which are not subject to notice and comment requirements. The EPA has also determined that this rule may be made effective in less than 30 days because it is interpretive and relieves restrictions. See 5 U.S.C. 553(d)(1) and (2).

III. Legal Authority

These regulations are amended under the authority of sections 112, 114, and 301 of the Clean Air Act, as amended (42 U.S.C. sections 7412, 7414, and 7601).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: March 31, 1999.

Robert Brenner,

Acting Assistant Administrator, OAR.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

2. Amend § 63.14 by adding paragraph (f) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(f) The following material is available from the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), P. O. Box 133318, Research Triangle Park, NC 27709–3318 or at http://www.ncasi.org:

NCASI Method DI/MEOH–94.02, Methanol in Process Liquids GC/FID (Gas Chromatography/Flame Ionization

Detection), August 1998, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for § 63.457(c)(3)(ii) of subpart S of this part.

Subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

3. Amend § 63.441 by revising the definition of ''Process wastewater treatment system'' to read as follows:

§ 63.441 Definitions.

* * * * *

Process wastewater treatment system means a collection of equipment, a process, or specific technique that removes or destroys the HAPs in a process wastewater stream. Examples include, but are not limited to, a steam stripping unit, wastewater thermal oxidizer, or biological treatment unit.

* * * * *

4. Amend § 63.443 by revising paragraph (b)(1) to read as follows:

§ 63.443 Standards for the pulping system at kraft, soda, and semi-chemical processes.

* * * * *

(b) * * *

(1) At each existing affected source, the total HAP emissions from each LVHC system shall be controlled.

* * * * *

5. Amend § 63.445 by revising paragraphs (a)(2) and (b) to read as follows:

§ 63.445 Standards for the bleaching system.

(a) * * *

(2) Bleaching systems bleaching pulp from kraft, sulfite, or soda pulping processes that use any chlorinated compounds; or

* * * * *

(b) The equipment at each bleaching stage, of the bleaching systems listed in paragraph (a) of this section, where chlorinated compounds are introduced shall be enclosed and vented into a closed-vent system and routed to a control device that meets the requirements specified in paragraph (c) of this section. The enclosures and closed-vent system shall meet the requirements specified in § 63.450. If process modifications are used to achieve compliance with the emission limits specified in paragraphs (c)(2) or (c)(3), enclosures and closed-vent systems are not required, unless appropriate.

* * * * *

6. Amend § 63.446 by revising paragraphs (b), (d)(1), and (e)(3) to read as follows:

§ 63.446 Standards for kraft pulping process condensates.

* * * * *

(b) The pulping process condensates from the following equipment systems shall be treated to meet the requirements specified in paragraphs (c), (d), and (e) of this section:

(1) Each digester system;

(2) Each turpentine recovery system;

(3) Each evaporator system condensate from:

(i) The vapors from each stage where weak liquor is introduced (feed stages); and

(ii) Each evaporator vacuum system for each stage where weak liquor is introduced (feed stages).

(4) Each HVLC collection system; and

(5) Each LVHC collection system.

* * * * *

(d) * * *

(1) Each closed collection system shall meet the individual drain system requirements specified in §§ 63.960, 63.961, and 63.962 of subpart RR of this part, except closed-vent systems and control devices shall be designed and operated in accordance with §§ 63.443(d) and 63.450, instead of in accordance with § 63.962(a)(3)(ii), (b)(3)(ii)(A), and (b)(3)(ii)(B)(5)(*iii*); and

* * * * *

(e) * * *

(3) Treat the pulping process condensates to reduce or destroy the total HAPs by at least 92 percent or more by weight; or

* * * * *

7. Amend § 63.447 by revising paragraphs (e)(2), (g)(1)(ii), and (g)(2) to read as follows:

§ 63.447 Clean condensate alternative.

* * * * *

(e) * * *

(2) The HAP emissions reduction occurring by complying with the clean condensate alternative technology.

* * * * *

(g) * * *

(1) * * *

(ii) The air pollution control technologies that would be used to meet the requirements of § 63.443(a)(1)(ii) through (a)(1)(v); and

* * * * *

(2) Estimates and basis for the estimates of total HAP emissions and emission reductions to fulfill the requirements of paragraphs (d), (e), and (f) of this section.

* * * * *

8. Amend § 63.450 by revising paragraph (b) to read as follows:

§ 63.450 Standards for enclosures and closed-vent systems.

* * * * *

(b) Each enclosure shall maintain negative pressure at each enclosure or hood opening as demonstrated by the procedures specified in § 63.457(e). Each enclosure or hood opening closed during the initial performance test specified in § 63.457(a) shall be maintained in the same closed and sealed position as during the performance test at all times except when necessary to use the opening for sampling, inspection, maintenance, or repairs.

* * * * *

9. Amend § 63.453 by revising paragraphs (b), (k)(6)(ii), and (l) to read as follows:

§ 63.453 Monitoring requirements.

* * * * *

(b) A CMS shall be operated to measure the temperature in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs for each thermal oxidizer used to comply with the requirements of § 63.443(d)(1) through (d)(3). Owners and operators complying with the HAP concentration requirements in § 63.443(d)(2) may install a CMS to monitor the thermal oxidizer outlet total HAP or methanol concentration, as an alternative to monitoring thermal oxidizer operating temperature.

* * * * *

(k) * * *

(6) * * *

(ii) The repair or corrective action shall be completed no later than 15 calendar days after the problem is identified. Delay of repair or corrective action is allowed if the repair or corrective action is technically infeasible without a process unit shutdown or if the owner or operator determines that the emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(l) Each pulping process condensate closed collection system used to comply with § 63.446(d) shall comply with the requirements specified in paragraphs (l)(1) through (l)(3) of this section.

(1) Each pulping process condensate closed collection system shall be visually inspected every 30 days and shall comply with the inspection and monitoring requirements specified in § 63.964 of subpart RR of this part, except:

(i) Owners or operators shall comply with the recordkeeping requirements of § 63.454 instead of the requirements specified in § 63.964(a)(1)(vi) and (b)(3) of subpart RR of this part.

(ii) Owners or operators shall comply with the inspection and monitoring requirements for closed-vent systems and control devices specified in paragraphs (a) and (k) of this section instead of the requirements specified in § 63.964(a)(2) of subpart RR of this part.

(2) Each condensate tank used in the closed collection system shall be operated with no detectable leaks as specified in § 63.446(d)(2)(i) measured initially and annually by the procedures specified in § 63.457(d).

(3) If an inspection required by this section identifies visible defects in the closed collection system, or if an instrument reading of 500 parts per million or greater above background is measured, then corrective actions specified in § 63.964(b) of subpart RR of this part shall be taken.

* * * * *

10. Amend § 63.457 by revising paragraphs (b)(5) introductory text, (b)(5)(ii)(C), (b)(5)(ii)(E)(*7*), (b)(6), (c)(2), (c)(3) introductory text, (c)(4)(i), (f)(1), (h), and (m)(1)(ii); by redesignating paragraph (c)(3)(ii) as paragraph (c)(3)(iii); and adding a new paragraph (c)(3)(ii) to read as follows:

§ 63.457 Test methods and procedures.

* * * * *

(b) * * *

(5) To determine vent gas concentrations, the owner or operator shall conduct a minimum of three test runs that are representative of normal conditions and average the resulting pollutant concentrations using the following procedures.

* * * * *

(ii) * * *

(C) Critical orifice. The critical orifice shall have a flow rate of 200 to 250 ml/min and shall be followed by a vacuum pump capable of providing a vacuum of 640 millimeters of mercury (mm Hg). A 45 millimeter diameter in-line Teflon 0.8 micrometer filter shall follow the impingers to protect the critical orifice and vacuum pump.

* * * * *

(E) * * *

(*7*) To prepare the 10 percent sulfuric acid solution, add 10 ml of concentrated sulfuric acid to 80 ml water in a 100 ml volumetric flask. Dilute to volume.

* * * * *

(6) The minimum sampling time for each of the three test runs shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the test run.

(c) * * *

(2) The volumetric flow rate of the entering and exiting liquid streams shall be determined using the inlet and outlet flow meters or other methods demonstrated to the Administrator's satisfaction. The volumetric flow rate measurements to determine actual mass removal shall be taken at the same time as the concentration measurements.

(3) The owner or operator shall conduct a minimum of three test runs that are representative of normal conditions and average the resulting pollutant concentrations. The minimum sampling time for each test run shall be 1 hour and the grab or composite samples shall be taken at approximately equally spaced intervals over the 1-hour test run period. The owner or operator shall use one of the following procedures to determine total HAP or methanol concentration:

* * * * *

(ii) For determining methanol concentrations, NCASI Method DI/MEOH–94.02, Methanol in Process Liquids by GC/FID, August 1998, Methods Manual, NCASI, Research Triangle Park, NC. This test method is incorporated by reference in § 63.14(f) of subpart A of this part.

* * * * *

(4) * * *

(i) Filter the sample through the filter paper, into an Erlenmeyer flask by applying a vacuum to the flask sidearm. Minimize the time for which vacuum is applied to prevent stripping of volatile organics from the sample. Replace filter paper as often as needed in order to maintain filter times of less than approximately 30 seconds per filter paper. No rinsing of sample container or filter bowl into the Erlenmeyer flask is allowed.

* * * * *

(f) * * *

(1) As the sum of all individual HAPs; or

* * * * *

(h) *Bleaching HAP concentration measurement.* For purposes of complying with the bleaching system requirements in § 63.445, the owner or operator shall measure the total HAP concentration as the sum of all individual chlorinated HAPs or as chlorine.

* * * * *

(m) * * *

(1) * * *

(ii) Multiply the total HAP mass determined in paragraph (m)(1)(i) of this section by 0.65 to determine the target HAP mass for the high-HAP fraction condensate stream or streams.

* * * * *

11. Table 1 of subpart S is amended by revising the entry for § 63.8(f)(6) to read as follows:

TABLE 1 TO SUBPART S—GENERAL PROVISIONS APPLICABILITY TO SUBPART S[a]

Reference	Applies to Subpart S	Comment
*	*	* * * * * *
63.8(f)(6)	No	Subpart S does not specify relative accuracy test for CEMs.
*	*	* * * * * *

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified date, but a postmark is not required.

[FR Doc. 99–8950 Filed 4–9–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300837; FRL–6074–5]

RIN 2070–AB78

Clopyralid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the herbicide clopyralid in or on canola at 3 part per million (ppm) for an additional one and one-half year period. This tolerance will expire and is revoked on July 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on canola. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act 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 FIFRA section 18.

DATES: This regulation becomes effective April 12, 1999. Objections and requests for hearings must be received by EPA, on or before June 11, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300837], 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–300837], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@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 objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300837]. 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: Libby Pemberton, 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. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 16, 1997 (62 FR 26949) (FRL–5718–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of clopyralid in or on canola at 3 ppm, with an expiration date of July 31, 1998. EPA extended the expiration date of this tolerance to January 31, 2000 in a **Federal Register** notice published June 10, 1998 (63 FR 31640–31642)(FRL–5789–8). EPA established the tolerance because 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 FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clopyralid on canola for this year's growing season due to the continued emergency situation involving perennial sowthistle and Canadian thistle in Minnesota, Montana, and North Dakota. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of clopyralid on canola for control of perennial sowthistle and Canadian thistle in Minnesota, Montana, and North Dakota.

EPA assessed the potential risks presented by residues of clopyralid in or on canola. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 16, 1997 (62 FR 26949) (FRL–5718–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional one and one-half year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation 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 June 11, 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). EPA is authorized to waive any fee requirement ''when in the judgement 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, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests 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.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300837] (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 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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests 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 in this unit 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.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance 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 prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or 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 under section 408(l)(6) of FFDCA, such as the tolerance/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 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.

IV. 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 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: April 2, 1999.

Donald R. Stubbs,

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. 321(q), 346(a), and 371.

§ 180.431 [Amended]

2. In § 180.431, by amending the table in paragraph (b) by revising the date ''1/31/00'' for canola to read ''7/31/01''.

[FR Doc. 99–8946 Filed 4–9–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

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

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base

flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No. 7260).	Unincorporated Areas.	October 23, 1998, October 30, 1998, Arizona Republic.	The Honorable Janice K. Brewer, Chairman, Maricopa County Board of Supervisors, 301 Jefferson Street, Phoenix, Arizona 85003.	September 23, 1998	040037
Maricopa (FEMA Docket No. 7260).	City of Phoenix	October 23, 1998, October 30, 1998, Arizona Republic.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	September 23, 1998	040051
California:					
Los Angeles (FEMA Docket No. 7260).	Unincorporated Areas.	October 22, 1998, October 29, 1998, Daily Commerce.	The Honorable Yvonne Burke, Chairperson, Los Angeles County Board of Supervisors, 500 West Temple Street, Suite 821, Los Angeles, California 90012.	September 18, 1998	065043
San Diego (FEMA Docket No. 7264).	City of San Diego ...	November 10, 1998, November 17, 1998, San Diego Union-Tribune.	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	October 19, 1998	060295
New Mexico:					
Bernalillo (FEMA Docket No. 7264).	City of Albuquerque	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	October 21, 1998	350002
Bernalillo (FEMA Docket No. 7260).	City of Albuquerque	October 23, 1998, October 30, 1998, Albuquerque Journal.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	September 18, 1998	350002
Bernalillo (FEMA Docket No. 7264).	Unincorporated Areas.	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable Steve Gallegos, Chairman, Bernalillo County, Board of Commissioners, One Civic Plaza Northeast, 10th Floor, Albuquerque, New Mexico 87102.	October 21, 1998	350001
Sanodoval (FEMA Docket No. 7264).	Village of Corrales ..	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable Gary Kanin, Mayor, Village of Corrales, P.O. Box 707, Corrales, New Mexico 87048.	October 21, 1998	350094
Sandoval (FEMA Docket No. 7264).	City of Rio Rancho	November 11, 1998, November 18, 1998, Albuquerque Journal.	The Honorable John Jennings, Mayor, City of Rio Rancho, 3900 Southern Boulevard, Rio Rancho, New Mexico 87124.	October 21, 1998	350146
Texas:					
Brazos (FEMA Docket No. 7260).	City of Bryan	October 20, 1998, October 27, 1998, Bryan-College Station Eagle.	The Honorable Lonnie Stabler, Mayor, City of Bryan, P.O. Box 1000, Bryan, Texas 77805.	September 18, 1998	480082
Tarrant (FEMA Docket No. 7264).	City of Dalworthington Gardens.	November 13, 1998, November 20, 1998, Fort Worth Star-Telegram.	The Honorable Al Taub, Mayor, City of Dalworthington Gardens, 2600 Roosevelt Drive, Dallworthington Gardens, Texas 76016.	October 19, 1998	481013
Denton (FEMA Docket No. 7260).	City of Highland Village.	October 21, 1998, October 28, 1998, Lewisville News.	The Honorable Austin Adams, Mayor, City of Highland Village, City Hall, 1500 F.M. 407, Highland Village, Texas 75077.	September 21, 1998	481105
Denton (FEMA Docket No. 7260).	City of Lewisville	October 21, 1998, October 28, 1998, Lewisville News.	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029–9002.	September 10, 1998	530074

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Washington: King (FEMA Docket No. 7260).	City of Bellevue	October 16, 1998, October 23, 1998, The Eastside Journal.	The Honorable Don Davidson, Mayor, City of Bellevue, P.O. Box 90012, Bellevue, Washington 98009–9102.	September 10, 1998	530074

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

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9024 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7280]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Riverside	City of Murrieta	February 23, 1999, March 2, 1999, *The Press-Enterprise*.	The Honorable Chuck Washington, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562.	February 8, 1999	060751
Los Angeles ...	City of Santa Clarita.	November 27, 1998, December 4, 1998, *The Signal*.	The Honorable Jan Heidt, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, California 91355.	November 12, 1998.	060729
Colorado:					
Pitkin	City of Basalt	February 10, 1999, December 4, 1999, *Snowmass Sun*.	The Honorable Rick Stevens, Mayor, Town of Basalt, 101 Midland Avenue, Basalt, Colorado 81621.	January 7, 1999 ...	080052
Pitkin	Unincorporated Areas.	February 12, 1999, February 19, 1999, *Aspen Times*.	The Honorable Dorothea Farris, Chairperson, Pitkin County, Board of Commissioners, 530 East Main Street, Third Floor, Aspen, Colorado 81611.	January 7, 1999 ...	080287
Nevada: Clark	Unincorporated Areas.	February 5, 1999, February 12, 1999, *Las Vegas Review-Journal*.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Supervisors, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	January 12, 1999	320003
Oklahoma: Oklahoma.	City of Edmond	February 16, 1999, February 23, 1999, *Edmond Evening Sun*.	The Honorable Robert Rudkin, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083–2790.	January 19, 1999	400252
Texas:					
Travis	City of Austin	February 19, 1999, February 26, 1999, *Austin American-Statesman*.	The Honorable Kirk P. Watson, Mayor, City of Austin, 124 West Eight Street, Austin, Texas 78701.	January 22, 1999	480624
Brazos	City of College Station.	February 23, 1999, March 2, 1999, *Bryan-College Station Eagle*.	The Honorable Lynn Millhaney, Mayor, City of College Station, P.O. Box 9960, College Station, Texas 77842–0960.	January 8, 1999	480083
Tarrant	City of Fort Worth	February 5, 1999, February 12, 1999, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	January 8, 1999	480596
Tarrant	City of Hurst	February 10, 1999, February 17, 1999, *Dallas Morning News*.	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	January 12, 1999	480601
Denton	City of Lewisville ..	February 19, 1999, February 26, 1999, *Lewisville News*.	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	January 22, 1999	480195
Tarrant	City of North Richland Hills.	February 10, 1999, February 17, 1999, *Fort Worth Star-Telegram*.	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	January 12, 1999	480607
Harris	City of Pasadena	February 17, 1999, February 24, 1999, *Pasadena Citizen*.	The Honorable Johnny Isbell, Mayor, City of Pasadena, P.O. Box 672, Pasadena, Texas 77501–0672.	January 22, 1999	480307
Ellis	City of Waxahachie.	February 12, 1999, February 19, 1999, *Waxahachie Daily Light*.	The Honorable Chuck Beatty, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, Texas 75165.	May 20, 1999	480211
Washington:					
King	City of Kent	February 2, 1999, February 9, 1999, *Seattle Times*.	The Honorable Jim White, Mayor, City of Kent, 220 Fourth Avenue South, Kent, Washington 98032–5895.	January 11, 1999	530080
King	Unincorporated Areas.	February 2, 1999, February 9, 1999, *Seattle Times*.	The Honorable Ron Simms, King County Executive, King County Courthouse, 516 Third Avenue, Room 400, Seattle, Washington 98104–2312.	January 11, 1999	530071

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

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9025 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

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

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

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Crittenden County (Unincorporated Areas) (FEMA Docket No. 7266)	
Tyronza River:	
Approximately 3,000 feet west of Route 149 and approximately 4,250 feet north of City of Earle corporate limits	*205
Approximately 750 feet north of Route 64 and approximately 8,250 feet south of Route 184	*205
Blackfish Bayou:	
Approximately 1,000 feet east of Route 149 and approximately 4,000 feet south of Barham Road	*203
Approximately 1,000 feet south of U.S. Route 64 and 7,600 feet east of Desha Street	*203
Approximately 7,000 feet east of Route 149 and 7,000 feet south of U.S. Route 64	*203
Approximately 1,600 feet east of Route 149 and approximately 1,600 feet north of U.S. Route 64	*205
Maps are available for inspection at the Crittenden County Courthouse, 100 Court Square, Marion, Arkansas.	
Crawford County (and Incorporated Areas) (FEMA Docket No. 7266)	
Louemma Creek:	
Approximately 3,500 feet downstream of North Hills Boulevard	*419
Just upstream of Rena Road	*487
Approximately 200 feet upstream of Highway 59	*574
Louemma Tributary:	
Approximately 850 feet downstream of Highway 59	*477
Just upstream of Highway 59	*493
Approximately 3,700 feet upstream of Highway 59	*570
Rena Branch:	
Approximately 1,050 feet downstream of Sandstone Drive	*419
Just upstream of Old Uniontown Road	*458
Approximately 2,200 feet upstream of Blake Road	*523
Maps are available for inspection at 1003 Broadway, Van Buren, Arkansas.	
Maps are available for inspection at 300 Main Street Van Buren, Arkansas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Earle (City), Crittenden County (FEMA Docket No. 7266)	
Blackfish Bayou:	
Approximately 2,000 feet east of Desha Street and approximately 1,200 feet south of Missouri Pacific Railroad	*203
Approximately 800 feet east of Route 149 and 2,000 feet north of Route 64	*205
Tyronza River:	
Approximately 400 feet west of Route 149 and approximately 400 feet south of northern corporate limits	*205
Approximately 5,200 feet west of Route 149 and approximately 1,200 feet south of Route 184	*205
Maps are available for inspection at the City of Earle City Hall, 1004 Second Street, Earle, Arkansas.	
CALIFORNIA	
East Palo Alto (City), San Mateo County (FEMA Docket No. 7266)	
San Francisco Bay:	
Approximately 150 feet downstream of Tulane Avenue	*8
Approximately 1,000 feet downstream of Cami	*8
San Francisquito Creek Overflow:	
Just downstream of Alberni Street	*11
Approximately 600 feet upstream of Green Street	*26
Maps are available for inspection at the City of East Palo Alto City Hall Annex, 2200 University Avenue, East Palo Alto, California.	
NEW MEXICO	
Clovis (City), Curry County (FEMA Docket No. 7254)	
West Second Street Drain:	
Approximately 2,250 feet upstream of confluence with Northeast Drain	*4,222
Just downstream of intersection of Thomas and West Seventh Street	*4,288
Northeast Drain:	
Approximately 5,000 feet downstream of Trades Road	*4,214
Approximately 200 feet upstream of 21st Street	*4,270
Approximately 1,250 feet upstream of Prince Street	*4,290
Thomas Ditch 2:	
Approximately 200 feet upstream of Thomas Ditch	*4,290
Approximately 1,350 feet upstream of Debra Street	*4,318
Northwest Drain:	
Approximately 200 feet upstream of confluence with Northeast Drain	*4,242
Approximately 1,900 feet upstream of Echols Avenue	*4,308
Thomas Ditch 1:	
Just downstream of Brady Avenue	*4,259
Just upstream of Jefferson Street	*4,296
Maps are available for inspection at the City of Clovis City Hall, 321 Connelly Street, Clovis, New Mexico.	
WASHINGTON	
Brewster (City), Okanogan County (FEMA Docket No. 7266)	
Swamp Creek:	
Just upstream of Bridge Street	*786
Approximately 2,550 feet above mouth, at the corporate limits	*915
Maps are available for inspection at the City of Brewster Clerk/Treasurer's Office, 105 South Third Street, Brewster, Washington.	

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

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9026 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

Proposed Rules

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

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

Animal and Plant Health Inspection Service

9 CFR Part 72

[Docket No. 96–067–1]

Texas (Splenetic) Fever in Cattle; Incorporation by Reference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Texas (splenetic) fever in cattle regulations by removing the section that describes the area of Texas quarantined because of ticks and replacing it with an incorporation by reference of the Texas Animal Health Commission's regulations that describe the same area. Because the quarantined area in Texas is defined and established by the Texas Animal Health Commission and an up-to-date description of the quarantined area is provided in the commission's regulations in the Texas Administrative Code, we do not believe that it is necessary to reproduce that description in our regulations. This proposed change in the regulations would eliminate the need to maintain a description of the Texas quarantined area in our regulations, thus reducing the volume of material included in those regulations, while continuing to provide for the treatment and inspection of cattle moved from the area of Texas quarantined for ticks.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 11, 1999.

ADDRESSES: Please send your comment and three copies to Docket No. 96–067–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 96–067–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Dave Wilson, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073; or e-mail: Dave.D.Wilson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 72, ''Texas (Splenetic) Fever in Cattle'' (referred to below as the regulations), restrict the interstate movement of cattle from areas quarantined because of the presence of ticks that are vectors of bovine babesiosis. This disease is referred to in the regulations as splenetic or tick fever. Splenetic or tick fever is a contagious, infectious, and communicable disease of cattle that causes cattle to become weak and dehydrated and can cause death. The areas quarantined because of ticks include all of Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, as well as portions of Texas. These quarantined areas are described in §§ 72.3 and 72.5 of the regulations.

The quarantined area in Texas is defined and established by the Texas Animal Health Commission (TAHC) in its regulations in the Texas Administrative Code as part of that agency's program to control and eradicate fever ticks within Texas. The Animal and Plant Health Inspection Service (APHIS) reproduces the TAHC's description of the quarantined area in § 72.5 of the regulations in order to define the area of Texas from which the interstate movement of cattle is restricted to prevent the spread of splenetic or tick fever from that State.

During a review of our existing regulations, we concluded that the description of the quarantined area in Texas was not in agreement with the most recent description of that area promulgated by the TAHC in its regulations. Further, we concluded that it would be possible to omit the description of the quarantined area in Texas from our regulations, thereby eliminating six full pages of text from part 72, without negatively affecting our ability to provide for the inspection and treatment of cattle moved interstate from the Texas quarantined area.

We based this latter conclusion on the fact that all affected livestock owners within the Texas quarantined area are notified of their status by the TAHC under §§ 167.006 and 167.023 of the Texas Agriculture Code, and on the fact that the boundaries of the quarantined area in Texas are described in the TAHC's regulations in § 41.2 of title 4, part II, Texas Administrative Code (4 TAC 41.2). On the basis of those findings, we are proposing to remove the description of the Texas quarantined area in § 72.5 of our regulations and incorporate 4 TAC 41.2 by reference, thus ensuring that the inspection and treatment requirements of part 72 continue to be linked to a readily available description of the quarantined area in Texas.

The requirements of the Office of the Federal Register regarding the proper language of incorporation, which are found in 1 CFR 51.9(b), state that the language incorporating a publication by reference is precise and complete if it: (1) Uses the words ''incorporated by reference;'' (2) states the title, date, edition, author, publisher, and identification number of the publication; (3) informs the user that the incorporated publication is a requirement; (4) makes an official showing that the publication is in fact available by stating where and how copies may be examined and readily obtained with maximum convenience to the user; and (5) refers to 5 U.S.C. 552(a).

To comply with those requirements, we are proposing to revise § 72.5 to state that the area quarantined in Texas is the permanent quarantined area described in 4 TAC 41.2, which is incorporated by reference. Section 72.5 would also state that the 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 and that copies of 4 TAC 41.2 may be obtained from the central office of the TAHC at 2105 Kramer Lane, Austin, TX 78758, or from area offices, which are listed in local Texas telephone directories, or from the TAHC's Internet homepage (www.tahc.state.tx.us/). Finally, § 72.5 would inform the reader that copies may also be inspected at APHIS' offices in Riverdale, MD, or at the Office of the Federal Register in Washington, DC.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the Texas (splenetic) fever in cattle regulations to incorporate by reference the description of fever tick eradication areas contained in the Texas Administrative Code. Incorporating the TAHC's description of fever tick eradication areas by reference rather than continuing to reproduce the description in our regulations would eliminate the need for APHIS to maintain an up-to-date description of the quarantined area in Texas and reduce the volume of material included in our regulations, while continuing to provide for the treatment and inspection of cattle moved from the tick eradication area in Texas.

Our proposal to incorporate the description of fever tick eradication areas in Texas contained in the Texas Administrative Code is not expected to have an economic impact on any entities, large or small, because the description of Texas' tick eradication areas, which are defined and established by the TAHC, have merely been reproduced in APHIS' regulations in part 72. There would be no change in the quarantined area in Texas as a result of its description being removed from part 72, so no livestock or property owners in Texas would be affected by this proposed rule.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 72

Animal diseases, Cattle, Quarantine, Transportation.

Accordingly, we are proposing to amend 9 CFR part 72 as follows:

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

1. The authority citation for part 72 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 72.5 would be revised to read as follows:

§ 72.5 Area quarantined in Texas.

The area quarantined in Texas is the permanent quarantined area described in the regulations of the Texas Animal Health Commission (TAHC) in § 41.2 of title 4, part II, of the Texas Administrative Code (4 TAC 41.2), which is incorporated by reference. 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 TAHC at 2105 Kramer Lane, Austin, TX 78758, and from area offices of the TAHC, which are listed in local Texas telephone directories. The TAHC also maintains a copy of its regulations on its Internet homepage at http://www.tahc.state.tx.us/. Copies may be inspected at the Animal and Plant Health Inspection Service, Veterinary Services, Emergency Programs, Suite 3B08, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Done in Washington, DC, this 6th day of April 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–9007 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AD90

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: On September 18, 1980, we issued the first regulations governing the exercise of the Secretary of the Interior's authority to accept title to land in the name of the United States to be held in trust for the benefit of Indian tribes and individual Indians (*i.e.*, to ''take land into trust''). These regulations have not undergone substantial revision since their adoption. We now propose to amend these regulations to make clearer that we will follow a process that is somewhat different, and we will apply a standard which is somewhat more demanding when a land-into-trust application involves title to lands which are located outside the boundaries of a reservation (''off-reservation lands''). In contrast, when the application involves lands located inside the boundaries of a reservation (''on-reservation lands''), we will apply a process and a standard which reflect a presumption in favor of acquisition of trust title to those lands. In addition, the proposed rule sets out the process we will use to comply with a mandate from Congress directing us to use our administrative procedures to place a particular tract of land into trust. Finally, the proposed rule establishes a framework in which a tribe without a reservation can establish a geographic boundary within which it may acquire land under the on-reservation provisions of the regulation.

DATES: Send comments before July 12, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any

one of several methods. See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, MS–4513, Main Interior Building, 1849 C Street, NW, Washington, DC 20240; by telephone at (202) 208–5831; or by telefax at (202) 219–1065.

SUPPLEMENTARY INFORMATION:

General Comments

You may mail comments to the Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS–4513–MIB, Washington, DC 20240.

Electronic Access and Filing

You may also comment via the Internet to [land__comments@ios.doi.gov]. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 1076–AD90'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Office of Trust Responsibilities directly at (202) 208–5831.

Finally, you may hand-deliver comments to the Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, N.W., MS–4513–MIB, Washington, D.C. 20240.

Our practice is to make comments, including the names and addresses of persons commenting, available for public review during regular business hours. Persons commenting as private individuals may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. Comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Specific Comments on Information Collection Aspects of the Rulemaking

Indian tribes and individuals must submit the information required under §§ 151.4, 151.9, 151.12, 151.15, and 151.18 to acquire land into trust, and 151.26 for approval of Tribal Acquisition Plans. We will use the information in making a determination on an application to take land into trust. The applicant must respond to this request to obtain a benefit. This table represents our estimate of the burden hours for reporting information collection under each section of this proposed rule.

Citation 25 CFR 151	Information	Average number of hours	Average number per year	Annual burden hours
151.4—For all applications	Submit completed written request as specified in sections 151.9, .12, and .15.	4–8	6,941	28,635
151.9—For on reservation acquisitions.	Applicants must submit: (a) Copy of authority (b) Explanation of need (c) Explanation of ownership status (Tribe) (d) Explanation of ownership status (Individual) (e) Title Insurance (f) Documentation for NEPA	4	95%=6,594	26,376
151.12—For off reservation acquisitions.	Applicants must submit: (a) Copy of authority (b) Explanation of need (c) Description of proposed use (d) Description of location of land (e) Description of effect on state & political subdivisions (f) Description of jurisdictional issues (g) Title Insurance (h) Documentation for NEPA (i) Documentation that individual's request meets 151.13	8	4%=278	2,224
151.15—For mandatory acquisitions.	Applicants must submit: (a) Copy of authority (b) Title Insurance (c) Additional information upon request	.5	1%=69	[2] 35
151.18—For Tribal Land Acquisition Plans (TLAP).	Applicants must submit: (a) Copy of authority (b) Copy of tribal documents to establish TLAP (c) Summary of purposes & goals (d) Summary of tribe's history (e) Description of TLAP (f) Location of Rights-of-Way (g) Description of effect on State & political subdivisions (h) Description of jurisdictional & land use issues	8	.05%=325	[3] 2,600
151.26—Recordkeeping	Maintaining each case file	([1])	6,941	578

[1] 5 minutes=1/12 hour.
[2] Rounded.
[3] Not included in total burden hours.

We invite your comments as to:

(1) Whether the collection of information is necessary for the proper performance of the functions of the

Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected; and

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Your comments regarding the burden estimate or any other aspect of this information collection should be sent to: Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington DC 20503. Please note that OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments should also be sent to the Bureau of Indian Affairs, Office of Trust Responsibilities, 1849 C Street, NW, MS–4513–MIB, Washington, DC 20240.

Introduction and Summary

Congress has given the Secretary of the Interior discretionary authority to acquire title to land to be held in trust by the United States for the benefit of Indian tribes and individual Indians. Acquiring such title is commonly referred to as ''taking land into trust.'' General statutory authority giving the Secretary discretion to acquire trust title to land is found in Section 5 of the Indian Reorganization Act of 1934 (the IRA), 25 U.S.C. 465:

> The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to land, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land to Indians.

Occasionally, Congress enacts other legislation granting the Secretary authority to take land into trust for some specific purpose. We refer to acquisitions of trust title under the IRA, and under other specialized statutes that grant discretionary authority to the Secretary, as ''discretionary acquisitions of title.''

The regulations proposed here would restructure how we review proposed discretionary acquisitions of title. We believe this restructuring will facilitate land-into-trust decisions which better reflect the modern-day needs and concerns of tribes, individual Indians, and surrounding non-Indian communities. Specifically, the proposed regulation sets forth an application process and review criteria which is more demanding when the land at issue is located outside the boundaries of an existing reservation or outside a Secretarially-approved Tribal Land Acquisition Area (collectively, ''off-reservation acquisitions''), but which is less demanding when the land is located inside the boundaries of an existing reservation or inside a Secretarially-approved Tribal Land Acquisition Area (collectively, ''on-reservation acquisitions''). In other words, the proposed regulations would make the application process easier for on-reservation acquisitions, while conversely requiring a more detailed analysis of a greater number of criteria for off-reservation acquisitions.

The purpose of creating these differing processes and criteria is two-fold. First, we intend to better carry out our responsibility to assist tribes in reestablishing ownership of, and jurisdiction over, land located within their own reservations. Second, we also intend to create a framework that adequately addresses the particular concerns that non-Indian governments have about the ramifications of placing off-reservation land into trust.

In addition, the proposed regulations delineate the procedure by which we process mandatory acquisitions of title. Mandatory acquisitions of title are trust acquisitions which Congress, by explicit statutory direction, requires the Secretary to accept through the administrative process. In other words, mandatory acquisitions are those which Congress has directed the Secretary to complete by removing any discretion in the administrative decision-making process. (Mandatory acquisitions of title are distinguishable from *legislative transfers of title*. Legislative transfers of title are those in which Congress directly places a parcel of land in trust, thereby removing the need for any administrative action to effectuate the transfer of title into trust status.)

Finally, the proposed regulations address the unique difficulties encountered by tribes which do not have reservations by including new provisions which set out a process by which those tribes may benefit from the on-reservation provisions of this regulation. In this process, a tribe without a reservation can designate a ''Tribal Land Acquisition Area'' in which it plans to acquire land. If the tribe obtains Secretarial approval of its Tribal Land Acquisition Area, the tribe will be able to apply to have title to the lands located within the Tribal Land Acquisition Area taken into trust under the on-reservations provisions of this regulation.

Discretionary Acquisitions On-Reservation

The General Allotment Act of 1887, 25 U.S.C. 331 *et seq.*, authorized the division, and distribution to individuals, of lands located within the boundaries of most Indian reservations across the country. This allotment policy was based in part on the theory that fee ownership of land would improve the economic condition of Indians, which at the time was acknowledged to be very poor. Unfortunately, in practice the primary beneficiaries of the Allotment Act were land speculators who quickly acquired large portions of land within Indian reservations, often at prices well below market value. Institute for Government Research, The Problem of Indian Administration 460–462 (L. Meriam, ed.) (Johnson Reprint Corporation 1971) (1928) (Meriam Report).

Implementation of the Allotment Act resulted in the alienation of as much as 90 million acres of land originally reserved to tribes by treaties and Executive Orders. Felix S. Cohen, Handbook of Federal Indian Law 138 (Michie Company) (1982 ed.) (Cohen). The loss of these tribal lands was catastrophic and generally is regarded by historians and others as being responsible for a precipitous decline in the economic, cultural, social and physical health of tribes and their members. *E.g.*, Charles F. Wilkinson, American Indians, Time and the Law 19–21 (Yale University Press 1987). To combat this downward spiral, in 1934 Congress passed the Indian Reorganization Act (IRA). Comment, Tribal Self-Government and Indian Reorganization Act of 1934, 70 Mich. L. Rev. 955, 960 (1972). One of the primary goals of the IRA was the restoration to tribal ownership of allotted land within existing reservations. *See*, Readjustment of Indian Affairs, Hearing before the Committee on Indian Affairs, 73d Cong. 2nd Sess. on H.R. 7902, at 16–1; Cohen, *supra* at 147. Although the IRA authorized appropriation to the Department of the Interior of two million dollars a year for land acquisition, since 1934 only $5.5 million has been appropriated by Congress for that purpose, all of it before 1950. Cohen at 150, note 51.

In the modern era tribes have taken full responsibility for rebuilding their reservation land bases, purchasing land from willing sellers and then applying to the Secretary to request that the land be taken into trust. Yet to date, less than eight percent of lands lost through allotment have been returned to tribal ownership. Cohen at 138, BIA's Annual Report for Indian Lands, 1996. Indeed, most applications requesting that we take land into trust have involved relatively small amounts of land. For example, in 1996 (the latest year for which data is available), the average amount of land involved in an application to take land in trust was about 30 acres. BIA's Annual Report for Indian Lands, 1996.

The proposed regulations are intended to promote the health and welfare of tribes and their members by better facilitating the restoration of on-reservation Indian lands into trust status. For example, the on-reservation provisions of the regulation provide that the tribe's stated need for the land will be accorded additional weight in recognition of the tribe's reasonable expectation that it benefit from the lands originally promised to it by treaty or Executive Order. For the same reason, because lands within reservation boundaries are subject to tribal governmental jurisdiction, the portion of the proposed rule governing on-reservation acquisitions does not specifically require submission of information concerning impacts on non-Indian communities, although State and local governments may comment on these impacts if they so desire. (In which case, the tribe will be given a copy of the comments and a reasonable amount of time in which to respond.)

Discretionary Acquisitions Off-Reservation

Congressional adoption of the land acquisition provisions of the IRA was based in part on Congress' understanding that the decimation of the tribal land base had resulted in substantial economic hardship for Indian tribes and their members. Hence, the regulations implementing the IRA anticipate the potential need for tribal trust land for economic development outside the boundaries of a reservation, particularly in situations in which a tribe's reservation is isolated or otherwise remote from centers of economic activity.

The acquisition of title by the United States in off-reservation circumstances can, however, have significant ramifications for local non-Indian communities. In particular, important jurisdictional matters (e.g., those involving law enforcement, land use planning, public education, and maintenance of utilities and roads) can become blurred. The effects of off-reservation acquisitions are in contrast to those caused by on-reservation acquisitions, as the effects of on-reservation acquisitions are just incremental additions to an already established set of circumstances, and not marked by the establishment of a new sovereign or jurisdictional presence.

For this reason, the proposed rule requires tribes wishing to take off-reservation land into trust to submit a substantial amount of information about how the proposed acquisition would impact the surrounding non-Indian community, and about how the tribe would address that impact. Requiring submission of this detailed information helps ensure that the concerns of local non-Indian governments are identified, reviewed and evaluated in our decision-making process.

Unlike the regulations currently in effect, the proposed regulations do not treat applications concerning land which is adjacent (contiguous) to a reservation as if the land were located on-reservation. Rather, applications concerning adjacent parcels are to be treated as off-reservation acquisitions, and will be subject to the same process and local non-Indian government consultation as are applications concerning other off-reservation lands. Of particular note is that we will require consultation with the state and local non-Indian governments in the state in which the adjacent land is located (even if the main body of the reservation lies across a state line).

The proposed regulation, however, would continue our policy (as articulated in the existing regulations) of giving greater weight to the tribe's need (vis-a-vis the objections of the local non-Indian community) the closer the land is to the tribe's reservation. Thus, the stated need for land adjacent to a reservation will be given greater weight in the context of the off-reservation criteria. In addition, tribal applicants wishing to conduct gaming on a parcel adjacent to land which has held reservation status since October 17, 1988 will continue to benefit from the ''contiguity exception'' mandated by Congress in the Indian Gaming Regulatory Act (IGRA) Section 20 requirements. (*See* 25 U.S.C. 2719(a)(1).)

The IRA land acquisition provisions authorize us to take off-reservation land into trust for the benefit of individual Indians. However, as a matter of general policy, we will approve applications from individual Indians for title to land located outside the boundaries of a reservation only under certain limited circumstances, in our discretion. For example, we will continue to accept title to interests in off-reservation land for the purpose of consolidating fractioned ownership of such land. Additionally, we will continue to accept title to lands purchased with funds obtained as the result of the voluntary sale of non-taxable Indian lands to any State, county, or municipality, or as the result of condemnation of such property by a State, county, or municipality, under 25 U.S.C. 409a.

Off-Reservation Acquisitions and Indian Gaming

If a tribe intends to use off-reservation land for gaming purposes, it must comply with the applicable requirements of Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. 2719 (IGRA) before gaming may occur on that land. In most cases, compliance with Section 20 of IGRA requires additional consultation with local non-Indian governments, a determination by the Secretary that the acquisition is ''in the best interest of the tribe and not detrimental to the surrounding community,'' and a concurrence in that determination from the Governor of the State in which the land is located. *Id.*

If a tribe applies under these regulations to have title acquired in trust for a non-gaming purpose, and then at a later date decides that it would like to conduct gaming on that parcel, it will be authorized to engage in such gaming only if it complies with the requirements of Section 20 of IGRA. In other words, to game on a parcel of trust land acquired after October 17, 1988 (*i.e.*, the date of passage of IGRA), the tribe must submit to the same Section 20 analysis and obtain the same gubernatorial consent as would have been required if the parcel were originally taken into trust for the purpose of gaming.

Discretionary Acquisitions in Alaska

Both the current and the proposed regulations bar the acquisition of trust title in land in Alaska, unless an application for such acquisition is presented by the Metlakatla Indian Community or one of its members. (The lands of the Metlakatla Indian Community comprise the only Native land in Alaska currently designated as a ''reservation'' by the federal government.) The regulatory bar to acquisition of title in trust in Alaska in the original version of these regulations was predicated on an opinion of the Associate Solicitor, Indian Affairs (''Trust Land for the Natives of Venetie

and Arctic Village,'' September 15, 1978), which concluded that the Alaska Native Claims Settlement Act (ANCSA) precluded the Secretary from taking land into trust for Natives in Alaska (again, except for Metlakatla).

Although that opinion has not been withdrawn or overruled, we recognize that there is a credible legal argument that ANCSA did not supersede the Secretary's authority to take land into trust in Alaska under the IRA (*see* relevant IRA provision at 25 U.S.C. 473a). *See also* the Petition of Chilkoot Indian Association, Native Village of Larsen Bay, and Kenaitze Indian Tribe, requesting the Department to undertake a rulemaking to remove the prohibition on taking land in trust in Alaska (60 FR 1956 (1995). However, even if it were held that the Secretary retained authority to take land in trust in Alaska, whether to exercise that authority remains in the sound discretion of the Secretary.

In recent years blue-ribbon commissions and working groups (such as the State of Alaska's Rural Governance Commission) have been formed to address various related issues concerning tribal governments and Native lands in Alaska and to address such issues in the wake of the decision in *Alaska* v. *Native Village of Venetie Tribal Government*, 522 U.S. 520, 118 S. Ct. 948 (1998). In that decision, the court held that former Native Corporation lands owned in fee simple by the Native Village of Venetie Tribal Government were not validly set apart for the use of Indians as such, nor were they under the superintendence of the federal government, and thus did not meet the definition of ''dependent Indian communities.'' *Id.* At 955. Since the lands did not qualify as dependent Indian communities, they did not meet the definition of Indian country and the Native Village of Venetie Tribal Government was not authorized to tax non-members. Of course, if land were taken in trust by the Secretary, such trust land then would qualify as Indian country and an Alaskan tribe would have all the powers that pertain within Indian country. We invite comment on the continued validity of the Associate Solicitor's opinion and issues raised by the petition noticed at 60 FR 1956 (1995) in light of the Supreme Court's ruling in the *Venetie* case.

The proposed regulations would make no change in the current regulations and would continue the bar against taking Native land in Alaska in trust. However, that bar would be subject to review pending the report of the Rural Governance Commission, or Congressional action clarifying that ANSCA lands are Indian country.

Mandatory Acceptance of Title

The implementation of specific statutes containing congressional mandates to acquire title to land in trust through our administrative process has not always been well-understood. To provide more clarity, the proposed rule includes new language that specifically identifies the types of acquisitions we consider ''mandatory,'' and sets out the process by which we will acquire title.

The proposed regulation clarifies that an acquisition of title is ''mandatory'' if Congress has removed all discretion in determining whether to accept title to a particular tract of land. Situations in which all discretion has been removed include those situations in which Congress dictates that the Secretary ''shall'' acquire title to a parcel of land which is specifically identified by legal description, or to land which is purchased with certain, specified funds. In contrast, a statute which merely directs that the Secretary ''shall'' accept title to unidentified land within some broader geographic boundary, e.g. within certain named counties, still allows for some discretion. Hence we do not view acquisitions under such a statute as ''mandatory'' for the purposes of this regulation. By definition, mandatory acceptances of title rely on statutory authority which preempts the discretionary authority granted to the Secretary by the IRA. The Department will evaluate each statute on a case-by-case basis to determine whether it requires a mandatory acceptance of trust title.

The process for completing a mandatory acceptance of title is relatively simple. A tribe must submit an application that includes the identification of the federal statute which mandates the acquisition of title and include the same sort of title insurance information required for discretionary acquisition applications. Because of the mandatory character of such acquisitions, the regulation does not require compliance with the National Environmental Policy Act (NEPA). However, we strongly advise applicants, for their own protection, to conduct the same type of environmental assessment generally done under NEPA prior to acquisition of the property, or at least prior to submitting an application to have the property taken into trust.

As a final matter, we note the distinction between mandatory acquisitions where Congress directs the Secretary to complete the administrative process of accepting trust title, and ''legislative transfers of title,'' where Congress directly transfers land into trust status on behalf of tribes or individual Indians. In the latter type of title transfer, Congress has removed the need for any administrative action to effectuate the title transfer.

Tribal Land Acquisition Areas for Tribes Without Reservations

There are a few tribes which do not benefit from the basic rights and opportunities inherent in having a reservation. For the most part, these are tribes recently restored to federal recognition by a federal statute which does not specifically designate a reservation, or they are tribes that have obtained federal recognition through the administrative Federal Acknowledgment Process, which as a matter of course does not provide for the designation of a reservation.

Federal policy for many decades has viewed the existence of a tribal land base as integral to the cultural, political, and economic well-being of a tribe. For example, most federal programs for Indians are in one way or another tied to the tribal land base. Because of the overwhelming importance of the tribal land base, and because the new regulations make it less burdensome for tribes to take land into trust on (as opposed to off-) reservation, we are proposing in these regulations an alternative mechanism by which reservation-less tribes may benefit from the on-reservation acquisition provisions to create a homeland.

The alternative mechanism is the use of a ''Tribal Land Acquisition Area.'' A Tribal Land Acquisition Area is a geographic boundary designated by a reservation-less tribe within which the tribe plans to acquire land within a specified period of time under the more lenient on-reservation provisions of the proposed rule. In other words, the Tribal Land Acquisition Area would create a geographic boundary within which individual parcels would be treated as on-reservation for the purposes of acquiring trust title under these regulations.

Because establishment of a Tribal Land Acquisition Area will affect local non-Indian governments, we will require that the concerns of local non-Indian governmental entities be addressed before the Secretary will approve the creation of the Tribal Land Acquisition Area boundaries. For that reason, an application for Secretarial approval of a Tribal Land Acquisition Area requires submission of information similar to that required in applications for off-reservation acquisitions. However, because we view the need for

a homeland as fundamental, we will accord greater weight to the application of a reservation-less tribe, particularly in situations in which the tribe benefits from a federal statute directing the Secretary to acquire some land base for the tribe.

However, while off-reservation land located within a Tribal Land Acquisition Area may be treated as on-reservation land for acquisition purposes, such lands legally cannot be treated as on-reservation for the purposes of IGRA. In other words, title to land which is inside a Tribal Land Acquisition Area cannot be taken into trust for the purpose of gaming unless and until the requirements of section 20 of IGRA have been satisfied.

Part 151 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be amended for the reasons set out below:

1. The authority for part 151 is revised to include the False Statements Accountability Act of 1996, 18 U.S.C. 1001.

2. Section 151.1 *Purpose and Scope,* is retitled as *What is the purpose of this part?,* and is reformatted and simplified.

3. Section 151.2 *Definitions,* is retitled as *How are key terms defined in this part?,* and is revised to update some of the definitions of terms used in this part and to include new terms used in this part. The definitions in this section apply only to this part.

4. Section 151.3 *Land acquisition policy,* has been deleted, although some of the substantive portions of the current § 151.3 have been incorporated into other parts of the proposed rule. A new § 151.3 is added entitled *To what types of transactions do these regulations apply?* The new § 151.3 incorporates some of the information that is in the current § 151.1.

5. Section 151.4 *Acquisitions in trust of lands owned in fee by an Indian,* is deleted because it is unnecessary given the rest of the proposed changes to this regulation. A new § 151.4 entitled *How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?* is added to explain how to apply to have land taken into trust.

6. Section 151.5 *Trust acquisitions in Oklahoma under Section 5 of the I.R.A.,* is deleted because it is unnecessary. A new § 151.5 entitled *How do we process the request?* is added to provide more clarity about how we review requests to take land into trust.

7. Section 151.6 *Exchanges* is deleted because it is no longer necessary given the other sections of the part. A new § 151.6, entitled *How do we proceed after making a decision on the request?* is added.

8. Section 151.7 *Acquisition of fractional interests,* is renumbered and retitled as § 151.8, *Will we accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?,* is reformatted to include acquisitions of ''undivided'' interest under the Indian Land Consolidation Act, and is revised for clarity. ''Undivided fractional'' is substituted for the word ''fractional'' to clarify that the ''fractional'' interest being acquired is not a geographically separate parcel of land. A new § 151.7 is added, *When does land attain trust status?,* to provide clarification as to how land technically attains trust status after we have decided to take it into trust.

9. Section 151.8 *Tribal consent for nonmember acquisitions* is renumbered and retitled as § 151.11 *Can an individual Indian or a tribe acquire land inside a reservation inside or an approved Tribal Land Acquisition Area of another tribe?* and is revised for clarity.

10. Section 151.9 *Requests for approval of acquisitions* is renumbered and retitled as § 151.4 *How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?* A new § 151.9, *What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?* is added.

11. Section 151.10 *On-reservation acquisitions,* is renumbered, retitled, and has been separated for clarity as § 151.5 *How do we process the application?,* § 151.9 *What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?,* and § 151.10, *What criteria will we use to evaluate requests involving land inside a reservation or inside an approved Tribal Land Acquisition Area?* The new § 151.10 is revised to establish a uniform, nationwide, ''minimum standard'' set of criteria for the decision maker to consider in the evaluation of an application for an on-reservation trust acquisition. The requirement to furnish title evidence is transferred from the current § 151.13 to this section to incorporate title evidence as part of a complete application request.

12. Section 151.11 Off-reservation acquisitions, is renumbered, retitled, and has been separated for clarity as § 151.5 *How do we process a request?,* § 151.12 *What information must be provided in an application involving land outside a reservation and outside a Tribal Land Acquisition Area?,* and § 151.14 *What criteria will we use to evaluate a request involving land outside a reservation and outside a Tribal Land Acquisition Area?* The requirement to furnish title evidence is transferred from the current § 151.13 to this section to incorporate title evidence as part of a complete application request. In addition, a new § 151.11, *Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Indian Land Acquisition Area of another tribe?,* is added, replacing the current § 151.8.

13. Section 151.12 *Action on requests* has been separated for clarity and is included as part of § 151.6 *How do we proceed after making a decision on the request?* A new § 151.12, *What information must be provided in a request involving land outside a reservation and outside a Tribal Land Acquisition Area?,* is added.

14. Section 151.13 *Title examination,* is renumbered, reorganized, and revised for clarity. The requirement to furnish title evidence is transferred from this section and incorporated in the new §§ 151.9 and 151.12 as part of a complete application request. Section (b), governing situations in which the title to the land has any liens, encumbrances, or infirmaties, has been integrated into § 151.6(c)(1). A new § 151.13, entitled *Can an individual Indian acquire land outside his or her own reservation?,* has been added to clarify the Secretary's policy regarding the acquisition of off-reservation lands by an individual Indian.

15. Section 151.14 *Formalization of acceptance* is renumbered and retitled as § 151.7 *When does the land attain trust status?* A new § 151.14, entitled *What criteria will we use to evaluate a request involving land outside a reservation or outside a Tribal Land Acquisition Area?,* is added to establish a uniform, basic, nationwide, ''minimum standard'' set of criteria for the decision maker to consider in the evaluation of an application for an off-reservation trust acquisition.

16. Section 151.15 *Information collection,* is renumbered and retitled as § 151.27 *Do information collections under this part have Office of Management and Budget approval?* Paragraph (a) is revised to include the new information collection requirements. A new § 151.15 entitled *What information must be provided in a request to process a mandatory transfer of title into trust status, and how will we process the request?* has been added to clarify the information needed to process mandatory acquisitions.

17. A new § 151.16 entitled *Can our determination that a transfer of title into trust status is mandatory be appealed?* is added for clarity.

18. A new § 151.17 entitled *What is a Tribal Land Acquisition Area?* has been added to clarify how a Tribal Land Acquisition Area can be used by tribes without reservations to benefit from the on-reservation provisions of this regulation.

19. A new § 151.18 entitled *What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?* has been added to describe what information must be submitted in the request.

20. A new § 151.19 entitled *How is a tribal request for Secretarial approval processed?* is added to describe how we will process the request for Secretarial approval of the Tribal Acquisition Area.

21. A new § 151.20 entitled *What criteria will we use to decide whether to approve a proposed Tribal Land Acquisition Area?* has been added to set out the criteria the Secretary will use to evaluate a Tribal Land Acquisition Area.

22. A new § 151.21 entitled *Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?* is added for clarity.

23. A new § 151.22 entitled *If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?* is added for clarity.

24. A new § 151.23 entitled *If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?* is added for clarity.

25. A new § 151.24 entitled *Can a Tribal Land Acquisition Area be modified after approval?* has been added to state that a Tribal Land Acquisition Area can be modified after approval by submitting a request for Secretarial approval of the modifications in compliance with the criteria in this part.

26. A new § 151.25 entitled *What is the penalty for making false statements in connection with a request that we place land in trust?* has been added to notify applicants that they are subject to prosecution for knowingly and willfully making false statements on an application.

27. A new § 151.26 entitled *What recordkeeping and reporting requirements apply to acquisitions of trust title under this part?* has been added to notify contracted or compacted tribes that documents created in the application process are permanent federal records.

28. A new § 151.27 entitled *Do information collections under this Part have Office of Management and Budget approval?* is added for clarity.

Clarity of this regulation.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of questions as headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, § 151.1 What is the purpose of this part?) (5) Is the description of the rule in the Supplementary Information section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget.

(a) The proposed amendments to this rule basically conform to the policies and practices that currently guide the Department's decision making on land into trust applications. Hence, we do not anticipate that this regulation will have a significant effect on the net amount of land taken into trust. The rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule simply identifies a ''minimum standard'' of criteria and requirements to be considered in the exercise of the Secretary's discretion to place lands in trust for individual Indians and tribes.

Looking at the overall picture of how much land we have taken into trust historically, the annual number of requests to place lands in trust has been small. Based on the BIA's Annual Report of Indian Lands for 1996, only 35 States have Indian lands, four of which have fewer than 1,000 acres of Indian lands. The 1996 report indicated that there were 6,941 total applications involving 212,000 acres cumulatively, i.e., the average amount of land involved in an application was only about 30 acres. Based on the annual caseload report for FY 1996, the total dollar amount Indians paid for acquisitions of land in trust is $19,420,303.81, less than 20% of $100 million. Some States and local governments may have a decrease in revenues derived from taxes. However, the loss in annual revenues for State and local jurisdictions will only be a fraction of the value of the land involved. Moreover, some tribes may choose to offset this loss by making payments in lieu of taxes, or supplying services to the local communities. In addition, the proposed rule would alter the final disposition of only a portion of the applications. Finally, any losses or gains to State or local tax rolls would be spread over several states. Thus, overall, the net changes in tax rolls due to this rule will be minimal, and will not significantly affect State or local governments.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. Actions taken by this rule will affect tribal or individual Indian land titles. The Department of the Interior, Bureau of Indian Affairs is the only governmental agency that makes the determination whether to take land into trust.

(c) This rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule sets out the criteria and procedures the Secretary uses in determining whether to accept title of certain Indian lands to the United States, as trustee, for the benefit of an individual Indian or a tribe.

(d) This rule does not raise novel legal or policy issues. This rule is of an administrative, technical, and procedural nature. The land acquisition regulations have been in effect since 1980. We are proposing to amend them in order to clarify procedures and requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility analysis is not required. See our initial analysis above item 1(a) under Regulatory Planning and Review. The effect on small entities will be minimal.

(a) It does not have an annual effect on the economy of $100 million or

more. As stated above, the effect on the economy will be minimal.

(b) It does not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions taken by this rule will only affect title to tribal or individual Indian owned lands. While it may affect revenues collected by State or local jurisdictions, the effect as noted above, should be minimal.

(c) It does not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, actions under this rule will only affect title to tribal or individual Indian owned lands. This rule is of an administrative, technical, and procedural nature.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. See the initial analysis above, item 1(a) under Regulatory Planning and Review. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. An economic analysis is not required.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will only affect title to tribal or individual Indian owned lands.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Actions under this rule will only affect title to tribal or individual Indian owned lands.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*):

(a) The rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. Additional expenses may be incurred by the requesting tribe or individual Indian to provide information to the Secretary. Tribes or an individual Indian provide information in order to receive a benefit.

(b) This rule will not produce a federal mandate of a $100 million or greater in any year. The overall effect of this rule will be negligible to the State, local, or tribal governments or the private sector. See our analysis under Regulatory Planning and Review.

Takings (E.O. 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because actions under this rule do not constitute a taking. Tribes or individual Indians are voluntarily transferring title to the United States for their own benefit.

Federalism (E.O. 13083)

With respect to Executive Order 13083, the rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment. The local tax base may be affected. However, this rule should not affect the relationship between State and Federal governments because actions in this rule apply only to a relatively small amount of land. Due to the loss of tax revenue, the relationship between the State and local governments with tribes and/or the Federal Government may be affected. However, because the loss of revenue is minimal and most of the land to be acquired will be within the boundaries of reservations where there is already a measure of Indian sovereignty, the effects are ''insignificant'' within the meaning of E. O. 13083. See the analysis under the Regulatory Planning and Review section.

Civil Justice Reform (E.O. 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear standards, simplifies procedures, reduces burden, and is clearly written. These regulations do not preempt any statute. They do supersede the current land acquisition regulations and the current procedure for establishing Indian Land Consolidation Areas. They would not be retroactive with respect to any land already taken into trust, but would apply to pending applications.

Paperwork Reduction Act

This regulation does require an information collection from ten or more parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirements in §§ 151.4; 151.9; 151.12, 151.15, 151.18, and 151.26 under 44 U.S.C. 3501 *et seq.* have been submitted to the Office of Management and Budget for approval and assigned clearance number 1076-xxxx. This information is required from Indian tribes and individual Indians who wish to convey land into trust status.

The burden associated with these requests is presented in a table in the **ADDRESSES** section of the preamble, and public comments are requested on these collections.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because this rule is of an administrative, technical, and procedural nature.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, ''Consultation and Coordination with Indian Tribal Governments'' (FR Vol. 63, No. 96, Pages 27655–27657) and 512 DM 2, we have evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects. No action is taken under this rule unless a tribe or an individual Indian voluntarily requests that the United States place land in trust for their benefit. Tribes will be asked for comments prior to publication as a final regulation of this rule and their comments will be considered prior to publication.

List of Subjects in 25 CFR Part 151

Indians—lands.

For the reasons set out in the preamble, we are proposing to revise Part 151 in Chapter I of Title 25, of the Code of Federal Regulations so that it will read as follows:

PART 151—ACQUISITION OF TITLE TO LAND IN TRUST

Subpart A—Purpose, Definitions, General

Sec.

151.1 What is the purpose of this part?
151.2 How are key terms defined in this part?
151.3 To what types of transactions does this part apply?
151.4 How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?
151.5 How do we process a request?
151.6 How do we proceed after making a decision on a request?
151.7 When does the land attain trust status?

151.8 Will we accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?

Subpart B—Discretionary Acquisitions of Title On-Reservation

151.9 What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?
151.10 What criteria will we use to evaluate a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?
151.11 Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Tribal Land Acquisition Area of another tribe?

Subpart C—Mandatory Acceptance of Title Off-Reservation

151.12 What information must be provided in a request involving land outside a reservation or outside a Tribal Land Acquisition Area?
151.13 Can an individual Indian acquire land outside his or her own reservation?
151.14 What criteria will we use to evaluate a request involving land outside a reservation or outside an approved Tribal Land Acquisition Area?

Subpart D—Mandatory Acquisitions of Title

151.15 What information must be provided in a request to process a mandatory transfer of title into trust status, and how will we process the request?
151.16 Can our determination that a transfer of title into trust status is mandatory be appealed?

Subpart E—Tribal Land Acquisition Areas

151.17 What is a Tribal Land Acquisition Area?
151.18 What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?
151.19 How is a tribal request for Secretarial approval processed?
151.20 What criteria will we use to decide whether to approve a proposed Tribal Land Acquisition Area?
151.21 Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?
151.22 If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?
151.23 If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?
151.24 Can a Tribal Land Acquisition Area be modified after approval?

Subpart F—False Statements, Recordkeeping, Information Collection

151.25 What is the penalty for making false statements in connection with a request that we place land in trust?
151.26 What recordkeeping and reporting requirements apply to acquisitions of trust title under this part?
151.27 Do information collections under this part have Office of Management and Budget approval?

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 18 U.S.C. 1001; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 467, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

Subpart A—Purpose, Definitions, General

§ 151.1 What is the purpose of this part?

The purpose of this part is to describe the authorities, policies, and procedures that we use to decide whether to accept title to land in the name of the United States to be held in trust for the benefit of an individual Indian or a tribe.

§ 151.2 How are key terms defined in this part?

Alienation means a conveyance or transfer of title to property.

Bureau means the Bureau of Indian Affairs within the Department of the Interior.

Discretionary acquisitions of title means those acquisitions of trust title which we are authorized, but are not required, to accept administratively.

Encumbrance means a limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind.

Fee simple land means title to land is absolute and clear of any condition or restriction, and with unconditional power of disposition.

Host tribe means the tribe having jurisdiction over the land being acquired.

Individual Indian means a person who:

(1) Is a member of a federally recognized tribe; or

(2) Was physically residing on a federally recognized Indian reservation as of June 1, 1934, and is a descendant of an enrolled member of a federally recognized tribe; or

(3) Possesses a total of one-half degree or more Indian blood of a federally recognized tribe.

Land means real property or any title interest therein, as defined by the statute that authorizes the land acquisition.

Legislative transfer of title means the direct transfer of title to land into trust status for the benefit of an individual Indian or Indian tribe by Congress through legislation. The regulations in this part do not apply to legislative transfers of title.

Mandatory acceptance of title means a conveyance of trust title which Congress has required the Secretary to accept if certain specified conditions over which the Secretary has no control are met.

Reservation means that area of land which has been set aside or which has been acknowledged as having been set aside by the United States for the use of the tribe, the exterior boundaries of which are more particularly defined in the final tribal treaty, agreement, Executive Order, federal statute, Secretarial Order, or judicial determination, except that in the State of Oklahoma, ''reservation'' means that area of land constituting the former reservation of the tribe. ''Former reservation'' means lands that are within the jurisdictional area of an Oklahoma Indian tribe and that are within the boundaries of the last reservation established by treaty, Executive Orders, or Secretarial Orders.

Restricted fee land means land for which an individual Indian or a tribe holds fee simple title subject to limitations or restrictions against alienation or encumbrance as set forth in the title and/or by operation of law.

Secretary means the Secretary of the Interior or an authorized representative.

Tribal Land Acquisition Area means a geographic boundary designated by a tribe that does not have a reservation, within which the tribe plans to acquire land over a specified period of time.

Tribe means any Indian tribe, nation, band, pueblo, town, community, rancheria, colony, or other group of Indians, which is recognized by the Secretary as eligible for the special programs and services provided by the Bureau of Indian Affairs, and listed in the **Federal Register** under Pub. L. 103–454, Act of Nov. 2, 1994 (108 Stat. 4791; 25 U.S.C. 479a (1994)).

Trust land means land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian or a tribe.

Undivided fractional interest means that the interest of co-owners is in the entire property and that such interest is indistinguishable. The interest has not been divided out from the whole parcel. (Example: If you own ¼ interest in 160 acres, you do not own 40 acres. You own ¼ of the whole 160 acres because your ¼ interest has not been divided out from the whole 160 acres.)

We means the Secretary of the Interior or an authorized representative.

§ 151.3 To what types of transactions does this part apply?

(a) Except as provided in paragraphs (b) and (c) of this section, this part

applies to all fee simple land-to-trust, restricted fee land-to-trust, trust-to-trust, and land exchange transactions.

(b) This part does not apply to the following transactions:

(1) Fee to restricted fee or restricted fee to restricted fee;

(2) The transfer of title of trust land through inheritance or escheat; or

(3) The Legislative transfer of title into trust status.

(c) We will not accept title to land in trust in the State of Alaska, except for the Metlakatla Indian Community of the Annette Island Reserve of Alaska or its members.

§ 151.4 How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?

Individual Indians and tribes must send us a written request asking that we accept title and place the land into trust.

(a) The request must:

(1) Identify the applicant (including the applicant's tribal affiliation);

(2) Include the legal description of the land to be acquired; and

(3) Include all information which shows that the proposed acquisition meets the applicable requirements in this section.

(b) The request does not need to be in any special form. However, we strongly urge the applicant to address each section of this part that is relevant to the type of acquisition (*e.g.*, on- or off-reservation, discretionary or mandatory), in the order it appears here. Constructing the request in this way will enable us to review the request more efficiently.

(c) We may also ask for additional information to aid us in reaching a decision.

§ 151.5 How do we process the request?

(a) After we receive the request, we will notify the State, county, and municipal governments having regulatory jurisdiction over the land. We will send all notices under this section by certified mail, return receipt requested. The notice will contain the information described in paragraph (a)(1) or (a)(2) of this section, as appropriate.

(1) If the request is for on-reservation lands or lands inside an approved Tribal Land Acquisition Area, the notice we send under this section will:

(i) Include the name of the applicant;

(ii) Describe the lands proposed to be taken in trust;

(iii) State the proposed use of the land; and

(iv) Invite the State and local governments from the State in which the land is located to comment in writing within 30 days on the proposed acquisition.

(2) If the request is for land outside a reservation and outside a Tribal Land Acquisition Area, the notice we send under this section will:

(i) Include the name of the applicant;

(ii) Describe the lands proposed to be taken in trust;

(iii) Describe the proposed use of the land; and

(iv) Invite the State and local governments from the State in which the land is located to comment in writing within 60 days on the acquisition's potential effects on the State and local governments, including on their regulatory jurisdiction, real property taxes, and special assessments.

(b) After the comment period has ended, we will send to the applicant copies of any comments made by State or local governments on the applicant's request. We will give the applicant a reasonable time in which to reply to the comments.

(c) Subject to restrictions on disclosure required by the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905) the request will be available for review at the local BIA agency or area office having administrative jurisdiction over the land.

(d) We will consider all the documentation that the applicant submits.

§ 151.6 How do we proceed after making a decision on the request?

(a) We will send the applicant a certified letter describing our decision to accept or deny a request. We will also send a copy of the decision letter to everyone (including State and local governments) who sent us written comments on the request. The notice to interested parties will explain that they have a right to appeal our decision under part 2 of this title.

(b) If our decision is to deny the request, we will take no further action.

(c) If our decision is to approve the request, after the exhaustion of administrative remedies we will:

(1) Complete a preliminary title examination. For both discretionary and mandatory acquisitions, after we examine the title evidence, we will notify the applicant of any liens, encumbrances, or infirmities. If the liens, encumbrances, or infirmities make title to the land unmarketable, we will require the applicant to eliminate the liens, encumbrances, or infirmities before we act on the application.

(2) Publish in the Federal Register, or in a newspaper of general circulation serving the affected area, a notice of the decision to take land into trust under this part. The notice will state that we have made a final decision to take land in trust and that we will accept title in the name of the United States no sooner than 30 days after the notice is published;

(3) Act on any judicial appeals that may be filed; and

(4) After the exhaustion of judicial remedies, accept trust title to the land by issuing or approving an appropriate instrument of conveyance.

§ 151.7 When does land attain trust status?

After the Secretary has published notice of intent to take the land into trust pursuant to § 151.6 (c)(2), the time period for appeal has run, all appeals rights have been exhausted, and all title objections have been cleared, we will approve or issue the appropriate instrument of conveyance. Only after these steps have been completed will the land attain trust status. The approved deed will then be recorded in the county where located, title evidence will be updated, a final title opinion will be issued and the deed will be recorded in the appropriate Bureau of Indian Affairs title plant under part 150 of this chapter.

§ 151.8 Will we accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?

We will not accept and hold in trust for an individual Indian or a tribe an undivided fractional interest in land, except under one of the following conditions:

(a) The individual Indian or tribe already owns an undivided fractional restricted or trust interest in the land, and is acquiring the additional interest(s) to consolidate ownership.

(b) The individual Indian or tribe acquires the undivided fractional interest as the result of a gift under § 152.25(d) of this chapter and the conveyance does not result in further fractionation of interest in the land.

(c) The individual Indian or tribe is acquiring interest in fee and there are existing undivided fractional trust or restricted interests in the same land.

(d) The individual Indian or tribe offers and agrees to purchase the remaining undivided fractional trust or restricted interest in the land, at not less than fair market value.

(e) A specific statute grants the individual Indian or tribe the right to purchase an undivided fractional interest in trust or restricted land without offering to purchase all interests.

(f) A majority of the owners of the remaining undivided trust or restricted fractional interest agree in writing that the individual Indian or tribe may acquire the interest.

(g) Under the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.*, a tribe may acquire an undivided fractional interest in trust or restricted land under these conditions:

(1) The land is inside the tribe's reservation, or inside an approved Tribal Land Consolidation Area, or is otherwise subject to the tribe's jurisdiction, and

(2) The tribe acquires the land:

(i) At not less than the fair market value; and

(ii) With the written consent of a majority of the owners of the remaining undivided fractional trust or restricted interest of this land.

(h) The tribe acquires, at not less than the fair market value, part or all of the undivided fractional interests in a parcel of trust or restricted land within the tribe's reservation, or subject to the tribe's jurisdiction and:

(1) Over 50 percent of the owners of the undivided fractional interests consent in writing to the acquisition; or

(2) An individual Indian makes an offer under paragraph (e) of this section.

(i) An individual Indian:

(1) Already owns an undivided fractional interest in the land;

(2) Offers to match a tribal offer to purchase under paragraph (d) of this section; and

(3) Has used and possessed the land for at least 3 years preceding the tribe's offer to purchase.

Subpart Part B—Discretionary Acquisitions of Title On-Reservation

§ 151.9 What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land inside a reservation boundary or to land inside an approved Tribal Land Acquisition Area must include:

(a) A complete description, or a copy, of the federal statute that authorizes the United States to accept the land in trust and any limitations contained in the authority.

(b) An explanation of why the individual Indian or tribe needs land to be in trust and how the land will be used. This explanation is a crucial factor in determining if the request should be approved.

(c) If the applicant is a tribe, an explanation of whether the tribe:

(1) Already owns an undivided fractional trust or restricted interest in the land; and

(2) Maintains jurisdiction over the land.

(d) If the applicant is an individual Indian, an explanation of:

(1) Whether the applicant already owns an undivided fractional trust or restricted interest in the land;

(2) The amount of land that the applicant already owns and the status of the land (fee, restricted, or trust); and

(3) Whether the applicant needs assistance in handling real estate affairs. For example, tell us if the applicant is a minor or has been declared legally incompetent.

(e) Title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice.

(f) Documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, see the Department of Interior, Bureau of Indian Affairs web site at: <http://www.doi.gov/bureau-indian-affairs.html>.) Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

§ 151. 10 What criteria will we use to evaluate requests involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

We will review all information submitted under § 151.9. We may decide to accept trust title to the land if the acquisition meets all of the following criteria:

(a) We determine that the conveyance is necessary to facilitate tribal self-determination, economic development, Indian housing, or land consolidation;

(b) There is legal authority that authorizes us to accept the land in trust;

(c) The request is complete (including all supporting documents);

(d) The request will benefit the economic and/or social condition of the applicant;

(e) There is title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice;

(f) There is information sufficient for compliance with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations, including, a record of coordination with agencies having jurisdiction over cultural, historic, or natural resources; and

(g) We determine after mitigation of effects on the environment, cultural resources, historic resources, and endangered or threatened species, that the conveyance is consistent with applicable environmental, cultural, historic, or natural resources law.

§ 151.11 Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Tribal Land Acquisition Area of another tribe?

An individual Indian or a tribe, including individual Indians and tribes in Oklahoma, may acquire land in trust on another tribe's reservation, or inside another tribe's approved Tribal Land Acquisition Area, if the host tribe's governing body consents in writing. No consent is required if:

(a) An individual Indian or tribe already owns an undivided fractional trust or restricted interest in the parcel of land to be acquired; or

(b) The proposed acquisition is inside a reservation or an approved Tribal Land Acquisition Area that is shared by two or more tribes, and the acquisition is for one of these tribes, or one of these tribes' members.

Subpart C—Discretionary Acquisitions Off-Reservation

§ 151.12 What information must be provided in a request involving land outside a reservation or outside a Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land outside a reservation boundary and outside an approved Tribal Land Acquisition Area, must include:

(a) A complete description, or a copy of, the statutory authority that authorizes the United States to accept land in trust and any limitations contained in the authority;

(b) An explanation of the need of the individual Indian or tribe for land in trust and how the land will be used. This explanation is a crucial factor in determining if the request should be approved. The request must explain:

(1) Why the present land base is not appropriate for the activity contemplated in the request;

(2) Why the applicant needs the land in trust for the proposed use; and

(3) How trust status will benefit the applicant's economic and/or social conditions.

(c) A description of how the applicant will use the land. This description must include an explanation of:

(1) The past uses of the land;

(2) The present use of the land;

(3) The anticipated future uses of the land;

(4) The cultural or historical interest in the land;

(5) The objectives that the individual Indian or tribe hopes to attain; and

(6) If the acquisition is for housing:

(i) The projected number of units to be built; and

(ii) The number of members who will benefit.

(7) If the applicant is acquiring the land for business purposes, the tribe must provide a business plan that specifies the anticipated economic benefits of the proposed use.

(d) A description of the following:

(1) The location of the land relative to State boundaries;

(2) The distance of the land from the boundaries of the tribe's reservation;

(3) The distance of the land from the Bureau's agency or area office;

(4) The location of roads and rights-of-way that provide access to the land; and

(5) The location of land in relation to the tribe's other trust lands.

(e) A description of the effect on the State and its political subdivisions of removing the land from tax rolls. Describe any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local governments;

(2) The amount of annual revenue lost from special assessments to the local governments, if any;

(3) The amount of annual revenue lost from mineral receipts to the local governments, if any; and

(4) The local governments' ability to provide public safety services for the land.

(f) A description of any jurisdictional and land use infrastructure issues that might arise. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Any tribal zoning ordinances.

(2) Law enforcement and cross-deputization, including:

(i) Who currently provides law enforcement services for the land;

(ii) Whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Any additional resources required to provide adequate law enforcement and how they will be funded.

(3) Safety factors, including:

(i) Who supplies fire protection service for the land;

(ii) Who supplies emergency medical service for the land; and

(iii) If the land is in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) Access to the land;

(ii) A description and quantification of anticipated increased traffic in the area from proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The land is on a city sewage system;

(ii) The land is served by an adequate sewage system that meets applicable standards;

(iii)Trash pickup service or another method of trash disposal is available for the land;

(iv) The city or another facility supplies services to the land;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to the land; and

(ii) The source of heating for the land, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there are any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the tribe has made any provisions to compensate the State or local governments for revenue lost because of the removal of the land from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

(g) Whether there is title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice. The evidence will be examined to determine if the applicant has marketable title.

(h) The documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, see the Bureau of Indian Affairs web site at: <http://www.doi.gov/bureau-indian-affairs.html>.) Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

(i) If the request is for an individual Indian, documentation demonstrating that the applicant's request meets one of the criteria described in § 151.13.

§ 151.13 Can an individual Indian acquire land outside his or her own reservation?

Except as provided in paragraphs (a) and (b) of this section, we will not accept title to land in trust outside an individual Indian's reservation. We may approve acquisitions of land outside an individual Indian's reservation if:

(a) The individual Indian already owns an undivided fractional trust or restricted interest in the property being acquired; or

(b) The individual Indian has sold trust or restricted interest in land and the money received from the sale is reinvested in other land selected and purchased with these funds, or the individual Indian is purchasing land with funds obtained as a result of a sale of trust or restricted land under 25 U.S.C. 409a.

§ 151.14 What criteria will we use to evaluate a request involving land outside a reservation or outside an approved Tribal Land Acquisition Area?

We will review all information submitted under section § 151.12. We may decide to place the land in trust if we determine that the application meets all of the following criteria:

(a) We determine that the conveyance is necessary to facilitate tribal self-determination, economic development, Indian housing, or land consolidation;

(b) There is legal authority that authorizes us to accept land in trust;

(c) The request is complete (including all supporting documents);

(d) The acquisition will benefit the tribe's economic and/or social conditions;

(e) There is title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice;

(f) There is information sufficient for compliance with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing

Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations: a record of coordination with agencies having jurisdiction over cultural, historic, and natural resources;

(g) We determine after mitigation of impacts on the environment, cultural resources, historic resources, and endangered or threatened species, that the conveyance is consistent with applicable environmental, cultural and historic resources law, and the Endangered Species Act;

(h) We determine that any adverse impacts on local governments and communities are reasonable compared to the benefits flowing to the applicant from taking the land in trust;

(i) The Bureau of Indian Affairs is equipped to handle the additional responsibilities of this acquisition and has sufficient staff to perform inspections for rights-of-way, leasing, soil conservation, and oil and gas exploration, or any other responsibilities resulting from the acquisition of the land in trust status; and

(j) The location of the land relative to State boundaries, and its distance from the boundaries of the tribe's reservation, is reasonable based in part on the following:

(1) If the land is in a different state than the tribe's reservation, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny.

(2) As the distance between the tribe's reservation or approved Tribal Land Acquisition area and the land to be acquired increases, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny.

(3) As the distance between the tribe's reservation or approved Tribal Land Acquisition Area and the land to be acquired increases, the concerns raised by the state and local governments will be given greater weight.

Subpart D—Mandatory Acceptance of Title

§ 151.15 What information must be provided in a request to process a mandatory transfer of title into trust status, and how will we process the request?

(a) To help us determine whether we are mandated by legislation to accept trust title to a specific tract of land, we require submission of the following documentation:

(1) A complete description, or a copy of, the statutory authority that directs the United States to place the land in trust, and any limitations contained in that authority;

(2) Title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U.S. Department of Justice; and

(3) Any additional information that we may request.

(b) If we determine that the transfer of title into trust status is mandatory, we will publish that determination and a notice of intent to take the land in trust in the **Federal Register**.

§ 151.16 Can our determination that a transfer of title into trust status is mandatory be appealed?

The Department's determination that a transfer of title into trust status is ''mandatory'' may be appealed according to requirements set forth in part 2 of this title.

Subpart E—Tribal Land Acquisition Areas

§ 151.17 What is a Tribal Land Acquisition Area?

A Tribal Land Acquisition Area is a geographic boundary designated by a reservation-less tribe within which the tribe plans to acquire land within a 10-year period. If the Secretary approves the Tribal Land Acquisition Area under this part, the reservation-less tribe can acquire parcels of land within the Tribal Land Acquisition Area during that 10-year period under the on-reservation provisions of this part.

§ 151.18 What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?

A request for Secretarial approval of a Tribal Land Acquisition Area must be made in writing, although we do not require that it take any special form. However, we strongly urge the applicant to address each applicable section of this part in the order it appears here. Constructing the application in this way will help us review the request more efficiently. To be complete, a request for Secretarial approval of a Tribal Land Acquisition Area must identify the applicant tribe, and must include:

(a) A complete description, or a copy, of the federal statute(s) that authorize the United States to accept land in trust on behalf of the tribe, and any limitations contained in that authority.

(b) Copies of tribal documents relating to the establishment of the Tribal Land Acquisition Area and the acquisition of land within it, including:

(1) A copy of the tribe's constitution and by-laws, corporate charter, resolution, or excerpts from those documents that identify and grant tribal officials the authority to acquire tribal lands on behalf of the tribe;

(2) A copy of a tribal resolution designating the Tribal Land Acquisition Area, including a legal description of the lands located within it; and

(3) A copy of a tribal resolution requesting that the Secretary approve the proposed Tribal Land Acquisition Area.

(c) A narrative summary that describes the purposes and goals for acquiring lands in trust within the Tribal Land Acquisition Area, including general information about whether the lands are to be used for residential, governmental, educational, economic development, or other purposes.

(d) A narrative of the tribe's history that explains:

(1) When the tribe was federally recognized, and whether it was through legislation, treaty, or the Bureau of Indian Affairs' Federal Acknowledgment Process; and

(2) If applicable, how the tribe became dispossessed of its former reservation lands.

(e) A description of the Tribal Land Acquisition Area, including:

(1) A legal description of the lands within the Tribal Land Acquisition Area;

(2) Information about whether the lands are within the tribe's former reservation or aboriginal homelands;

(3) Information about whether the lands are Federal lands, State lands, or private lands;

(4) Information about whether the lands overlap with another tribe's jurisdictional area;

(5) Information about the significance of the land to the tribe, including whether the land has any particular historical, cultural, religious, or other value to the tribe; and

(6) Information about the distance of the Tribal Land Acquisition Area from the Bureau's nearest agency or area office.

(f) A description of the location of roads and rights-of-way, or of additional rights-of-way that may be needed to provide access to lands located within the Tribal Land Acquisition Area.

(g) A description of the reasonably anticipated overall effect on the State and its political subdivisions of removing lands located within the Tribal Land Acquisition Area from tax rolls, and a description of any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local governments for lands located within the Tribal Land Acquisition Area;

(2) The amount of annual revenue which would be lost from special assessments to the local governments, if any;

(3) The amount of annual revenue lost from mineral receipts to the local governments, if any; and

(4) The local governments' ability to provide public safety services for lands located within the Tribal Land Acquisition Area.

(h) A description of any overall jurisdictional and land use infrastructure issues that might arise if the lands within the Tribal Land Acquisition Area is taken into trust. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Applicable tribal zoning ordinances.

(2) Law enforcement and cross-deputization, including:

(i) Who currently provides law enforcement services for the land;

(ii) Whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Whether additional resources would be needed to provide adequate law enforcement.

(3) Safety factors, including:

(i) Who supplies fire protection service for lands located within the Tribal Land Acquisition Area;

(ii) Who supplies emergency medical service for lands located within the Tribal Land Acquisition Area; and

(iii) Information about whether lands located within the Tribal Land Acquisition Area are in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) A description of current access to the land;

(ii) A description and quantification of anticipated increased traffic in the area from proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The lands located within the Tribal Land Acquisition Area are on a city sewage system;

(ii) The lands located within the Tribal Land Acquisition Area are served by an adequate sewage system that meets applicable standards;

(iii) Trash pickup service or another method of trash disposal is available for lands located within the Tribal Land Acquisition Area;

(iv) The city or another facility supplies sanitation services to the lands located within the Tribe Land Acquisition Area;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to lands located within the Tribal Land Acquisition Area; and

(ii) The source of heating for lands located within the Tribal Land Acquisition Area, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there exist any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the tribe has made any provisions to compensate the State and local governments for revenue lost because of the removal of the lands from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

§ 151.19 How is a tribal request for Secretarial approval processed?

When we receive a request for Secretarial approval of a Tribal Land Acquisition Area, we will review the supporting documentation to determine if the request meets the requirements of this part. If the request is complete, we will:

(a) Provide notice of the request for Secretarial approval to the Governor's Office, to appropriate local government officials, and to appropriate officials of tribes located within a 50-mile radius of the boundaries of the proposed Tribal Land Acquisition Area. Recipients of the notice will be provided 60 days from the date of receipt in which to comment on the proposed Tribal Land Acquisition Area and the request supporting it. Other interested parties may also submit comments during the 60-day consultation period.

(b) After the close of the consultation period, based on the criteria described in § 151.21, we will decide whether to approve the Tribal Land Acquisition Area. Our decision on whether to approve the Tribal Land Acquisition Area will be communicated in the form of a certified letter to the applicant. We also will provide notice of our decision to interested parties by sending a copy of the decision letter to everyone (including State and local governments) who sent us written comments on the request for approval.

(c) If we decide not to approve the Tribal Land Acquisition Area, we will take no further action.

(d) If we decide to approve the Tribal Land Acquisition Area, we will:

(1) Publish in the **Federal Register**, or in a newspaper of general circulation serving the affected area, a notice of the decision to approve the Tribal Land Acquisition Area; and

(2) Thereafter review requests to accept trust title land located within the Tribal Land Acquisition Area as ''on-reservation'' acquisitions under the applicable on-reservation provisions in this part.

§ 151.20 What criteria will we use to decide whether to approve a proposed Tribal Land Acquisition Area?

In general, because tribes without reservations are significantly disadvantaged, both in terms of cultural preservation and in terms of being ineligible for federal land-based programmatic funding and technical assistance, there is a presumption in favor of the tribe's need for at least some trust land. However, in determining whether to approve establishment of a Tribal Land Acquisition Area, we will consider the individual circumstances of each applicant tribe, surrounding community, and affected land base. There are some standard criteria which will help direct our decision-making process. These standard criteria include:

(a) The request must be complete and contain all supporting documents;

(b) The statutory basis upon which the tribe proposes creation of the Tribal Land Acquisition Area: if the tribe is the subject of a statute directing the Secretary to take some unspecified land into trust for the tribe's benefit the tribe will enjoy a greater presumption in favor of approval of its proposed Tribal Land Acquisition Area. (For example, there is statutory language such as ''the Secretary shall take land into trust within the tribe's service area,'' or ''the Secretary shall take land into trust within X and Y counties.'')

(c) The size of the proposed Tribal Land Acquisition Area in relation to the size of the tribe's membership: we will look for a reasonable connection between the amount of land the tribe wishes to take into trust, and the basic trust needs (housing, health, employment opportunities) of the tribe's membership.

(d) The relationship of the tribe to the lands located within the Tribal Land Acquisition Area: we will give greater weight to a request for approval of a Tribal Land Acquisition Area that encompasses lands to which the tribe

has established a strong cultural, historical, and/or legal connection.

(e) The ability of the tribe and the local non-Indian community to adjust to the jurisdictional changes that will occur if the lands within the Tribal Land Consolidation Area are taken into trust, including:

(1) That there are adequate arrangements for provision of police and fire protecion and other emergency response for persons living within the Tribal Land Consolidation Area (whether living on trust or non-trust property);

(2) That there are adequate arrangements for provision of other municipal-type services, such as garbage removal, water, sewage;

(3) That adverse impacts on local governments and communities are reasonable compared to the benefits flowing to the applicant.

§ 151.21 Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?

A tribe may include land inside the reservation boundaries or within an approved Tribal Land Acquisition Area of another tribe, if:

(a) The host tribe's governing body consents in writing;

(b) The tribe already owns undivided fractional trust or restricted interests in the tracts of land identified in its Tribal Land Acquisition Area; or

(c) The tracts of land to be included in the plan are inside a reservation or an approved Tribal Land Acquisition area that is shared by two or more tribes, and the plan is for one of these tribes.

§ 151.22 If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?

No. However, the tribe will have to apply to have individual parcels taken into trust under the off-reservation provisions of this part.

§ 151.23 If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?

No. Lands taken into trust within a Tribal Land Acqusition Area will enjoy ''Indian country'' status as that term has been defined in relevant federal statutes and caselaw. However, those lands do not attain ''reservation'' status by virtue of the Tribal Land Acquisition Area having been approved by the Secretary. Reservation status can only be attained if:

(a) The tribe has applied to the Secretary under 12 U.S.C. 467; or

(b) There is a specific federal statute designating the land as a reservation.

§ 151.24 Can a Tribal Land Acquisition Area be modified after approval?

Yes. However, the changes must be submitted with a request for approval in compliance with the criteria in this part and must be approved by the Secretary.

Subpart F—False Statements, Recordkeeping, Information Collection

§ 151.25 What is the penalty for making false statements in connection with a request that we place land into trust?

Anyone who knowingly and willfully makes a false statement in connection with a trust title acquisition request may be subject to criminal prosecution under the False Statements Accountability Act of 1996, 18 U.S.C. 1001.

§ 151.26 What recordkeeping and reporting requirements apply to acquisitions of trust title under this part?

(a) Each document that we hold or that is created in the development of a request asking for land to be placed in trust is a permanent federal case file record. The Bureau of Indian Affairs file will maintain each of the documents in accordance with National Archives and Records Administration requirements.

(b) The Secretary will negotiate with Indian tribes and tribal organizations compacting and contracting under Title I or Title IV of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 250 *et seq.*, to ensure that such tribes and tribal organizations also maintain each document in a case file in accordance with National Archives and Records Administration rules and requirements, and to ensure that they follow all Bureau reporting requirements concerning this part.

§ 151.27 Do information collections under this part have Office of Management and Budget approval?

(a) The information collection requirements contained in §§ 151.4; 151.9; 151.12; 151.15, 151.18, and 151.26 have been approved by the Office of Management and Budget under 44 U.S.C. 33501 *et seq.* and assigned clearance number 1076-xxxx. It is a requirement of the Paperwork Reduction Act that each respondent to any information collection be notified that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number pursuant to 35 U.S.C. 3506(c)(B)(V); 44 CFR 1320 8(b)(3)(vii). Indian tribes and individuals must submit the information required under these sections to acquire land into trust. We will use the information in making a determination on an application to take land into trust. The applicant must respond to this request to obtain a benefit.

(b) Public reporting for on-reservation information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collected. Public reporting for off-reservation information collection is estimated to average 8 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collected. Comments regarding the burden estimate or any other aspect of this information collection should be sent to the Bureau of Indian Affairs, Information Collection Clearance Officer, 1849 C Street, NW, Washington, DC 20240; and Attention: Desk Officer, for the Department of the Interior, Office of Information and Regulatory Affairs [OMB Control Number 1076-xxxx], Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20502.

Dated: April 2, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–8851 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5 and 7

[Notice No. 873; Re: Notice No. 872]

RIN 1512–AB89

Prohibition of Certain Alcohol Beverage Containers and Standards of Fill for Distilled Spirits and Wine (98R–452P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 872, a notice of proposed rulemaking, published in the **Federal Register** on February 9, 1999. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before May 10, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, [Attention: Notice No. 872].

FOR FURTHER INFORMATION CONTACT: William H. Foster, Regulations Division, (202) 927–8210, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. You may also write questions by e-mail to *whfoster@atfhq.atf.treas.gov*. ATF will not accept comments on the proposal that are submitted to this address.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1999, ATF published a notice of proposed rulemaking (NPRM) in the **Federal Register** soliciting comments from the public and industry on a proposal to amend the regulations to clarify the standards of fill for distilled spirits and wine. This notice also proposed regulations to prohibit certain alcohol beverage containers that are likely to mislead consumers as to the identity or character of the distilled spirits, wine, or malt beverage products or are likely to be confused with other (non-alcohol) food products. The comment period for Notice No. 872 closes on April 12, 1999.

However, ATF received a request from the National Association of Beverage Importers, Inc. (NABI) to extend the comment period an additional 30 days. NABI, representing the companies that import most of the alcohol beverages brought into the United States, stated that additional time was needed for it to obtain information from its members and foreign counterparts in order to prepare the association's comments.

In consideration of the above, ATF finds that an extension of the comment period is warranted and the Bureau is, therefore, extending the comment period until May 10, 1999.

Disclosure

Copies of Notice No. 872 and written comments will be available for public inspection during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information

The author of this document is Nancy M. Kern, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, consumer protection, customs duties and inspections, imports, labeling, packaging and containers, and wine.

27 CFR Part 5

Advertising, consumer protection, customs duties and inspections, imports, labeling, liquors, and packaging and containers.

27 CFR Part 7

Advertising, beer, consumer protection, customs duties and inspection, imports, and labeling.

Authority and Issuance

This notice is issued under the authority contained in 26 U.S.C. 5368, 5301, 7805; 27 U.S.C. 205.

Signed: April 6, 1999.

John W. Magaw,

Director.

[FR Doc. 99–8993 Filed 4–9–99; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 013–0139b; FRL–6322–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) from open burning. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP for San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD). EPA has evaluated SJVUAPCD Rule 4103 and SCAQMD Rule 444 and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority. These revisions, while strengthening the SIP or maintaining the SIP's control strategy, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. In this action, EPA also is proposing full approval of SCAQMD Rule 208 for incorporation into the California SIP. EPA has evaluated this rule and determined that it is consistent with the CAA and EPA regulations and will maintain the SIP's control strategy.

DATES: Comments must be received on or before May 12, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for limited approval and limited disapproval into the California SIP are SJVUAPCD Rule 4103, Open Burning (amended December 16, 1993) and SCAQMD Rule 444, Open Fires (amended October 2, 1987). SJVUAPCD Rule 4103 was submitted by the State of California to EPA on May 24, 1994. SCAQMD Rule 444 was submitted by the State of California to EPA on March 23, 1988.

The rule being for proposed for full approval into the California SIP is SCAQMD Rule 208, Permit for Open

Burning (amended January 5, 1990). SCAQMD Rule 208 was submitted by the State of California to EPA on May 13, 1991.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Joaquin Valley Planning Area and South Coast Air Basin (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 188(a). The San Joaquin Valley Planning Area (now under the SJVUAPCD), the South Coast Air Basin (under the SCAQMD), and the Coachella Valley Planning Area (now under the SCAQMD) were among the areas designated nonattainment.

On February 8, 1993, EPA classified four nonattainment areas as serious nonattainment, including the San Joaquin Valley Planning Area, the South Coast Air Basin, and the Coachella Valley Planning Area in 58 FR 3334 (January 1, 1993). This **Federal Register** action for SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District, as of July 1, 1997.[2]

Section 189(a) of the CAA requires moderate PM–10 nonattainment areas to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) of the CAA requires serious nonattainment areas with significant PM–10 sources to adopt best available control measures (BACM), including best available control technology (BACT). SCAQMD and SJVUAPCD are serious PM–10 nonattainment areas. SCAQMD has not identified Open Burning as a significant PM–10 source in their PM–10 BACM Plan, so EPA will evaluate the SCAQMD rules against RACM requirements. If the SCAQMD BACM Plan should be disapproved, EPA may require SCAQMD to submit additional Open Burning provisions to meet BACM requirements. SJVUAPCD has not identified Open Burning as a non-significant PM–10 source in their BACM Plan, so EPA will evaluate the SJVUAPCD rule against RACM and BACM requirements. However, EPA may identify additional BACM requirements for Open Burning upon review of the SJVUAPCD BACM Plan at a later date.

In response to section 110(a) and Part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rules being acted on in this document. This document addresses EPA's proposed action for SJVUAPCD Rule 4103, Open Burning, SCAQMD Rule 444, Open Fires, and SCAQMD Rule 208, Permit for Open Burning. SJVUAPCD Rule 4103 was amended December 16, 1993, submitted by the State of California for incorporation into the SIP on May 24, 1994, and found to be complete on July 14, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[3] SCAQMD Rule 444, was amended October 2, 1987, and submitted by the State of California for incorporation into the SIP on March 23, 1988. SCAQMD Rule 208 was amended January 5, 1990, submitted by the State of California for incorporation into the SIP on May 13, 1991, and found to be complete on July 10, 1991. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen the SIP or maintain the SIP's control strategy.

The statutory provisions relating to RACM and BACM are discussed in EPA's ''General Preamble,'' which give the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), and 59 FR 41998 (August 16, 1994). In this proposed action, EPA is evaluating SCAQMD rules to determine if they fulfill the RACM requirements of CAA section 189(a) and is evaluating SJVUAPCD rules to determine if they fulfill the BACM requirements of CAA section 189(b).

For the purpose of assisting state and local agencies in developing RACM and BACM rules, EPA prepared a series of technical guidance documents on PM–10 source categories (See CAA section 190). The RACM guidance applicable to these rules is entitled, ''Appendix C3—Prescribed Burning Control Measures'' (57 FR 18072). The BACM guidance applicable to these rules is entitled, ''Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures' (EPA–450/2–92–003).

Submitted SJVUAPCD Rule 4103 replaces 25 rules in the existing SIP for the eight counties that now comprise the SJVUAPCD. SJVUAPCD Rule 4103 regulates open burning and reduces PM emissions. Although SJVUAPCD Rule 4103 strengthens the SIP by combining and unifying the rules of eight counties and by eliminating the exemption for one- and two-family dwellings to burn residential rubbish, EPA has determined that SJVUAPCD Rule 4103 does not meet the requirements of RACM and BACM by allowing exemptions for eight burning activities that could be limited to Permissive-Burn Days. Rule 4103 also does not meet the requirements of BACM for Prescribed Burning (including Agricultural Burning, Forest Management Burning, Range Improvement Burning, and Wildland Vegetation Management Burning) to require burner training, to require emission reduction techniques, to require a smoke management plan, and

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards. This action is part of California's efforts to achieve compliance with the 1987 PM–10 standards.

[2] The State has recently changed the names and boundaries of the air basins located within the southeast Desert Modified AQMA. Pursuant to State regulation, the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (California Code of Regulations, Title 17, 60114); the Victor Valley/Barstow Region in San Bernardino County and the Antelope Valley Region in Los Angeles County are now a part of the Mojave Desert Air Basin (California Code of Regulations, Title 17, 60109). In addition, in 1996 the California Legislature established a new local agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code, 40406).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

to require the second level of smoke dispersion evaluation during the day (the first level is the initial evaluation at the begining of the day).

Submitted SCAQMD Rule 444 regulates open burning and reduces PM emissions. On July 6, 1982, EPA approved into the SIP a version SCAQMD Rule 444, Open Fires, that had been adopted by the District on October 2, 1981. Although the submitted SCAQMD Rule 444 will strengthen the SIP by requiring an approved implementation plan for Wildland Vegetation Management burning, EPA has determined that SCAQMD Rule 444 does not meet the requirements of RACM for Prescribed Burning, because the rule does not base approval of a burn on an evaluation of an airshed's capacity to disperse PM–10 emissions from all types of Open Burning and Prescribed and other PM–10 sources, to encourage burner training by offering incentives, and to encourage the use of emission reduction techniques by offering incentives.

There is currently no version of the SCAQMD Rule 208, Permit for Open Burning, in the SIP. Rule 208 requires a written permit to conduct Open Burning pursuant to SCAQMD Rule 444, Open Fires. EPA has evaluated the submitted SCAQMD Rule 208 and has determined that it is consistent with the CAA, EPA regulations, and meets the criteria for RACM in the General Preamble. EPA proposes full approval of SCAQMD Rule 208 into the California SIP.

A detailed list of rules to be replaced and a discussion of rule deficiencies can be found in the Technical Support Documents for SJVUAPCD Rule 4103 and SCAQMD Rule 444, which are available from the U.S. EPA's Region IX office.

Because of the above deficiencies, EPA cannot grant full approval of SJVUAPCD Rule 4103 and SCAQMD Rule 444 under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts that meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD Rule 4103, Open Burning and SCAQMD Rule 444, Open Fires, under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of SJVUAPCD Rule 4103 and SCAQMD Rule 444, because they contain deficiencies, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this limited disapproval have been adopted by SJVUAPCD and SCAQMD and are currently in effect in SJVUAPCD and SCAQMD, respectively. EPA's final limited disapproval action will not prevent SJVUAPCD, SCAQMD, or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 Executive Order 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, 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 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 Executive Order 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, 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 22, 1999.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 99–8949 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 68–7143–b; FRL–6322–4]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision to the particulate matter with an aerodynamic diameter less that or equal to nominal 10 micrometers (PM–10) SIP for the Spokane PM–10 nonattainment area submitted by the State of Washington and received at EPA on March 2, 1999. The revision, makes minor revisions to two sections of the Spokane County Air Pollution Control Authority's Regulation I, Article IV. The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for a PM–10 nonattainment plan. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment 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 this action, no further activity is contemplated. If the 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. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by May 12, 1999.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-6511.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: March 31, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–8943 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 068–1068b; FRL–6322–2]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa on August 12, 1998. This revision consists of routine updates to Iowa Administrative Code, Chapters 20, 22, 23, 24, 25, 29, and 31. Approval of this

SIP revision will make these rule revisions Federally enforceable.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives relevant 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 document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 12, 1999.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–8941 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[GA–42–1–9908b; FRL6321–2]

Implementation Plan and Redesignation Request for the Muscogee County, Georgia Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to simultaneously approve the lead state implementation plan (SIP) and redesignation request for the Muscogee County, Georgia lead nonattainment area. Both plans dated September 28, 1998, were submitted by the State of Georgia for the purpose of demonstrating that the Muscogee County area has attained the lead National Ambient Air Quality Standard (NAAQS). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment 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 the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by May 12, 1999.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

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

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**

Dated: March 18, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 99–8945 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6321–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the French Limited Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency, Region 6 (EPA) announces its intent to delete a portion of the French Limited Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9605. This partial deletion is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List.

This proposal for partial deletion pertains to all portions of the Site, excluding shallow groundwater, where appropriate response actions under CERCLA have been completed (Site Deletion Area). The Site Deletion Area consists of all properties located within the Site boundaries but does not include the shallow groundwater beneath the Site (Excluded Area). The Excluded Area will remain on the NPL and is not the subject of this partial deletion. CERCLA response activities will continue in the Excluded Area through 2006, and this partial deletion will not alter or abate those activities.

This proposal for partial deletion is based on the determination by EPA and the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), that all appropriate actions under CERCLA have been implemented to protect human health and the environment and that no further response action is appropriate in the Site Deletion Area. In the Site Deletion Area, extensive sampling and cleanups have been completed at all surface and shallow subsurface areas that had contaminant levels above the Record of Decision (ROD) criteria.

DATES: The EPA will accept comments concerning its proposal for partial deletion until May 12, 1999.

ADDRESSES: Comments may be mailed to: Mr. Donn Walters, Community Relations Coordinator, U.S. EPA, Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508 or (214) 665–6483.

Information Repositories: Comprehensive information on the Site as well as information specific to this proposed partial deletion is available for review at EPA's Region 6 office in Dallas, Texas. The Administrative Record and the Deletion Docket for this Site are maintained in EPA's Region 6 Library and are available for viewing and copying. The address for Region 6 Library office is: U.S. EPA, Region 6, Library, 12th Floor (6MD–II), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427, (214) 665–2146 (FAX).

Hours of operation, excluding holidays: Monday—Friday 8 a.m.–4:30 p.m.

The administrative record and information specific to this proposal also are available for viewing at the French Limited Superfund Site information repositories located at: Crosby Branch Library, 135 Hare Road, Crosby, Texas 77532, (713) 328–3535.

Hours of operation, excluding holidays:

Monday 12 p.m.–8 p.m.
Tuesday–Thursday 10 a.m.–6 p.m.
Friday 1 p.m.–6 p.m.
Saturday 10 a.m.–2 p.m.

Texas Natural Resource Conservation Commission: 12118 North IH 35, Technical Park Center, Room 190, Building D, Austin, Texas 78753, (512) 239–2920.

Hours of operation, excluding holidays: Monday—Friday 8 a.m.–5 p.m., Rice University, Fondren Library, Government Publications, 6100 South Main, Houston, Texas 77005, (713) 527–4800

Hours of operation, excluding holidays: Monday–Thursday 7 a.m.–2 a.m.

Friday 7 a.m.–10 p.m.
Saturday 9 a.m.–10 p.m.
Sunday 11 a.m.–2 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, Project Manager, U.S. EPA, Region 6 (6SF–AP), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

Appendix A—National Priorities List Deletion Docket—French Limited Superfund Site

Appendix B—Site Coordinate Boundaries—French Limited Superfund Site, Crosby, Texas

I. Introduction

The EPA Region 6 announces its intent to delete a portion of the French Limited Superfund Site, Crosby, Harris County, Texas, from the NPL, which constitutes Appendix B of the NCP, 40 CFR part 300, and requests comments on this proposal for partial deletion.

This proposal for partial deletion pertains only to the Site Deletion Area defined herein to consist of all portions of the Site, excluding shallow groundwater, where CERCLA response activities have been completed. The Site Deletion Area is the triangular 22.481-acre tract, including the former eight-acre waste lagoon, located immediately east of the intersection of, and bounded on two sides by, old U.S. Highway 90 and Gulf Pump Road near Crosby, Texas.

The Excluded Areas of the Site that will remain on the NPL and are not the subject of this partial deletion are defined herein to consist of the shallow aquifer (S1 and INT units) that is undergoing natural attenuation beneath the Site. CERCLA response activities will continue in the Excluded Area. The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health or the environment. Pursuant to 40 CFR 300.425(e)(3), ''All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action.''

The EPA will accept comments concerning its intent for partial deletion for 30 days after publication of this document in the **Federal Register** and a newspaper of record.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(a) Section 300.425(e)(1)(i): ''Responsible parties or other persons have implemented all appropriate response actions required;''

(b) Section 300.425(e)(1)(ii): ''All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or''

(c) Section 300.425(e)(1)(iii): ''The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.''

A partial deletion of a site from the NPL does not affect or impede the EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management.

Upon determination that at least one of the criteria described in § 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of the Site Deletion Area from the NPL:

(1) The EPA consulted with the State of Texas on this proposed partial deletion from the NPL prior to developing this notice of intent for partial deletion.

(2) The EPA provided the State of Texas at least 30 working days for review of this notice of intent for partial deletion prior to its publication in the **Federal Register**, and the State of Texas, through the TNRCC, concurred with this proposed partial deletion decision.

(3) Concurrently with publication of this notice of intent for partial deletion, a document is being published in a newspaper of record and is being distributed to appropriate federal, state, and local officials, and other interested parties. Both notices announce a 30 day public comment period concerning this proposed partial deletion, which commences on the date of publication of this document in the **Federal Register** and a newspaper of record.

(4) The EPA has placed copies of information supporting the proposed partial deletion in the information

repositories listed above, which information is available for public inspection and copying. The notice in a newspaper of record also announces the availability of this notice of intent for partial deletion. The public is asked to comment on the EPA's proposal to delete the Site Deletion Area from the NPL. All critical documents needed to evaluate EPA's decision are listed on the Deletion Docket and are available for review and copying at the information repositories.

(5) Upon completion of the 30 day public comment period, the EPA will evaluate the comments and all new data submitted before issuing a final decision on the proposed partial deletion. The EPA will prepare a Responsiveness Summary that will address concerns presented by comments and new data and respond to each significant comment and all significant new data submitted during the comment period. Such Responsiveness Summary will be included in the final partial deletion package. Members of the public are encouraged to contact the EPA to obtain a copy of the Responsiveness Summary.

(6) If, after review of all public comments, the EPA determines that the partial deletion from the NPL is appropriate, the EPA will publish a final notice of final partial deletion in the **Federal Register**. The deletion of the Site Deletion Area does not actually occur until a final notice of partial deletion is published in the **Federal Register**. The EPA will place the final partial deletion package in the information repositories listed above once the final notice of partial deletion has been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides the EPA's rationale for deletion of the Site Deletion Area from the NPL and EPA's finding that the criterion in 40 CFR 300.425(e)(1)(i) has been satisfied.

Background

The French Limited Site is a 22.5-Sacre tract of land located adjacent to Highway US–90 in eastern Harris County, Texas, about 20 miles northeast of Houston. The Site is approximately triangular in shape. The Site is in the floodplain of the San Jacinto River, an area that was extensively used for sand mining in the 1950s and 1960s.

During the period of 1966 through 1971, the Site was permitted by the State of Texas to accept industrial waste material. About 80 million gallons of waste material, generated by Houston area responsible parties, were disposed in the main waste lagoon creating 300,000 cubic yards of contaminated sludges and soils. Some neutralization was done in 1971 and 1972, and the Site was closed to receiving wastes in 1973.

The main waste lagoon at the French Site was an abandoned sand pit, consisting of about eight acres with an average water depth of about 20 to 25 feet. The Site also included a drainage ''slough'' adjacent to the main pit that periodically received contaminants that were washed out of the lagoon during flooding events. A shallow aquifer was contaminated beneath the Site to a depth of approximately 50 feet and extended laterally offsite approximately 600 feet.

Overview of Regulatory Activities

After Site closure in 1973, a series of regulatory activities occurred which defined the remedial action objectives and implementation schedule for the French Limited Site. In 1981 the Site was listed on the NPL and triggered emergency actions, engineering studies, and regulatory enforcement actions (including a ROD and a consent decree (CD)), remedial action construction, and operations. A chronological summary of these activities is presented in Table 1.

TABLE 1.—SUMMARY OF REGULATORY ACTIVITIES

Date	Activity	Comments
1973	Site closed to receiving wastes	
1981	Site placed on NPL	
1982–1984	a. EPA and State conduct Remedial Investigation/ Feasibility Study (RI/FS) through a Cooperative Agreement.	Removal Action was necessary to stabilize lagoon dikes and replacement of sludges released during flood event.
	b. Emergency Removal Action performed by EPA.	
1984–1987	Potentially responsible parties (PRPs) conduct Supplemental RI/FS and Pilot Studies.	Pilot studies demonstrate bioremediation will be effective.
1988	ROD issued. Equipment development testing.	In situ bioremediation selected as remedy for lagoon: Clean-up levels established for lagoon and groundwater.
1989	a. Flood Wall constructed around lagoon.(June-Nov.).	Sheet-pile wall constructed around lagoon earlier than planned in response to flood. Work done under AOC.
	b. EPA Inspection of Construction of floodwall.	
	c. Responsible parties conduct shallow subsurface soil excavation and slough remediation under AOC.	
1990	a. Consent Decree between EPA and PRP signed.	
1990–1991	a. Lagoon Facilities designed and constructed.	Both lagoon and aquifer system designed and constructed under one construction package.
	b. Aquifer Facilities designed and constructed.	Construction Completed: December 1991.
	c. EPA Inspection of Construction of lagoon.	
1992–1993	a. Lagoon Bioremediation Operation.	Lagoon remediation is now complete. EPA issued the Certification of Completion for Lagoon Remediation in May 1995.

TABLE 1.—SUMMARY OF REGULATORY ACTIVITIES—Continued

Date	Activity	Comments
	b. EPA Oversight and Split Sampling for Remediation Verification. c. EPA approval of Site Remediation Report: Part A (Lagoon).	
1994	Preliminary Site Close Out Report	Preliminary Site Close Out Report documents that construction activities for the site have been completed in accordance with OSWER Directive 9320.2–06.
1992–1995	a. Aquifer In situ Bioremediation, Extraction, and Treatment Operations and Maintenance. b. EPA Oversight for Remediation Verification.	Operation of active aquifer remediation system was completed December 1995. Natural Attenuation Modeling Report finalized December 1995.
1996	a. EPA approval of Site Remediation Report: Part B (Aquifer). b. Site Closure Plan approved March 1996. c. EPA prepares Final Close Out Report and Notice of Intent for Deletion from the NPL.	Active aquifer remediation complete. EPA issued the Certificate of Completion for the Active Aquifer Remediation. EPA will prepare final deletion document upon successful attainment of groundwater cleanup criteria.
1996–2005	Natural attenuation of groundwater remediation and post closure monitoring. Five-Year reviews will be performed in 1999 and 2004.	Groundwater monitoring will track natural attenuation progress. FLTG will prepare periodic groundwater summaries and evaluations (See Site Closure Plan for specific deliverables).
2006–2025	Begin compliance monitoring for the remaining 20 years of post closure monitoring. Five-Year reviews will be performed in 2009, 2014, 2019, and 2024.	Groundwater monitoring ensures continued protection of human health and the environment. The groundwater monitoring results will be summarized in reports to be submitted to EPA and TNRCC (See Site Closure Plan for specific deliverables).

Record of Decision

The components of the selected remedy defined in the Record of Decision are as follows:

(a) The primary component of the selected remedy for French Limited is in situ biological treatment of the sludges and contaminated soils in the lagoon onsite.

(b) The contaminated groundwater will be recovered and treated during implementation of the in situ biological treatment process. Groundwater recovery and treatment will continue until modeling shows that a reduction in the concentration of volatile organics to a level which attains the 10^{-6} Human Health Criteria can be achieved through natural attenuation in 10 years or less.

(c) Surface water from the lagoon will be treated to at least the Texas surface water quality standards for San Jacinto River Segment 1001.

(d) Residues generated from the treatment process will be stabilized to prevent leachate generation and used as backfill in the lagoon. The remaining lagoon volume will be backfilled with clean soil. The surface will then be graded to promote drainage away from the Site.

(e) The final component of the remedy involves post-closure monitoring of the upper and lower aquifers for a period of 30 years. Post-closure monitoring is required under the Resource Conservation and Recovery Act (RCRA).

Consent Decree

In autumn 1988 and spring 1989, EPA negotiated a consent decree (CD) with FLTG, Inc. (FLTG) to conduct the remedy established in the 1988 ROD. The CD was effective in March 1990.

The first deliverable by FLTG pursuant to the CD was a remedial action plan (RAP) that established the design, construction and operations planning, and schedule requirements to meet the obligations of the CD. FLTG contracted ENSR Corporation to prepare the RAP and the subsequent design packages for the remedial action. The final approved RAP was submitted to EPA in October 1990.

A summary of the implementation of the selected remedy and criteria for the lagoon, aquifer, and surface water is presented in the following subsections.

Lagoon

The primary component of the selected remedy for the French Site was in situ biological treatment of the sludges and contaminated soils in the lagoon. The concentrations of contaminants in the sludges and soils were reduced to a $1x10^{5}$ excess cancer risk that was tracked by the compounds and remediation standards shown in Table 2:

TABLE 2.—LAGOON SLUDGE/SOIL CLEAN-UP STANDARDS

Compound	Remediation standard, ppm*
Benzene	14
Benzo(a)Pyrene	9
Vinyl Chloride	43
PCB(Total)	23
Arsenic	7

*parts per million.

The biomass generated during the biological treatment process was stabilized in place and the remaining lagoon volume was backfilled with approximately 15 to 20 feet of clean soil. The surface was graded to promote drainage away from the Site.

The completion of the lagoon remediation is documented in the Site Remediation Summary Report: Part A, Lagoon Remediation Verification, May 1995.

Aquifer/Groundwater

The contaminated groundwater was recovered and treated in an above-

ground biological treatment facility. FLTG enhanced aquifer and groundwater remediation with the injection of oxygen and nutrients to stimulate subsurface in situ biological treatment processes. Active groundwater recovery and treatment operations continued until computer modeling showed that aquifer remediation goals could be met through natural attenuation within 10 years of system shut-off. Aquifer remediation goals are Maximum Concentration Levels (MCLs) or the 1x10–6 Human Health Criteria at the Site boundary. The active aquifer remediation system was shut off in December 1995. The completion of the active aquifer remediation is documented in the Site Remediation Summary Report: Part B Active Aquifer Verification, March 1996.

Surface Water

Surface water from the lagoon was treated to at least the Texas surface water quality standards for San Jacinto River Segment 1001 as specified in the remedial action plan.

Post-Closure Monitoring

The final component of the remedy involves post-closure monitoring of the upper and lower aquifers for a period of 30 years. Post-closure monitoring is required under RCRA. The French Limited Site closure plan was completed and approved by EPA in March 1996. The post-closure monitoring, as described in the plan, consists of 10 years of progress monitoring and 20 years of compliance monitoring. During the progress monitoring, 13 wells in the S1 unit and 18 wells in the INT unit will be sampled and analyzed for indicator compounds to evaluate natural attenuation progress.

During the 20-year compliance monitoring program, six wells in the S1 unit and eight wells in the INT unit will be sampled and analyzed for indicator compounds. In addition, several wells will monitor the gradient inside and outside the lagoon sheet-pile wall.

Community Involvement

The EPA has the lead responsibility for community involvement activities with TNRCC assistance. Meetings with the surrounding communities (Riverdale, Crosby, and Barrett Station) were held by both EPA and FLTG on a periodic basis to explain the ongoing response actions. The community relations plan was finalized in August 1989.

A community meeting was held at the Crosby High School on February 11, 1988, to present the preferred remedial alternatives as described in the proposed plan. The public comment period ran from January 25, 1988, through February 23, 1988. Several fact sheets were prepared by EPA before and after the ROD, administrative order, and CD were signed. There was a public comment period associated with the lodging of the CD with the federal court. EPA also issued press releases to local newspapers and has issued notices that the contents of the administrative record are available in four designated repositories for public review and copying. EPA and TNRCC conducted an open house in May 1995, to inform the residents and local officials of the progress regarding the completion of the remedial actions at the Site. During the public comment period for this proposed partial deletion, EPA and TNRCC will conduct an open house meeting in Crosby, Texas, to answer questions and receive public comments.

In addition to these public meetings and fact sheets, EPA, TNRCC, and FLTG prepared routine publications of progress, maintained a 24-hour telephone hot line, participated in community response projects, conducted group tours and technical seminars, and provided other community outreach programs.

Site Inspections

Beginning in 1987, EPA and TNRCC conducted monthly inspections of the Site, which was being cleaned up by the responsible parties. On February 14, 1996, EPA conducted an inspection of the Site including the former waste lagoon and aquifer remediation system. EPA determined that the remedial action performed in the Site Deletion Area was successful in protecting public health and the environment. Therefore, except for the Excluded Area, all appropriate response actions have been completed in the surface and subsurface soils.

Conclusions

In the Excluded Area, a 10-year period of natural attenuation, following four years of extraction, treatment, and in situ bioremediation of the shallow aquifer, is part of the 30-year post closure monitoring as described in the ROD. The active groundwater remediation operations continued until computer modeling showed that aquifer remediation goals (as specified in the ROD) could be met through natural attenuation within 10 years of system shut-off. System shut-off occurred December 15, 1995. The analysis supporting system shut down is documented in the Natural Attenuation Modeling Report dated December 1995.

During the 10-year (or less) natural attenuation phase of remediation, progress monitoring will be performed at selected groundwater wells to confirm the computer modeling predictions. FLTG will continue to collect and analyze groundwater from groundwater monitoring wells at selected locations at the Site. Upon successful achievement of aquifer cleanup criteria, EPA will initiate full deletion of the Site from the NPL and the FLTG will conduct post-closure monitoring activities for an additional 20 years to ensure protectiveness of the remedy. Pursuant to the NCP, five-year reviews will be required for the Site Deletion Area and the Excluded Area. The first five-year review was performed by EPA in December 1994. Five-year reviews will be required in years 1999, 2004, 2009, 2014, 2019, and 2024.

All EPA completion requirements for the Site Deletion Area have been met. Specifically, confirmatory sampling has verified that the surface and shallow subsurface soils cleanup criteria specified in the ROD have been achieved at remediated locations within the Site Deletion Area.

The Site Deletion Area will remain eligible for future Fund-financed response actions if future conditions warrant such action. Furthermore, this proposed partial deletion does not alter the status of the Excluded Area which are is not being deleted and which will remain on the NPL.

The EPA, with concurrence of the State of Texas, has determined that all appropriate CERCLA response actions have been completed at the Site Deletion Area. Therefore, EPA makes this proposal to delete that portion of the Site from the NPL.

Dated: March 31, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Appendix A—National Priorities List Deletion Docket—French Limited Superfund Site

- Remedial Investigation Report, April 1985
- 1986 Field Investigation and Supplement Remedial Investigation Report, December 1986
- Feasibility Study Report, March 1987
- In Situ Bioremediation Demonstration Report, November 1987
- EPA Superfund Record of Decision: French Limited, Texas, March 24, 1988.
- 1988 Slough Investigation Report, October 1988
- *United States of America* vs. *French Limited Inc. et al:* Consent Decree Number H–89–2544, March 1989.
- Flood and Migration Control Wall Design Report, August 1989

- North Pit Remediation Report, November 1989
- Installation Report for Flood and Migration Control Wall, January 1990
- Remedial Action Plan by ENSR Consulting Inc., FLTG, Inc., September 1990.
- Bioremediation Facilities Design Report by ENSR Consulting Inc., FLTG, Inc., May 1991.
- Shallow Aquifer and Subsoil Remediation Facilities Design Report prepared by FLTG, Inc., July 1991.
- 1992, 1993, and 1994 Annual Groundwater Sampling and Comparison Reports prepared by CH2M HILL, 1993, 1994, and 1995.
- 1992, 1993, 1994, and 1995 Annual GW Sampling and Analysis Reports prepared by FLTG, Inc.
- Cell E Remediation Verification Report by FLTG, Inc., December 1992.
- Quality Assurance Validation of Cell E Subsoil Remediation Verification Samples by Flory Environmental Consultants, FLTG, Inc., February 15, 1993.
- EPA Cell E Remediation Verification Report, May 1993.
- Quality Assurance Validation of Cell D/F Remediation Verification Samples and Quality Assurance Report by FLTG, Inc., January 20, 1994.
- Superfund Preliminary Site Close Out Report prepared by EPA September 1994
- Aquifer Remediation System, Refinements, and Enhancement Reports prepared by FLTG, Inc., October 1994.
- DNAPL Study, Remedial Alternative Selection and Feasibility Design Report prepared by Applied Hydrology Associates, Inc., November 1994.
- EPA, First Five-Year Review (Type 1a), CERCLIS TXD–980514814, December 1994.
- EPA Split Sampling and Analysis for Cell D/F, April 1995.
- Site Remediation Summary Report: Part A, Lagoon Remediation Verification, EPA, May 1995.
- INT–11 DNAPL Area Cutoff Wall Installation and Permeability Certification Report prepared by Applied Hydrology Associates, August 1995.
- Natural Attenuation Modeling Report prepared by Applied Hydrology Associates, Inc., December 1995.
- Remediation Summary Report: Part B, Active Aquifer Verification prepared by FLTG, Inc. in March 1996.
- Site Closure Plan, French Limited Project prepared by Southwestern Environmental Consulting, Inc., March 1996.
- Superfund Site Closeout Report prepared by EPA, April 1996.

Appendix B—Site Coordinate Boundaries—French Limited Superfund Site, Crosby, Texas

The proposed partial deletion of the French Limited Superfund Site is described by the latitude and longitude coordinate points as shown on the attached map of Appendix B. The Geographic Coordinates are DMS units with NAD27 Datum as follows:

Map point no.	Latitude	Longitude
1.	N 29°52′46.87″	W 95°04′45.57″.
2.	N 29°52′54.97″	W 95°04′20.57″.
3.	N 29°52′46.99″	W 95°04′15.20″.

[FR Doc. 99–8781 Filed 4–12–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130, and 3160

[AA–610–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period for the oil and gas drainage proposed rule published in the **Federal Register** on January 13, 1998, (63 FR 1936). A notice to reopen the comment period was published in the **Federal Register** on December 3, 1998, (63 FR 66776) and corrected on Jan. 13, 1999 (64 FR 2166). This extension is in response to requests that additional time is needed to complete consultations on the issue of applicability of the proposed rule to Tribal and individual Indian oil and gas leases.

DATES: Submit comments on or before June 4, 1999. BLM may not necessarily consider comments received after this time in developing the final rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 ''C'' Street, NW, Room 401LS, Washington, DC 20240. You may also comment via the Internet to *WOComment@wo.blm.gov.* Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''ATTN: AC54'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly on (202) 452–5030.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW, Washington, DC 20240; telephone (202) 452–0340 (Commercial or FTS). Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, except holidays, to reach the above information contact.

Dated: April 6, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–9054 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7282]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second

publication of this proposed rule in a newspaper of local circulation in each community.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	San Mateo (City) San Mateo County.	San Mateo Creek	Approximately 800 feet downstream of J. Hart Clinton Drive.	None	*7.0
			Approximately 55 feet upstream of El Cerrito Road.	None	*73
		San Mateo Creek Overflow.	Approximately 1,600 feet downstream of divergence from San Mateo Creek.	None	*7.0
			At divergence from San Mateo Creek	None	*12.0
Maps are available for inspection at the City of San Mateo City Hall, 330 West 20th Avenue, San Mateo, California.					
Send comments to The Honorable Arne Croce, City Manager, City of San Mateo, 330 West 20th Avenue, San Mateo, California 94403.					
Iowa	Dallas County and Incorporated Areas.	Little Walnut Creek	Approximately 3,200 feet downstream from County Road R–30.	None	*917
			Approximately 6,650 feet upstream from County Road R–22.	None	*1,016
		Walnut Creek	At 156th Street	None	*913
			Approximately 3,950 feet upstream of 230th Street.	None	*978
		Raccoon River	Approximately 51,000 feet downstream of County Road 90 (at County boundary).	None	*833
			Approximately 5,900 feet upstream of County Road R–16 (at confluence of North and South Raccoon Rivers).	None	*868
		North Raccoon River	Approximately 400 feet downstream of Interstate Highway 801.	None	*868
			Approximately 16,800 feet upstream of U.S. Highway 169.	None	*897

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Raccoon River Mill Slough	Approximately 2,300 feet downstream of Old Wiscotta Road (at downstream confluence with North Raccoon River).	None	*881
			Approximately 4,200 feet upstream of U.S. Highway 169 (at upstream confluence with North Raccoon River).	None	*890

Maps are available for inspection at the Dallas County Planning and Zoning Department, Dallas County Courthouse, 801 Court Street, Adel, Iowa.

Send comments to The Honorable Julius M. Little, Chairman, Dallas County Board of Supervisors, Dallas County Courthouse, 801 Court Street, Adel, Iowa 50003.

Maps are available for inspection at the City of Adel City Hall, 102 South Tenth Street, Adel, Iowa.

Send comments to The Honorable Tim Peters, Mayor, City of Adel, P.O. Box 248, Adel, Iowa 50003.

Maps are available for inspection at the City of Van Meter City Hall, 505 Grant Street, Van Meter, Iowa.

Send comments to The Honorable Jack Rockwell, Mayor, City of Van Meter, P.O. Box 160, Van Meter, Iowa 50261.

Maps are available for inspection at the City of Waukee City Hall, 410 Sixth Street, Waukee, Iowa.

Send comments to The Honorable Don Bailey, Mayor, City of Waukee, P.O. Box 847, Waukee, Iowa 50263.

Missouri	Lee's Summit (City), Cass and Jackson Counties.	Raintree Lake	Just west of Ward Road	None	*960

Maps are available for inspection at the Community Development Office, 207 Southwest Market, Lee's Summit, Missouri.

Send comments to The Honorable Karen R. Messerli, Mayor, City of Lee's Summit, 207 Southwest Market, Lee's Summit, Missouri 64063.

Oregon	Marion County (Unincorporated Areas).	Lake Labish Ditch	Approximately 2,200 feet downstream of Burlington Northern Railroad.	None	*130
			Approximately 50 feet downstream of Burlington Northern Railroad.	None	*132
		Claggett Creek	Backwater area along tributary to Claggett Creek, from approximately 300 feet upstream of Sieberg Street (along tributary drainage) to approximately 300 feet due west of the intersection of Verda Lane Northeast and Salem Parkway.	*130	*127
		Pudding River	Just upstream of Arndt Road and the Marion-Clackamas County border.	None	*95
			Just downstream of the Southern Pacific Railroad.	*99	*99
		Willamette River	Approximately 5,000 feet downstream of Newcomber Road (Extended).	*105	*104
			Approximately 2,500 feet upstream of Newcomer Road (Extended).	*105	*105

Maps are available for inspection at the City of Keizer City Hall, 930 Chemawa Road Northeast, Keizer, Oregon.

Send comments to The Honorable J. R. Bob Newton, Mayor, City of Keizer, P.O. Box 21000, Keizer, Oregon 97307.

Maps are available for inspection at the Marion County Planning Department, 3150 Lancaster Drive Northeast, Salem, OR.

Send comments to The Honorable Randy Franke, Chairman, Marion County Board of Commissioners, County Courthouse, 100 High Street Northeast, Salem, OR 97301.

Texas	Midland County and Incorporated Areas.	Playa MI7		None	*2,852
		Playa MI8		None	*2,843
		Playa MI9		None	*2,846
		Playa MI10		None	*2,845
		Playa MI11		None	*2,859
		Playa MI21		None	*2,826
		Playa MI22		None	*2,825
		Playa MI23		None	*2,826
		Playa MI25		None	*2,809
		Playa MI27		None	*2,812
		Playa MI31		None	*2,812
		Playa MI32		None	*2,809
		Playa MI33		None	*2,807

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Playa MI34		None	*2,807
		Playa MI38		None	*2,799
		Playa MI40		None	*2,807
		Playa MI41		None	*2,805
		Playa MI42		None	*2,806
		Playa MI43		None	*2,799
		Playa MI44		None	*2,788
		Playa MI46		None	*2,803
		Playa MI49		None	*2,783
		Playa MI50		None	*2,783
		Playa JA1		None	*2,864
		Playa JA2		None	*2,857
		Playa JA3		None	*2,842
		Playa JA4		None	*2,840
		Playa JA6		None	*2,860
		Playa JA7		None	*2,834
		Playa JA9		None	*2,828
		Playa JA10		None	*2,828
		Playa JA11		None	*2,823
		Playa JA11A		None	*2,827
		Playa JA12		None	*2,816
		Playa JA13		None	*2,814
		Playa JA15		None	*2,810
		Playa JA19		None	*2,872
		Playa JA23		None	*2,797
		Playa SC3		*2,806	*2,808
		Playa SC6		None	*2,815
		Playa SC10		*2,786	*2,788
		Playa SC11		None	*2,780
		Unnamed Playa	1,400 feet southeast of intersection of FM 307 and FM 715.	None	*2,744
		Unnamed Playa	1,150 feet northeast of intersection of FM 715 and East Highway 158.	None	*2,784
		Unnamed Playa	430 feet northwest of West County Road 111 and South County Route 1210.	None	*2,804
		Unnamed Playa	1,800 feet east of Playa JA6	None	*2,853
		Unnamed Playa	1,480 feet northwest of intersection of North Midland and Wood Drives.	None	*2,831
		Unnamed Playa	1,920 feet northwest of Playa JA10	None	*2,850
		Unnamed Playa	900 feet south of Playa MI40	None	*2,803
		Unnamed Playa	1,600 feet south of Playa MI40	None	*2,800
		Unnamed Playa	400 feet southeast of Playa MI42	None	*2,806
		Unnamed Playa	1,100 feet southeast of Playa MI42	None	*2,807
		Unnamed Playa	750 feet northwest of Playa MI43	None	*2,805
		Unnamed Playa	900 feet northwest of Playa MI43	None	*2,803
		Unnamed Playa	1,550 feet west of Playa MI42	None	*2,812
		Unnamed Playa	1,000 feet north of Playa MI43	None	*2,800
		Unnamed Playa	900 feet northeast of Playa MI43	None	*2,801
		Unnamed Playa	1,500 feet northeast of Playa MI43	None	*2,801
		Unnamed Playa	400 feet east of Playa MI43	None	*2,801
		Unnamed Playa	At intersection of Loop 250 North and North County Road 1160 (Todd Road).	None	*2,791
		Unnamed Playa	2,000 feet southeast of Playa MI43	None	*2,791
		Unnamed Playa	2,150 feet northeast of Playa MI50	None	*2,782
		Unnamed Playa	3,000 feet northwest of intersection of North county Route 1150 (Elkins Road) and East County Route 40.	None	*2,798
		Unnamed Playa	3,050 feet northeast of intersection of Elkins Road and East County Route 40.	None	*2,799
		Unnamed Playa	2,500 feet northeast of Playa MI42	None	*2,807
		Unnamed Playa	2,200 feet west of intersection of FM 1379 and East County Route 109.	None	*2,708
		Unnamed Playa	1,400 feet north of JA6	None	*2,872
		Unnamed Playa	1,910 feet northeast of JA6	None	*2,859
		Unnamed Playa	2,080 feet east of MI11	None	*2,855
		Unnamed Playa	2,950 feet northeast of MI11	None	*2,834
		Unnamed Playa	200 feet north of MI43	None	*2,800
		Unnamed Playa	80 feet west of MI43	None	*2,799
		Unnamed Playa	360 feet east of MI43	None	*2,807
		Mulberry Channcel	Just upstream of Wolfcamp Circle	None	*2,755

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 780 feet upstream of Fairgrounds Road.	None	*2,760
			Approximately 130 feet upstream of North Lincoln Street.	None	*2,765
			Approximately 180 feet downstream of North Lee Street.	None	*2,769
		Scharbauer Draw	Just upstream of State Route 349	*2,773	*2,772
			Just downstream of North A Street	*2,777	*2,776
			Approximately 200 feet downstream of Western Drive.	*2,783	*2,784
		South Draw	Approximately 800 feet upstream of confluence with Midland Draw.	*2,723	*2,725
			Approximately 3,200 feet downstream of State Route 158.	*2,735	*2,737
			Approximately 700 feet downstream of State Route 158.	*2,737	*2,739
			Approximately 920 feet upstream of FM 715.	*2,742	*2,744
		Industrial Channel	Approximately 900 feet upstream of confluence with Midland Draw.	*2,752	*2,751
			Approximately 300 feet downstream of Fairgrounds Road.	*2,760	*2,759
			Approximately 800 feet upstream of Fairgrounds Road.	*2,765	*2,763
			Approximtely 400 feet downstream of South Lee Street.	*2,769	*2,768
		Upper South Draw	Approximately 1,240 feet upstream of South County Route 1180.	*2,748	*2,751
			Approximately 800 feet upstream of Cotton Flat Road.	*2,765	*2,767
			Approximately 1,150 feet upstream of Santa Rosa.	*2,798	*2,795
			Approximately 150 feet upstream of Interstate Route 20.	*2,809	*2,812
		Jal Draw	Approximately 1,320 feet downstream of North I Street.	*2,790	*2,789
			Just upstream of Maxwell Drive	*2,807	*2,805
			Approximately 1,000 feet downstream of Loop 250.	*2,829	*2,830
			Approximately 150 feet downstream of Crowley Boulevard.	*2,840	*2,836
		Midland Draw	Approximately 400 feet upstream of Fairgrounds Road.	*2,760	*2,759
			Approximately 1,310 feet upstream of Loop 250.	*2,791	*2,788
			Approximtely 5,700 feet upstream of Mockingbird Lane.	*2,807	*2,805
			Approximately 5,630 feet upstream of Greentree Boulevard.	*2,823	*2,820

Maps are available for inspection at City Hall, 300 North Lorain, Midland, Texas.

Send comments to The Honorable Jeff Norwood, Midland County Judge, County Courthosue, 200 West Wall Street, Midland, Texas 79701.

Utah	Santa Clara (City) Washington County.	Lava Flow Wash	Approximately 1,100 feet downstream of Red Mountain Drive.	None	*2,846
			Approximtely 5,300 feet upstream of Red Mountain Drive.	None	*2,947
		Sand Hollow Wash	Approximately 2,200 feet downstream of Pearl Rose Drive (extended).	None	*2,690
			Approximately 2,100 feet upstream of Pearl Rose Drive (extended).	None	*2,728
		Santa Clara River	Approximately 7,500 feet downstream of Chapel Street.	None	*2,685
			Just upstream of Old Barn Road	None	*2,789
		Tuacahn Wash	Just upstream of Santa Clara Dike	None	*2,778
			Approximately 7,200 feet upstream of confluence with Lava Flow Wash.	None	*2,934

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Santa Clara City Hall, 2721 Santa Clara Drive, Santa Clara, Utah. Send comments to The Honorable Fred Rowley, Mayor, City of Santa Clara, P.O. Box 699, Santa Clara, Utah 84765.					

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

Dated: April 1, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–9027 Filed 4–9–99; 8:45 am]

BILLING CODE 6718–04–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1833

NASA FAR Supplement; Protests to the Agency

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: NASA has a mandatory solicitation provision required to be inserted in all solicitations which informs potential bidders or offerors to whom Agency protests may be submitted. The provision provides that potential bidders or offerors may submit a protest directly to the Contracting Officer or alternatively to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review of the protest. Based on our experience with protests submitted to the Agency, we are amending NASA regulations to address whether or not there is any appeal from or reconsideration of Agency protest decisions within NASA and whether or not NASA will continue to consider an Agency protest that is related to pending judicial proceedings or where the protester has filed a protest on the same procurement with the United States General Accounting Office prior to receipt of an Agency protest decision. The effect of this additional information is to give potential bidders or offerors a better understanding of NASA's process for considering protests to the Agency.

DATES: NASA will accept written comments until June 11, 1999.

ADDRESSES: Comments regarding this rule should be addressed as follows: National Aeronautics and Space Administration, Contract Management Division (Code HK/Beck), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dave Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The proposed rule is not expected to 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 there are few protests of NASA procurements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1833

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, it is proposed that 48 CFR part 1833 be amended as follows.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 1833 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1833.1—Protests

2. Section 1833.103 is amended by revising the section heading, redesignating paragraph (b) as paragraph (f) and adding paragraph (c), paragraph (d) introductory text, and paragraph (d)(4) to read as follows:

1833.103 Protests to the agency. (NASA supplements paragraphs (c), (d) and (f))

(c) An independent review under the provision at 1852.233–70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Deputy Associate Administrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States General Accounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the Contracting Officer or alternatively requests an independent review, the decision of the Contracting Officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233–70.

[FR Doc. 99–9047 Filed 4–9–99; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

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

Office of the Secretary

Privacy Act: Proposed Revision of an Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed revision of an existing system of Records—USDA/FNS–9 (formerly known as USDA/FCS–9), entitled, Food Stamp Program Retailer Information.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), is giving notice that it proposes to revise the following system of records. This system was previously published under the agency's former name, the Food and Consumer Service, in the **Federal Register** on December 2, 1996 and a subsequent correction was published in the **Federal Register** on June 10, 1997.

In order to be in compliance with a new statutory provision in the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, FNS proposes to amend the fourth routine use which addresses the reporting of delinquent debts to the IRS for the purpose of offsetting a monetary penalty against a tax refund due to a debtor for violations committed under the Food Stamp Program.

In accordance with the Internal Revenue Service requirements, FNS is also proposing to revise the eighth routine use. The routine use will ensure that the employer identification numbers (EINs) contained in this system of records will not be disclosed to private entities which have contractual agreements with USDA.

In addition, FNS is proposing to add a new routine use which will notify the public that FNS may disclose the information in this system of records to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

EFFECTIVE DATE: This notice will be effective, without further notice, May 24, 1999, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before May 12, 1999, to be assured consideration.

ADDRESSES: Comments should be addressed to: Thomas O'Connor, Director, Benefit Redemption Division, Food and Nutrition Service, USDA, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2419.

FOR FURTHER INFORMATION CONTACT: Gregory K. Evans, Senior Policy Analyst, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2419.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97–365), as amended, provides statutory authority for federal agencies to collect debts through administrative offset. The Debt Collection Improvement Act of 1996 (Pub. L. 104–134), expanded that statutory authority by requiring that any federal agency owed a past due, legally enforceable nontax debt that is over 180 days delinquent, refer such debt to the Department of the Treasury to participate in its offset program (also known as the Treasury Offset Program (TOP)) which includes administrative offset, the Federal Tax Refund Offset Program (FTROP), and Federal salary offset program. The TOP is a government-wide delinquent debt matching and payment offset system. Thus, FNS is proposing to amend the fourth routine use which is listed in USDA/FNS–9, so that FNS can fully comply with these legislative mandates.

This system of records contains personal information from owners and officers of firms and other entities currently participating in the Food Stamp Program, and those who have previously participated in the program. The following personal information regarding owners and officers is contained in the system: Name, home address, Social Security Number (SSN), and date of birth (DOB). The SSNs are collected only from owners of sole proprietorships, partnerships, principal shareholders of private corporations, and officers of cooperatives. Financial data (i.e., food sales, gross sales, food stamp redemption data) relative to each business entity currently authorized or previously authorized is also included in this system of records.

This system of records is not a financial management system that is used to track and identify financial payments which become delinquent; however, in order for FNS to participate in TOP, FNS must share with the Department of Treasury the personal identifying information (such as the debtor's name, DOB, home address, SSN and/or EIN (which is not considered a personal item of information)) of those individuals in this system of records for whom there is an outstanding delinquent debt owed to FNS. These debts originate from administrative actions (in the form of monetary penalties) taken against store owners and officers of stores who are found violating the Food Stamp Program regulations.

The fourth routine use which currently deals with disclosing information from this system of records to the Internal Revenue Service for the purpose of offsetting a debtor's tax refund in payment for a monetary penalty for food stamp violations, will be amended to notify the public that information (i.e., the debtor's name, home address, SSN and/or EIN) contained in this system of records may be disclosed to other Federal agencies (e.g., the Department of the Treasury) and other disbursing officials for offsets that are operated under the TOP.

Currently, once a determination is made to assess a fine or monetary penalty against a store owner or officer found violating the FSP, a demand for payment is forwarded to the individual. If the individual does not pay the debt, depending on the circumstances, he may receive from one to three demand letters from FNS. If the payment is not received with the prescribed time period, FNS refers that debt to a contract collection agency. If they cannot collect, the debt is either written off as uncollectible or referred to the Department of Justice for litigation and/or collection. Such collection efforts are

in accordance with the Federal Claims Collection Standards (FCCS) regulations, the Food Stamp Act, and the Food Stamp Program regulations. Based on the above, FNS is also amending the fourth routine use to notify the public that information from this system of records may be disclosed to contracted private collection agencies for claims collection action or the Department of Justice for litigation and/or collection action.

Currently, the fourth routine use states that, ''USDA/FCS may disclose information from this system of records to the Internal Revenue Service for the purpose of offsetting a monetary penalty for violations committed under the Food Stamp Program against a tax refund that may be due to the debtor.''

FNS proposes to revise the fourth routine use to permit USDA/FNS to release from this system of records information, including SSNs and EINs, to collect and report on delinquent debt. USDA/FNS will disclose this information to other Federal and State agencies (Note: SSNs and EINs will only be shared with Federal agencies), as well as private collection agencies, for purposes of claims collection actions including, but not limited to, administrative offset and referral to the Department of Justice for litigation.

Section 6109(f)(2)(B) of the Internal Revenue Code provides that, for purposes of sharing certain EINs by the Secretary of Agriculture with other agencies or instrumentalities of the United States, access to EINs shall be restricted *only to certain officers and employees of the United States.* Sections 301.6109–2(c) and (d) of the Procedure and Administration regulations also provide that *only certain officers and employees of the United States* are permitted access to EINs. The eighth routine use currently states that the information from this system of records can be disclosed to private entities which have contractual agreements with USDA. Based on the above, it has been determined that private entities which have contractual agreements with USDA are *not* permitted access to EINs. Thus, FNS is revising the routine use to reflect this position.

Lastly, the Privacy Act of 1974, as amended, provides that agencies that maintain a system of records shall publish a notice in the **Federal Register** of the existence and character of the system of records. This includes each routine use of the records contained in the system including categories of users and the purpose of such use. Thus, FNS is also proposing to add a new routine use number eleven to this system of records. The routine use will notify the public that FNS may disclose information in this system of records to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

A ''Report on a Revised System,'' required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Operations, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on April 5, 1999.

Since the publication of this system of records in the **Federal Register** on December 2, 1996, a correction has been made and now by way of this notice, we are amending two routine uses, adding another routine use, and changing the name of the agency. Thus, for clarification purposes, the proposed altered system of records is republished in its entirety below.

Signed at Washington, DC on April 5, 1999.

Dan Glickman,

Secretary of Agriculture.

USDA/FNS–9

SYSTEM NAME:

USDA/FNS–9 Food Stamp Program Retailer Information.

SECURITY CLASSIFICATION: None.

SYSTEM LOCATION:

The paper records (i.e., the applications for authorization and reauthorization) which contain the personal identifying information on retail and wholesale store owners and officers, and/or owners and officers associated with other entities, are located in a host computer database and in FNS field offices throughout the United States. The location of each FNS field office may be found in the local phone books. The host computer database which contains the Store Tracking and Redemption Subsystem (STARS) database, is located at the Benefit Redemption Systems Branch, PO Box 135, Minneapolis, Minnesota 55440.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of personal information from owners and officers of stores and other entities currently participating in the Food Stamp Program, as well as those owners and officers who have previously participated in the program. The individual paper records (i.e., applications for authorization) located in FNS field offices also contain personal information from owners and officers who applied for authorization to participate in the FSP but were denied authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

The applications for authorization and reauthorization are in the STARS database and located in the files of FNS field offices. The applications contain the following personal information regarding owners and officers: Name, home address, social security number, and date of birth. The SSNs are collected only from owners of sole proprietorships, partnerships, principal shareholders of private corporations, and officers of cooperatives. Financial data (i.e., food sales, gross sales, food stamp redemption data) relative to each entity currently authorized or previously authorized is in the STARS database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018); section 1735 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3359); section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)); and section 6109(f) of the Internal Revenue Code of 1986 (26 U.S.C. 6109(f)).

PURPOSE(S):

This information will be shared with other Federal and State entities to assist in the administration and enforcement of the Food Stamp Act, as well as other Federal and State laws. The SSNs and EINs of store owners will only be shared with Federal agencies which maintain those numbers in their files. STARS is used primarily for tracking the authorization and food stamp redemption activity of owners and officers of entities currently participating in the Food Stamp Program, as well as those owners and officers who have previously participated in the Food Stamp Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Limitations on Disclosure under the Following Routine Uses (1) through (11):

Information obtained from applicants under the authority of 7 U.S.C. 2018(c) may be used or disclosed only as specified in 7 U.S.C. 2018(c). With the exception of the SSNs and EINs obtained from applicants, 7 U.S.C. 2018(c) gives FNS the authority to

disclose the contents of an initial application, or other information submitted by an applicant to other Federal and State law enforcement and investigative agencies for the purposes of administering or enforcing the Food Stamp Act or any other Federal or State law. 7 U.S.C. 2018(c) also limits the *use* of the information obtained by applicants. That is, the above mentioned entities may only use this information for purposes directly connected with the administration and enforcement of the Food Stamp Act or any other Federal or State law. Some of the information obtained from applicants is ownership information and sales and redemption data.

The *use* and *disclosure* of SSNs and EINs obtained by applicants is covered in the Social Security Act and the Internal Revenue Code. In accordance with the Social Security Act and the Internal Revenue Code, applicant social security numbers and employer identification numbers may be disclosed only to other Federal agencies authorized to have access to social security numbers and employer identification numbers and maintain these numbers in their files, and only when the Secretary of Agriculture determines that disclosure would assist in verifying and matching such information against information maintained by such other agency. 42 U.S.C. 405(c)(2)(C)(iii); 26 U.S.C. 6109(f).

(1) USDA/FNS may disclose information from this system of records to the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when USDA, any component thereof, or any employee of the USDA in his or her official capacity, any USDA employee in his or her individual capacity where DOJ (or USDA where it is authorized to do so) has agreed to represent the employee, or the United States where USDA determines that the litigation is likely to affect directly the operations of USDA or any of its components, is a party to the litigation or has an interest in such litigation, and USDA determines that the use of such records by DOJ, the court or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation; provided, however, that in each case, USDA determines that such disclosure is compatible with the purpose for which the records were collected.

(2) In the event that material in this system indicates a violation of the Food Stamp Act or any other Federal or State law whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, USDA/FNS may disclose the relevant records to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) USDA/FNS may disclose records from this system of records to a congressional office from the record of an individual provided that individual gave the congressional office permission to inquire on his or her behalf.

(4) USDA/FNS may use information from this system of records, including SSNs and EINs, to collect and report on delinquent debt and may disclose the information to other Federal and State agencies, as well as private collection agencies, for purposes of claims collection actions including, but not limited to, administrative offset and referral to the Department of Justice for litigation. (Note: SSNs and EINs will only be disclosed to Federal agencies).

(5) USDA/FNS may disclose information from this system of records to other Federal and State agencies to respond to specific requests from such Federal and State agencies for the purpose of administering the Food Stamp Act as well as other Federal and State laws.

(6) USDA/FNS may disclose information from this system of records to other Federal and State agencies to verify information reported by applicants and participating firms, and to assist in the administration and enforcement of the Food Stamp Act as well as other Federal and State laws.

(7) USDA/FNS may disclose information from this system of records to other Federal and State agencies for the purpose of conducting computer matching programs.

(8) USDA/FNS may disclose information (excluding EINs) from this system of records to private entities having contractual agreements with USDA for designing, developing, and operating the system, and for verification and computer matching purposes.

(9) USDA/FNS may disclose an owner's home address to a financial institution to verify information contained on a redemption certificate (Form FCS–278B, formerly Form FNS–278B) submitted by a participating retailer. Authorized entities use these certificates when depositing food coupons at financial institutions. On occasion, particularly with small businesses, the owner's business address may also be the owner's home address.

(10) USDA/FNS will disclose information from this system of records to the Internal Revenue Service, for the purpose of reporting delinquent retailer and wholesaler monetary penalties of $600 or more for violations committed under the Food Stamp Program. USDA/FNS will report each delinquent debt to the Internal Revenue Service on Form 1099–C (Cancellation of Debt). USDA/FNS will report these debts to the Internal Revenue Service under the authority of the Income Tax Regulations (26 CFR parts 1 and 602) under section 6050P of the Internal Revenue Code.

(11) USDA/FNS may disclose information from this system of records to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), authorized under section 17 of the Child Nutrition Act of 1966 for purposes of administering that Act and the regulations issued under that Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tapes, and computer disks.

RETRIEVABILITY:

In STARS, the personal identifying information is retrievable by owner's name and by SSN.

SAFEGUARDS:

1. *Authorized Users:* When designing, developing and/or operating a system of records on individuals, contractors are required to comply with all provisions of the Privacy Act. Contractors are required to maintain and protect the personal data and cannot release or share data without consulting with FNS. Access to records maintained within FNS is limited to those staff officials responsible for the subject system of records. Otherwise, access is limited to persons authorized and needing to use the records, including project directors, contract officers, programmers, analysts, statisticians, statistical clerks and key punch operators on the staff of the contractors or in the FNS.

2. *Physical Safeguards:* Paper records are stored in locked safes, locked files, and locked offices when not in use. Computer terminals used to process personal identifiable data are located in secured areas and are accessible only to authorized users. Back up records which are stored off-site shall be used and stored under the same secure conditions.

3. *Procedural Safeguards:* In order to access STARS, each authorized individual is given a personal access ID and password. The individual's password must be changed at least every 45 days or whenever the individual feels it might have been compromised.

Access to personal information contained in the STARS database and to the paper record files is restricted to those individuals who have been authorized by FNS and who have a need to know such information in the performance of their official duties in administering the Food Stamp Act and other Federal and State laws. SSNs cannot be viewed on screen in STARS by those individuals who are not specifically authorized to view them.

FNS personnel, project officers, and contract officers oversee compliance with these requirements. When appropriate, FNS personnel will review the site facilities to ensure that records have been maintained in accordance with the terms of this notice.

RETENTION AND DISPOSAL:

In STARS, the personal identifying information is maintained indefinitely. The applications for authorization and reauthorization are kept in the FNS field offices for three years and then destroyed pursuant to the applicable document retention and disposal schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Thomas O'Connor, Director, Benefit Redemption Division, Food and Nutrition Service, United States Department of Agriculture, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records from the System Manager. The request must be in writing.

RECORD ACCESS PROCEDURES:

An individual who wishes to request access to records in the system which pertains to him or her may submit a written request to the System Manager. The envelope and the letter should be marked, ''Privacy Act Request''. An individual may be required to reference the record by furnishing name, address, Social Security Number, and/or other identifiers needed by FNS.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager. The request should include, as appropriate, the reasons for contesting it, and the proposed amendment to the information with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information in this system comes from the authorization and reauthorization applications of stores and other entities which are currently participating in the Food Stamp Program, as well as information on file for those entities which have previously participated in the program. Personal information in this system of records is also obtained from the owners and officers of such entities as reported on the authorization and reauthorization applications.

The STARS database also keeps a food stamp redemption history on such entities. The database maintains the dollar amount of food stamp benefits accepted by each entity currently authorized or previously authorized.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8976 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–002N]

''Certified Organic By'' Labeling on Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Availability of labeling guidance.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of guidance concerning the use of the claim ''certified organic by (a certifying entity)'' on the labeling of meat and poultry products. The claim ''certified organic by (a certifying entity)'' will be permitted on the labeling of meat and poultry products if the labeling is submitted to FSIS for approval, the labeling meets certain criteria, and the labeling submitted is accompanied by specified certification documentation that has been provided by the certifying entity to the meat or poultry producer seeking labeling approval.

ADDRESSES: Copies of FSIS's labeling guidance concerning the use of the claim ''certified organic by (a certifying entity)'' are available from the FSIS Docket Clerk in the FSIS Docket Room, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, between 8:30 a.m. and 4:30 p.m., Monday through Friday, and on FSIS's homepage at www.fsis.usda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Post, Director, Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 205–0279.

Background

The United States Congress passed the Organic Foods Protection Act of 1990 (1) to establish national standards governing the marketing of certain agricultural products as organically produced, (2) to assure consumers that organically produced products meet a defined, consistent standard, and (3) to facilitate commerce in organically produced fresh and processed food. The Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), published a proposed rule in the **Federal Register** (62 FR 65850) on December 16, 1997, to permit the use of the term ''organic'' on the labeling of certain agricultural products. AMS received approximately 280,000 public comments in response to the proposal, which raised many complex issues. AMS has decided to publish a revised proposed rule that will address those issues and to seek further input and comment from interested parties.

A number of meat and poultry producers asked FSIS to permit the marketing of meat and poultry products bearing the claim ''certified organic by (a certifying entity)'' during the pendency of the rulemaking and before AMS issues its final rule. Because AMS's decision to issue a revised proposal and to seek further public comment before finalizing the organic standards rule will likely take some time, FSIS has decided in the interim to permit the use of the claim ''certified organic by (a certifying entity)'' on the labeling of meat and poultry products under certain conditions.

As indicated in FSIS's guidance documents, to use the claim ''certified organic by (a certifying entity)'' on the labeling of a meat or poultry product, processors will have to submit the labeling they want to use to FSIS for approval. Processors will also have to submit to FSIS, simultaneously with the labeling for which they are seeking approval, specified certification documentation provided to them by the certifying entity, including documentation that demonstrates that the certifying entity has standards for what constitutes an organic product, and that the certifying entity has a system for ensuring that that the

product it certifies as organic meets the standards it has established. The specific certification documentation that must be submitted to FSIS includes: (1) The name of the certified meat or poultry product and/or certified ingredient used in the meat or poultry product; (2) the certifying entity's name and address; (3) the name and signature of the responsible official of the certifying entity; (4) the date of certification, and (5) documentation from the certifying entity that (a) its criteria, i.e., standards, for what constitutes an organic product have been met by the product or ingredient for which labeling approval is being sought and (b) that the certifying entity employs a system for evaluating ongoing compliance with the criteria, i.e., standards, it has established.

As also indicated in FSIS's guidance document regarding this policy, the statement ''certified organic by (a certifying entity)'' must be followed by the name of the certifying entity on the labeling of a meat or poultry product. Upon approval, the claim ''certified organic by (a certifying entity)'' may appear anywhere on the labeling of a meat or poultry product in regard to the meat or poultry product portion certified and in regard to any nonmeat ingredients so certified. All words in the claim are to be contiguous and of the same size, style, and type. Further, as indicated in FSIS's guidance document, FSIS will also continue to permit the use of approved animal production claims and an approved claim of ''natural'' on the labeling of meat and poultry products.

In allowing the claim ''certified organic by (a certifying entity)'' to appear on the labeling of a meat or poultry product, FSIS is not defining the term ''organic.'' AMS, supported by the National Organic Standards Board, is responsible for carrying out the Department's program under the Organic Foods Protection Act to define the term ''organic'' and to establish the circumstances in which it can be applied to agricultural products, including meat and poultry products.

Applications for approval of labeling bearing the claim ''certified organic by (a certifying entity)'' should be sent to the Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, USDA, Room 602, Cotton Annex, Washington, DC 20250–3700. Inquiries regarding labeling claims, including the labeling claim ''certified organic by (a certifying entity)'' or animal production claims, may be directed to Dr. Robert Post, Director, Labeling and Additives Policy Division. Staff of the Labeling and Additives Policy Division may be reached by telephone, at (202) 205–0279, for consultation.

Paperwork Requirements

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this notice in accordance with the Paperwork Reduction Act. FSIS has submitted a request for an emergency clearance of these paperwork and recordkeeping requirements to OMB.

This notice, in conjunction with existing requirements, means that meat and poultry producers who want to market meat and poultry products that bear the labeling claim ''certified organic by (a certifying entity)'' will have to submit the labeling to FSIS for approval, along with the specified certification documentation that has been provided to the meat or poultry producer by the certifying entity. The certifying entity must have standards that list the criteria a meat or poultry product must meet to be certified organic and must have a system for ensuring that the product it certifies as organic meets those standards.

Estimate of Burden: FSIS estimates that it will take meat and poultry producers 2 hours to design and develop modified product labels. FSIS estimates that it will take certifying entities 40 hours to develop their organic standards and prepare their certification documentation.

Respondents: Meat and poultry producers, and certifying entities.

Estimated number of Respondents: 200 meat and poultry producers, and 44 certifying entities.

Estimated number of Responses per Respondent: FSIS estimates that each producer would modify approximately 4 product labels. Certifying entities would give their certification documentation to each meat and poultry producer once.

Estimated Total Annual Burden on Respondents: 3,360 hours Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lee Puricelli, Paperwork Specialist, see address above, and Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Done at Washington, DC on: April 5, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–9006 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection for the administration of special uses on National Forest System lands. The information helps the Forest Service ensure that the authorized use of Federal land is in the public interest and compatible with the mission of the agency. Respondents will include individuals, groups, organizations, businesses, corporations, and Federal, State, and local governments.

DATES: Comments must be received in writing on or before June 11, 1999.

ADDRESSES: All comments should be addressed to: Director, Lands Staff (mail stop 1124), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090 or email mscheibe/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Mark Scheibel, Lands Staff, at (202) 205–1264.

SUPPLEMENTARY INFORMATION:

Background

The forms described in this request for extension of an information collection are used by the agency to issue and administer special use permits to use or occupy National Forest System lands. The data collected will be evaluated by the Forest Service to ensure that the authorized use of Federal land is in the public interest and is compatible with the mission of the agency. The data will help identify environmental and social impacts of special uses and will ascertain whether the agency is receiving a fair market

rental fee for the use of National Forest System lands. The data will be collected through application forms and stipulations in operating plans and special-use authorizations. There are four general categories of information requests: (1) initial and amended application process; (2) annual financial information; (3) preparing and updating operation and maintenance plans; and (4) compliance reports and information updates.

Application Process

Description of Information Collection

The following describes the information collection to be extended:

Title: SF–299, Application for Transportation and Utility Systems and Facilities on Federal Lands.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to evaluate the applicant's technical capability and financial resources, the applicant's proposed operations, and the anticipated environmental impacts. This form is used by applicants requesting use of National Forest System lands for nonrecreational use.

Estimate of Burden: 8 hours.

Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated number of respondents: 1,500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 12,000 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–3a, Request for Termination of and Application for Special Use Permit.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to facilitate issuance of a new authorization when private improvements authorized on National Forest System lands change ownership.

Estimate of Burden: 0.5 hours.

Type of respondents: Individuals, businesses, and corporations.

Estimated number of respondents: 1,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 500 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–3b, Special Use Application and Permit for Noncommercial Group Use.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to evaluate requests, such as group gatherings from noncommercial groups, to use National Forest System lands. These requests usually involve First Amendment rights that require a short, specific time frame (48 hours) for the agency to approve or deny the request.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, groups, organizations.

Estimated number of respondents: 2,400.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 2,400 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–3c, Special Use Application and Permit for Recreation Events.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to evaluate requests for National Forest System lands for recreational events.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, groups, organizations.

Estimated number of respondents: 2,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 2,000 hours.

Annual Financial Information

Title V of the Federal Land Policy and Management Act of 1976, the Independent Offices Appropriation Act of 1952, and the Office of Management and Budget Circular A–25 require the Forest Service to collect rental fees that reflect fair market value for the use of National Forest System lands. Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized officer with the information necessary to calculate fair market value rental fees. Procedures for how the information is provided and when it is required are contained in the authorization terms and conditions. Information requests for financial information are provided to the authorized officer in a variety of ways. Several examples include gross revenues, value of capitol improvements, number of trips or customers served, or a listing of occupants in a communications site building.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–7, Reconciliation of Sales for Fee Calculation.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal government for use of National Forest System lands.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–8, Reconciliation of Gross Fixed Assets (GFA) to Booked Amounts.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal Government for use of National Forest

System lands based on the gross fixed assets of the entity holding the permit.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–19, Fee Calculation for Concession Permits.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal Government for concession permits.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2700–19a, USDA Forest Service Fee Calculation For Ski Area Permits.

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized Forest Service officer to determine the annual rental fee due the Federal Government for ski area permits.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 100 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: Business Practices (No specific agency form).

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: The information is provided to the Forest Service by the holder of the authorization when requested by the authorized Forest Service officer or as a term and condition of the authorization. There is no specific form involved. The information that is collected is usually maintained in a form that is customary for the type of business.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 1,675.

Estimated number of responses per respondent: 1.5.

Estimated total annual burden on respondents: 2,513 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: Preparing and Updating Operation and Maintenance Plans (No specific agency form).

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain a clause requiring the holder of the special-use authorization to prepare or update an operation and maintenance plan, when the authorized Forest Service officer determines that the day-to-day operations of the authorized use needs to be specified. This information is useful to the holder of the special-use authorization and to the Forest Service, because it outlines procedures and policies used while the holder conducts operations or business on National Forest System lands. Typically, operation and maintenance plans include daily operating guidelines, fire abatement and control procedures, monitoring guidelines, maintenance standards, safety and emergency plans, and inspection standards and frequencies. Operation and maintenance plans are not required for all special use authorizations, but are usually necessary for complex operations, commercial uses, and situations involving sensitive environmental areas.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 35,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 35,000 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: Compliance Reports and Information Updates (No specific agency form).

OMB Number: 0596–0082.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized Forest Service officer with compliance reports, information reports, and other information required by Federal law or required to properly manage National Forest System lands to ensure adequate protection of forest resources and public health and safety. Examples of compliance and information requests include dam maintenance inspection reports and logs required by the Reclamation Safety of Dams Act of 1978, the Federal Dam Safety Inspection Act of 1979, and the Dam Safety Act of 1983; documentation that authorized facilities passed safety inspections; documentation showing that the United States is covered in an insurance policy; notifications involving changes in corporation or partnership status; and documentation of compliance with nondiscrimination in Federally assisted programs as required by Title VI and VII of the Civil Rights Act of 1964.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 13,500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 13,500 hours.

Comments Are Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 5, 1999.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 99–9044 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oil and Gas Leasing; Humboldt-Toiyabe National Forest, White Pine and Nye Counties, Nevada

AGENCY: USDA Federal Energy Regulatory Commission.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Federal Energy Regulatory Commission will prepare an Environmental Impact Statement for the purposes of leasing National Forest System lands in the White Pine, Grant and Quinn Mountain Ranges (White Pine and Nye Counties, Nevada) for hydrocarbon exploration, development and production. This EIS will be prepared by the Forest Service in cooperation with the Bureau of Land Management, the Nevada Division of Minerals, and Nevada Division of Wildlife.

DATES: Written comments concerning the scope of the analysis should be received by May 10, 1999 to ensure timely consideration.

ADDRESSES: Send written comments to: Monica J. Schwalbach, Assistant Forest Supervisor, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely, NV 89301.

FOR FURTHER INFORMATION: Direct questions about the project and the preparation of the EIS to Jim Winfrey, Project Team Leader, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely, NV 89301. Telephone 775–3031.

SUPPLEMENTARY INFORMATION: Several proponents have requested portions of the Humboldt-Toiyabe National Forest be made available under the Bureau of Land Management's Competitive Oil and Gas Lease Sale. The Forest Service must complete an environmental analysis to determine if the lands are suitable for leasing and to identify the necessary conditions of approval prior to authorizing the BLM to offer these lands.

The proposal would affect approximately 553,135 acres of National Forest System lands. Preliminary internal scoping had identified several issues which will be addressed in the analysis process. The following list of issues is not intended to be all inclusive. Issues identified by the members of the interdisciplinary team are. (1) Threatened, endangered and sensitive species and other species of concerning including Bonneville cutthroat trout, mountain plover, sage grouse, bats, bighorn sheep, elk, and mule deer; (2) grazing; (3) surface and groundwater and cumulative effects to watershed; (4) heritage resources; (5) grazing; (6) noxious weeds; (7) roadless areas; (8) recreation opportunities; (9) visual, noise and air quality; (10) economic and social impacts; and (11) safety. These issues, and others identified during the scoping process will be used to develop alternatives to the proposed action. In addition, the No Action alternative will be considered in the analysis.

Public participation is important during the EIS scoping process. As part of the scoping process, the Forest Service is seeking information and comments from Federal, State, County and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. This input will be used in preparation of the draft EIS and final EIS.

Several government agencies will be invited to participate in this project as cooperating or participating agencies. These agencies include, but are not limited to, Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Division of Environmental Protection, Nevada Division of Wildlife, and Nevada Division of Minerals.

The Forest Service is the lead agency for this project and Monica J. Schwalbach, Assistant Forest Supervisor is the responsible official. She will make the decision to determine which lands are suitable for leasing and any stipulations which should be included in a lease agreement. Applicable laws, Forest Service regulations and the Humboldt National Forest Land and Resource Management Plan (1986) will be taken into account throughout the analysis.

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in October, 1999. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be at least 45 days from the date the EPA's Notice of Availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Monica J. Schwalbach,

Assistant Forest Supervisor.

[FR Doc 99–8960 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Resources Conservation Service

Buena Vista Watershed, Rockbridge County and City of Buena Vista, Virginia

AGENCY: U.S. Department of Agriculture, Natural Resources Conservation Service.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: M. Denise Doetzer, Responsible Federal Official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Buena Vista Watershed project is available. Single copies of this record of decision may be obtained from M. Denise Doetzer at the address shown on the next page.

FOR FURTHER INFORMATION CONTACT: Ms. M. Denise Doetzer, State Conservationist, USDA, Natural Resources Conservation Service, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, telephone (804) 287–1691.

This activity is listed in the Catalog of Federal Domestic Assistance Under No. 10.904, Watershed and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: March 31, 1999.

M. Denise Doetzer,

State Conservationist.

[FR Doc. 99–8978 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.75 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 1999. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit preapplications for FY 1999 and award grants before September 1, 1999.

DATES: The deadline for receipt of a preapplication is May 28, 1999. Preapplications received after that date will not be considered.

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State Office to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, S.W., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION: Rural Cooperative Development Grants (RCDG) is authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(e) and regulations are contained in 7 CFR part 4284, subpart F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State Offices acting on behalf of RBS.

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. The priorities described in this paragraph will be used by RBS to rate preapplications. RBS review of preapplications will include the complete preapplication package submitted to the Rural Development State office. Points will be distributed according to ranking as compared with other preapplications on hand. Points will be awarded to each factor on a 5, 4, 3, 2, 1 basis depending on the applicant's ranking compared to other applicants.

(A) Preference will be given to applications that:

(1) Demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

(3) Demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) Commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) Commit to providing greater than a 25 percent matching contribution with private funds and in-kind contributions;

(7) Evidence transferability or demonstration value to assist rural areas outside of project area; and

(8) Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 1999 Preapplication Submission

Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project. Each preapplication received in the State office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address selection criteria will not be considered. Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State office or RBS National office. Preapplications must be completed and submitted to the Rural Development State office as soon as possible, but no later than May 28, 1999. Preapplications received after May 28, 1999, will not be considered.

Each preapplication must contain the following:

(A) A detailed Table of Contents containing page numbers for each component of the preapplication.

(B) A project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

(C) A separate one-page information sheet which lists each of the eight evaluation criteria followed by the page numbers of all relevant material and documentation contained in the preapplication which supports that criteria. This page should immediately follow the project summary.

(D) An additional requirement for those applicants who have received funding under the RCDG program in

fiscal years 1997–98 is a summation, not to exceed three pages, of progress and results for all projects fully or partially funded by the RCDG program in those years. This summary should include the status of cooperative businesses organized and all eligible grant purpose activities listed under 7 CFR 4284.515. The summary should immediately follow the page described above in paragraph (c) documenting the location of evaluation criteria supporting material.

The National office will score applicants based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with subpart F. Entities submitting preapplications that are selected for award will be invited by the State office to submit a formal application prior to September 1, 1999. It is anticipated that grant awardees will be selected by September 1, 1999.

Dated: March 31, 1999.

Dayton Watkins,

Administrator, RBS.

[FR Doc. 99–8983 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Business–Cooperative Service

Request for Proposals: Fiscal Year 1999 Funding Opportunity for Research on Rural Cooperative Opportunities and Problems

AGENCY: Rural Business–Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business–Cooperative Service (RBS) announces the availability of approximately $1.0 million in competitive cooperative agreement funds allocated from FY 1999 appropriations. RBS hereby requests proposals from institutions of higher education or nonprofit organizations interested in applying for competitively awarded cooperative agreements for research related to agricultural and nonagricultural cooperatives serving rural communities. The intent of the funding is to encourage research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities.

DATES: Cooperative agreement applications must be received on or before June 30, 1999. Proposals received after June 30, 1999, will not be considered for funding.

ADDRESSES: Send Proposals and other required materials to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business–Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252. Telephone: (202)690–0368.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business–Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252. Telephone: (202) 690–0368.

SUPPLEMENTARY INFORMATION:

General Information

This solicitation is issued pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 making appropriations for programs administered by USDA's Rural Business–Cooperative Service (RBS) for the fiscal year ending September 30, 1999. The Rural Business–Cooperative Service (RBS) was established by the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance, and creating effective strategies for rural development. RBS has authority to enter into cooperative agreements pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996.

The primary objective of this funding is to encourage research through cooperative agreements on critical issues vital to the development and sustainability of user-owned cooperatives as a means of improving the quality of life in America's rural communities. Issue areas on which proposals should focus are:

(1) Production cooperatives (including joint management of farm operations) as a tool for small farm operators, as recommended by the National Commission on Small Farms.

(2) New generation cooperative equity management issues and their impact on the user-owned nature of the cooperative business.

(3) Cooperative structure, conduct and performance in selected industries.

(4) Can cooperatives compete for value-added markets?

(5) Governance and control issues in evolving cooperative structures and environments.

(6) The role of nonagricultural cooperatives in rural development.

(7) Evaluation of group action strategies, dispute resolution mechanisms, and justifiable terms available to contract growers and cooperatives in an increasingly industrialized agriculture.

(8) Assessment of farmer's markets organized as cooperatives. A cooperative agreement reflects a relationship between the United States Government and an eligible recipient where (1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out research related to rural cooperatives; and (2) substantial involvement is anticipated between RBS acting for the United States Government, and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. Cooperative agreements are to be awarded on the basis of merit, quality, and relevance to advancing the purpose of federally supported rural development programs that increase economic opportunities in farming and rural communities.

All forms required to apply are available from the Cooperative Services Program web-site at www.usda.gov/rbs/coops/rrcop.htm, by calling (202) 690–0368, or faxing (202) 690–2723. Forms may also be requested via Internet by sending a message with your name, mailing address (not E-mail) and phone number to ''thomas.stafford@usda.gov''. When calling or e-mailing Cooperative Services, please indicate that you are requesting forms for Fiscal Year 1999 (FY 1999) Research on Rural Cooperative Opportunities and Problems (RRCOP). Forms will be mailed to you (not e-mailed or faxed) as quickly as possible. Forms are also usually available from the local university grants office.

Use of Funds

Funds may be used to pay up to 75 percent of the total cost for carrying out relevant projects. Applicants' contribution may be in cash or in-kind contribution and must be from nonfederal funds. Funds may not be used to: (1) Pay more than 75 percent of relevant project or administrative costs; (2) pay costs of preparing the application package; (3) fund political activities; or (4) pay costs incurred prior to the effective date of the cooperative agreement. Indirect costs may not exceed current negotiated rates. If no

rate has been negotiated, an indirect cost rate proposal must be submitted for approval.

Available Funds and Award Limitations

The amount of funds available for cooperative agreements in FY 1999 is approximately $1.0 million. Up to one-quarter of the total funds awarded will be allocated to research on nonagricultural cooperatives serving rural areas. Nonagricultural cooperatives include, but are not limited to housing, child care, health care, shared services, wholesale or retail consumer cooperatives, and credit unions. Agricultural cooperatives are user-owned and controlled businesses which purchase farm inputs, market farm products, or provide other services to their members. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be $100,000. In 1998, a typical award ranged from $40,000 to $80,000 with an average award of $60,000.

Eligible Applicants

Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities, is not eligible to apply.

Methods for Evaluating and Ranking Applications

Applications will be evaluated by a panel of RBS technical experts. Applications will be evaluated competitively and points awarded as specified in the Evaluation Criteria and Weights section of this notice. After assigning points upon those criteria, applications will be listed in rank order and presented, along with funding level recommendations, to the Administrator of RBS, who will make the final decision on awarding of agreements. Applications will then be funded in rank order until all available funds have been expended. RBS reserves the right to make selections out of rank order to provide for a geographic or subject matter distribution of funded projects. In addition, timely completion of past cooperative agreements with RBS may be considered in awarding funds. With respect to any approved proposal, the amount of funding and the project period during which the project may be funded and will be completed, are subject to negotiation prior to finalization of the cooperative agreement.

Evaluation Criteria and Weights

RBS will initially determine whether the submitting organization is eligible and whether the application contains the information required by this notice. Prior to technical examination, each proposal will be reviewed for responsiveness to the funding solicitation. Proposals focusing on technical assistance, consulting, or problem solving for the benefit of a single cooperative are not encouraged. Submissions that do not fall within the guidelines as stated in the solicitation will be eliminated from the competition and will be returned to the applicant.

After this initial screening, RBS will use the following criteria to rate and rank proposals received in response to this notice of funding availability. The maximum number of points is 100. Failure to address any of the following criteria will disqualify the proposal.

(1) Relevance: Focuses on an agricultural or nonagricultural cooperatives serving rural areas and demonstrates a clear relationship with the research topics contained in this notice (maximum 20 points);

(2) Demonstrates potential to contribute innovative ideas or solutions to identified problems or issues (maximum 20 points);

(3) Shows capacity for broad applicability in facilitating new or improved cooperative development or new or improved cooperative approaches (maximum 15 points);

(4) Outlines a sound plan of work and appropriate methodology to accomplish the stated objective of the research (maximum 15 points);

(5) Adequately documents the need for and clearly defines the objectives of the research (maximum 10 points);

(6) Demonstrates cost effectiveness (maximum 10 points);

(7) Identifies qualified resources and personnel, including a demonstrated track-record of similar research (maximum 10 points).

Deliverables

Upon completion of the project, recipients will deliver the results of the research to RBS, in the form of a document of publishable quality, accompanied by all applicable supporting data. Publishable documents include, but are not limited to, manuscripts, videotapes, or software, or other media, as may be identified in approved proposals. RBS retains publishing rights to such documents, as well as rights to any raw or preliminary data collected as part of the project.

Content of a Proposal

A proposal should contain the following:

(1) *Form SF–424,* ''Application for Federal Assistance.''

(2) *Form SF–424A,* ''Budget Information—Non-Construction Programs.''

(3) *Form SF–424B,* ''Assurances—Non-Construction Programs.''

(4) *Form AD–1047,* ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters.''

(5) *Form AD–1049,* ''Certification Regarding Drug-Free Workplace Requirements.''

(6) *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(7) *Project Summary.* A summary of the Project Proposal, not to exceed one-page should include the following: title of the project; names of principal investigators and applicant organization; and a description of the overall goals and relevance of the project.

(8) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed research. The Proposal must include at least the following:

(i) Project Title. The title of the proposed project must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the names and contact information for the principal investigators. Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale for the research must be presented. Included should be a summarization of the body of knowledge (literature review) which substantiates the need for the research. The need for the proposed research must be clearly and directly related to the facilitation of new or improved cooperative approaches.

(iv) Objectives of the Project. Discuss the specific objectives of the project and the impact of the research on end-users.

(v) Procedures. Discuss the hypotheses or questions being asked and the methodology or approach to be used in carrying out the proposed research and accomplishing the

objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included.

(vi) Time Table. A tentative schedule for conducting the major steps of the research must be included.

(vii) Expected Output. Describe how the results will be presented and disseminated. Include who will be responsible for any published output.

(viii) Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(9) *Personnel Support.* To assist reviewers in assessing the competence and experience of proposed principal investigators, the following must be included for each:

(i) estimated time commitment to the project;

(ii) a one-page curriculum-vitae;

(iii) a chronological list of all publications during the past five years.

What to Submit

An original and two copies must be submitted in one package.

When and Where To Submit

Proposals must be received by close of business on June 30, 1999. Proposals must be sent to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include but are not limited to:

7 CFR part 15, subpart A-Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

7 CFR part 3018—New Restrictions on Lobbying

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB control number 0570–0028.

Dated: April 1, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–8974 Filed 4–9–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Bureau of the Census

Applicant Background Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 11, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dayna Jacobs, Bureau of the Census, Field Division, SFC–2, Room 1408, Washington, DC 20233–5700, 301–457–4899.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Applicant Background Questionnaire is completed on a voluntary basis by applicants for temporary (Schedule A) positions with the Bureau of the Census at the time of application and testing. Temporary positions normally last 8–12 weeks, and applicants must meet the minimum qualifications of a written test. The expected number of applicants for temporary Census Bureau jobs is increasing significantly because of our efforts to hire over 800,000 enumerators for Census 2000. The questions on the Applicant Background Questionnaire are of a sensitive nature relating to race and national origin as well as medical disabilities. This information is useful in determining whether we have a representative sample of the community from which we are hiring. This allows the Bureau of the Census to adjust recruiting efforts quickly and to employ local applicants for indigenous hiring. Background information provided by applicants will not be used in applicant screening or selection and will not be available to the selecting official.

The Applicant Background Questionnaire asks the minimum number of questions to obtain the necessary information. Individuals complete the form only once and the Bureau of the Census does not obtain similar information from applicants prior to employment. The confidentiality of information contained on the BC–1431 will be maintained according to the Privacy Act. The questionnaire contains the Privacy Act statement.

II. Method of Collection

Individuals complete the BC–1431 only once. Based on past experience, the BC–1431 on average takes about 2.5 minutes to complete. The paper form is completed by the applicant at the time of testing.

III. Data

OMB Number: 0607–0494.

Form Number: BC–1431.

Type of Review: Regular Submission.

Affected Public: Decennial Census Job Applicants.

Estimated Number of Respondents: 3,200,000.

Estimated Time Per Response: 2.5 minutes.

Estimated Total Annual Burden Hours: 133,333.

Estimated Total Annual Cost: There is no cost to respondents except for their time.

Respondent's Obligation: Voluntary.

Legal Authority: P.L. 92–261, Equal Employment Opportunity Act of 1972 P.L. 94–311, Publication of Economic and Social Statistics for Americans of Spanish Origin or Descent 43 FR 38297, Information of Impact (Section 4) 5 U.S.C. 7201, Antidiscrimination Policy, Minority Recruitment Program.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9051 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

BISNIS Publication Subscription Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 11, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Christopher Weiss, Market Access and Compliance, Business Information Service for the Newly Independent States (BISNIS) Room 7413, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–4655 ext. 26, and fax number: (202) 482–2293.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's (ITA) Business Information Service for the Newly Independent States (BISNIS) program offers business information and counseling to U.S. companies seeking to export or to invest in the countries of the former Soviet Union. A critical component of the program is the dissemination of information regarding market conditions and opportunities in various industries and countries of the former Soviet Union. These information products provided by BISNIS are in the form of emails, faxes, and paper mailers. The Publication Subscription form is a quick way for interested parties to tell BISNIS which products they want and what is their industry and country interests.

II. Method of Collection

Internet, fax, mail, or telephone.

III. Data

OMB Number: 0625–XXXX.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit firms.

Estimated Number of Respondents: 2,040.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 170 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $8,500.00 ($5,950.00 for respondents and $2,550.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9052 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon from Norway; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On December 31, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping order on fresh and chilled Atlantic salmon from Norway. The review covers one manufacturer/exporter of the subject merchandise shipped to the United States during the period April 1, 1997, through March 31, 1998. We did not receive any comments on the preliminary results. The dumping margin for the reviewed company is unchanged from the preliminary results.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: John Conniff or Thomas Futtner, AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone 202/482–1009 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this review on December 31, 1998 (63 FR 72244). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called ''king'' or ''quinnat''); Coho (''silver''); Sockeye (''redfish'' or ''blueback''); Humpback (''pink''); and Chum (''dog''). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Final Results of Review

The Department received no comments on its preliminary results and we did not make any changes to our analysis. Therefore, the margin from the preliminary results has not changed for the final results of review.

Manufacturer/Exporter	Margin (percent)
Nornir Group A/S	31.81

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We will assess antidumping duties on the above firm's entries at the same rate as its above stated dumping margin since the margin is not a calculated rate, but is a rate based upon facts available pursuant to section 776 of the Act.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 23.80 percent, the ''all others'' rate established in the final determination of sales at less than fair value, published by the Department (56 FR 14920, April 12, 1991).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1)(B) and 777(i)(1)of the Act.

Dated: April 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–9049 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Egypt Presidents' Council: Membership

AGENCY: International Trade Administration, Commerce Department.

ACTION: Notice of Membership Opportunity.

SUMMARY: The International Trade Administration of the U.S. Department of Commerce established and monitors the activities of the U.S.-Egypt Presidents' Council, the private sector component of the Gore-Mubarak Partnership. This notice announces membership opportunities for American business representatives on the U.S. side of the Council.

DATES: In order to receive full consideration, requests must be received no later than: Friday, May 7, 1999.

ADDRESSES: Please send your requests for consideration to Thomas Sams, Egypt Desk Officer, Office of the Near East, U.S. Department of Commerce either by fax on 202–482–0878 or by mail to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Tom Sams, Office of the Near East, Room H–2029B, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During his September, 1994 visit to Cairo, Vice President Gore, on behalf of President Clinton, and President Mubarak announced the ''Gore-Mubarak Partnership for Growth and Development''. This bilateral initiative includes the establishment of the United States-Egypt Presidents' Council. The purpose of the Council is to provide a forum through which American and Egyptian private sector representatives can provide advice to their respective governments that reflect their views, needs and concerns regarding private sector business development in Egypt and enhanced bilateral commercial ties. The Council exchanges information and encourages bilateral discussions that address the following areas:

- Factors that affect the growth of private sector business in Egypt, including disincentives to trade and investment and regulatory obstacles;
- Initiatives that the Government of Egypt might take to promote private sector business growth in Egypt;
- Identification and promotion of business opportunities in Egypt;
- Identifying further steps to facilitate and encourage the development of

commercial expansion between the two countries.

The U.S. section of the Council, chaired by the U.S. Secretary of Commerce, consists of fifteen members, all drawn from the private sector. They represent the diversity of American business with emphasis on: agribusiness and food processing, tourism, banking and investment, pharmaceuticals, services, information technology, electronics and other high technology industries, and manufacturing industries. Private sector members will serve in a representative capacity presenting the views and interests of their particular industry and as senior business representatives whose expertise on international business issues can be shared. Private sector members are not special government employees, and will receive no compensation for their participation in Council activities. Members participating in Council meetings and events will be responsible for their travel, living, and other personal expenses. Council members serve for two-year terms at the discretion of the Secretary.

In order to be eligible for membership in the U.S. section, potential candidates should be:

- a U.S. citizen residing in the United States;
- the President or CEO (or comparable level of responsibility of a private sector company (or, in the case of very large private sector companies, the head of a sizeable operating unit); or head of a non-profit organization that has a unique technical expertise and outstanding reputation; and
- not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

In reviewing eligible candidates, the Secretary of Commerce will consider such selection factors as:

- Experience and interest in the Egyptian market;
- Industry or service sector represented;
- export/investment experience; and
- contribution to diversity based on industry sectors, company size, location, and demographics.

Members will be selected who will best carry out the objectives of the Council as stated in the Terms of Reference establishing the U.S.-Egypt Presidents' Council.

To be considered for membership, please provide the following: name or manes and title(s) of the individual(s) requesting consideration; name and address of the company or organization sponsoring each individual; company's product, service or technical expertise; size of the company; export trade, investment, or international program experience and major markets; and a brief statement of why the candidate(s) should be considered for membership on the Council.

Dated: April 6, 1999.

Thomas R. Parker,

Director, Office of the Near East.

[FR Doc. 99–8985 Filed 4–9–99 8:45 am]

BILLING CODE 3510–DA–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1997, through December 31, 1997. We have preliminarily determined that certain producers/exporters have received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the preliminary results of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Sally Hastings, or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815, 482–3464 or 482–0176, respectively.

Background

On July 24, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 38544) the countervailing duty order on pasta from Italy. On July 1, 1998, the Department published a notice of ''Opportunity to Request Administrative Review'' (63 FR 35909) of this countervailing duty order. We received timely requests for review and we initiated the review, covering the period January 1, 1997, to December 31, 1997, on August 27, 1998 (63 FR 45796), and September 9, 1998 (63 FR 48188). In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: Audisio Industrie Alimentari S.p.A. (''Audisio''); the affiliated companies Delverde S.r.L., Tamma Industrie Alimentari di Capitanata S.r.L., Sangralimenti S.r.L., and Pietro Rotunno, S.r.L. (''Delverde/Tamma''); Pastificio Fabianelli S.p.A. (''Fabianelli''); and Pastificio Riscossa F.lli Mastromauro S.r.L. (''Riscossa''). This review covers 26 programs.

On September 15, 1998, we issued countervailing duty questionnaires to the Government of Italy (''GOI''), the Commission of the European Union (''EU''), and the above-named companies under review. The following seven companies which had requested to be included in this review withdrew their request on the noted dates: De Gi Ma S.r.L. and Pastificio Laporta S.a.s. on September 23, 1998; Industrie Alimentari Molisane S.r.L. and Pastificio Antonio Pallante S.r.L. on October 6, 1998; Pastificio Maltagliati S.p.A. on October 28, 1998; La Molisana Industrie Alimentari S.p.A. on November 4, 1998; and Petrini S.p.A. on November 5, 1998.

We received responses to our questionnaires and issued supplemental questionnaires throughout the period November 1998 through February 1999. Responses to supplemental questionnaires were received in March 1999.

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995 (''the Act'').

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail

market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (''IMC''), by Bioagricoop Scrl, by QC&I International Services, or by Ecocert Italia.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders (*see* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997).

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. (*See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.)

(3) On October 26, 1998, we initiated a scope inquiry to determine whether a package weighing over five pounds as a result of industry packing tolerances may be within the scope of the antidumping and countervailing duty orders. A preliminary scope ruling was issued (*see* Memorandum from John Brinkmann to Richard Moreland, dated March 24, 1999).

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1, 1997, through December 31, 1997.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: The companies under review did not takeout any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under review were given. Therefore, for years prior to 1995, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. For 1995 through 1997, we used the average interest rate on medium-and long-term loans as reported by the Bank of Italy based on a survey of 114 Italian banks. We continued to use the same mark-up as in *Certain Pasta From Italy: Final Results of Countervailing Duty Review*, 63 FR 43905, 43906 (August 17, 1998) (''*Pasta First Review*''), but we will examine at verification whether that mark-up includes fees, commissions and other expenses.

Allocation Period: In *British Steel plc.* v. *United States*, 879 F.Supp. 1254, 1289 (CIT 1995) (''*British Steel I*''), the U.S. Court of International Trade (''CIT'' or ''the Court'') ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) (''*GIA*''). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (''AUL'') of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) (''*British Steel II*''). Accordingly, the Department has applied this method to those non-recurring subsidies that were not countervailed in the investigation. However, for non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in earlier segments of this proceeding, it is neither reasonable nor practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each non-recurring subsidy received prior to the POR. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

For non-recurring subsidies received during the POR, each company under review submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Each company's AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past 10 years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. We have used these calculated AULs for the allocation period for non-recurring subsidies received during the POR.

Benefits to Mills: In cases where semolina (the input product to pasta) and the subject merchandise were produced within a single corporate entity, the Department has found that subsidies to the input product benefit total sales of the corporation, including sales of the subject merchandise, without conducting an upstream subsidy analysis. (*See, e.g., Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 FR 22570 (May 28, 1992); *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987); *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, at 30292 (June 14, 1996) (''*Pasta from Italy*''.) Where appropriate, we have also included sales of semolina in calculating the *ad valorem* subsidy rate. However, for those companies where the mill is separately incorporated from the producer of the subject merchandise, we have not included subsidies for the milling operations in our calculations.

Changes in Ownership

One of the companies under review, Delverde/Tamma, purchased an existing pasta factory from an unaffiliated party. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership, which took place in 1991. Consistent with our practice in *Pasta First Review*, we have calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *GIA*, 58 FR at 37265.

Affiliated Parties

In *Pasta First Review*, we found that Delverde S.r.L. (''Delverde'') and Tamma Industrie Alimentari, S.r.L. (''Tamma'') warrant treatment as a single company with a combined rate due to the level of affiliation between the two companies. In this review, the respondents have provided no new information which would warrant a reconsideration of this determination. Therefore, we calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Subsidies

A. Industrial Development Grants

1. Law 64/86 Benefits

Law 64/86 provided assistance to promote industrial development in the Mezzogiorno (south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (see 2, below). This decision became effective in 1993. Projects approved prior to 1993, however, were authorized to receive grant amounts after 1993. Delverde/Tamma and Riscossa benefitted from industrial development grants under Law 64/86 during the POR.

In *Pasta from Italy*, the Department determined that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act. They provided a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

In *Pasta from Italy*, the Department treated independent development grants as ''non-recurring'' based on the analysis set forth in the Allocation section of the GIA, 58 FR at 37226. In the current review, we have found no reason to depart from this treatment. Therefore, we have allocated those grants which exceeded 0.5 percent of a company's sales in the year of receipt over time. (*See GIA* at 58 FR 37226.) To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to each company in the POR by its sales in the POR. Thus, we determine the countervailable subsidy for these grants to be 2.18 percent ad valorem for Delverde/Tamma and 0.74 percent *ad valorem* for Riscossa.

2. Law 488/92 Benefits

In 1986, the EU initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU (*see* III., below). The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible areas may apply for industrial development grants. (Loans are not provided under Law 488/92.) Law 488/92 was previously found countervailable in *Final Affirmative Countervail Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, (March 31, 1999).

In the POR, Delverde/Tamma received grants under Law 488/92 for modernization of its pasta factory and warehouse and the production of pasta.

Based on information provided in the responses, we preliminarily determine that grants under Law 488/92 provide a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, we preliminarily find these grants to be regionally specific within the meaning of section 771(5A) of the Act. We, therefore, preliminarily determine that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act.

We have determined that Law 488/92 grants are ''non-recurring'' based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. In accordance with our practice, we have allocated these grants, which exceeded 0.5 percent of Delverde/Tamma's sales in the year of receipt, over time. (*See GIA* at 58 FR 37226.)

To calculate the countervailable subsidy, we used our standard grant methodology. We divided Delverde/Tamma's benefit attributable to the POR by the company's sales in the POR. Thus, we preliminarily determine the countervailable subsidy for this program to be 0.23 percent *ad valorem* for Delverde/Tamma.

B. Industrial Development Loans Under Law 64/86

Law 64/86 also provided reduced rate industrial development loans with interest contributions to companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. The interest rate on these loans was set at the reference rate, with the GOI's interest contributions serving to reduce this rate. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants but not to establish new plants.

Delverde/Tamma received industrial development loans with interest contributions from the GOI. These loans were outstanding during the POR.

In *Pasta from Italy*, the Department determined that these loans were countervailable subsidies within the meaning of section 771(5) of the Act. They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

It is the Department's practice to measure the benefit conferred by interest rebates using our loan methodology if the company knew in advance that the government was likely to pay or rebate interest on the loan at the time the loan was taken out. (*See, e.g., Certain Steel from Italy*, 58 FR 37331 (July 9, 1993).) Because, in this case, the recipients of the interest contributions knew, prior to taking out the loans, that the GOI would be likely to provide the interest contributions, we have allocated the benefit over the life of the loan for which the contribution was received. We divided Delverde/Tamma's benefit attributable to the POR by the company's sales in the POR. On this basis, we preliminarily determine the countervailable subsidy for this program to be 0.65 percent *ad valorem* for Delverde/Tamma.

C. Export Marketing Grants under Law 304/90

To increase market share in non-EU markets, Law 304/90 provides grants to encourage enterprises operating in the food and agricultural sectors to carry out pilot projects aimed at developing links

between Italian producers and foreign distributors, and improving services in those markets. Emphasis is placed on assisting small-and medium-sized producers.

In *Pasta from Italy*, the Department determined that the export marketing grants under Law 304 provided countervailable subsidies within the meaning of section 771(5) of the Act. The grants were a direct transfer of funds from the GOI providing a benefit in the amount of the grant. The grants were also found to be specific because their receipt was contingent upon anticipated exportation. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received a grant under this program for an export sales pilot project in the United States prior to the POR.

Each project funded by Law 304/90 grants requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in new overseas markets. Therefore, in *Pasta from Italy*, the Department treated the grant received under this program as ''non-recurring'' based on the analysis set forth in the Allocation section of the *GIA*, 58 FR at 37226. Further, the Department found that the grant exceeded 0.5 percent of Delverde/Tamma's exports to the United States in the year it was received. Therefore, in accordance with our past practice, we allocated the benefits of this grant over time. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to the POR by Delverde/Tamma's exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy to be 0.22 percent ad valorem for Delverde/Tamma.

D. Social Security Reductions and Exemptions

1. Sgravi Benefits

Pursuant to Law 1089 of October 25, 1968, companies located in the Mezzogiorno were granted a 10 percent reduction in social security contributions for all employees on the payroll as of September 1, 1968, as well as those hired thereafter. Subsequent laws (*e.g.*, Law 183/76, Law 30/97 and Sgravi Unico) authorized companies located in the Mezzogiorno to take additional reductions in social security contributions for employees hired during later periods, provided that the new hires represented a net increase in the employment level of the company. The additional reductions ranged from 10 to 20 percentage points. Further, for employees hired during the period July 1, 1976 to November 30, 1991, companies located in the Mezzogiorno were granted a full exemption from social security contributions for a period of 10 years, provided that employment levels showed an increase over a base period.

In *Pasta from Italy*, the Department determined that the social security reductions and exemptions were countervailable subsidies within the meaning of section 771(5) of the Act. They represented revenue foregone by the GOI and they conferred a benefit in the amount of the savings received by the companies. Also, they were found to be specific within the meaning of section 771(5A) of the Act because they are limited to companies located in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma and Riscossa received social security reductions and exemptions during the POR.

To calculate the countervailable subsidy, we divided each company's savings in social security contributions during the POR by that company's sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.31 percent ad valorem for Delverde/Tamma and 0.37 percent ad valorem for Riscossa.

2. Fiscalizzazione Benefits

In addition to the sgravi deductions described above, the GOI provides social security benefits of another type, called ''fiscalizzazione.'' Fiscalizzazione is a nationwide measure which provides a reduction of certain social security payments related to health care or insurance. The program provides an equivalent level of deductions throughout Italy for contributions related to tuberculosis, orphans, and pensions. However, the program provides a higher deduction from contributions to the National Health Insurance system for manufacturing enterprises located in southern Italy compared to those located in northern Italy. Until July 31, 1995, the differential was 6.16 percent of base salary after which it was reduced to five percent. In 1996, the differential was reduced to four percent and it was further reduced to three percent on January 1, 1997.

In *Pasta from Italy*, the Department determined that the fiscalizzazione reductions were countervailable subsidies within the meaning of section 771(5) of the Act for companies with operations in southern Italy. They represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma and Riscossa received the higher levels of fiscalizzazione deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the excess fiscalizzazione deductions realized by each company in the POR by that company's sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.07 percent ad valorem for Delverde/Tamma and 0.21 percent ad valorem for Riscossa.

3. Law 407/90 Benefits

Law 407/90 grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years or more. A 100 percent exemption was allowed for companies in southern Italy. However, companies located in northern Italy received only a 50 percent exemption.

In *Pasta from Italy*, the Department determined that the 100 percent exemptions provided under Law 407/90 to companies with operations in southern Italy were countervailable subsidies within the meaning of section 771(5) of the Act. They represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, the exemptions were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received the higher level of Law 407/90 deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the amount of the

Law 407/90 exemption which exceeds the amount available in northern Italy realized by Delverde/Tamma in the POR by the company's sales during the same period. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.00 percent ad valorem for Delverde/Tamma.

4. Law 863 Benefits

Law 863 provides for a reduction of social security payments of 25 percent for companies in northern Italy whose employees are participating in a training program. Companies in southern Italy receive a 100 percent reduction in social security payments for such employees.

In *Pasta from Italy*, the Department determined that Law 863 reductions were countervailable subsidies within the meaning of section 771(5) of the Act for companies with operations in southern Italy. They represented revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Delverde/Tamma received the higher level of Law 863 deductions available to companies located in the Mezzogiorno during the POR.

To calculate the countervailable subsidy, we divided the amount of the Law 863 reductions which exceeds the amount available in northern Italy realized by Delverde/Tamma in the POR by the company's sales in that year. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.17 percent ad valorem for Delverde/Tamma.

E. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77

The Special Section for Export Credit Insurance (''SACE'') was created under Article 2 of Law 227/77 as the branch of the GOI responsible for the administration of government export credit insurance and guarantee programs. Pursuant to Article 3 of Law 227/77, SACE insures and reinsures political, catastrophic, economic, commercial and exchange-rate risks which Italian operators are exposed to in their foreign activities.

During the POR, only two private insurance companies, Societa Italiana Crediti S.p.A. (''SIAC'') and La Viscontea S.p.A. (''LV''), had reinsurance agreements with SACE. Under the reinsurance agreements, the companies passed along a fixed percentage (*i.e.*, 30 percent) of their export credit insurance premia to SACE. In return, SACE assumed that same percentage of risk on export credit insurance policies sold by the companies (*i.e.*, SACE would pay 30 percent of any claim for which the companies would become liable).

Article 33 of Law 227/77 provides for the remission of insurance taxes on policies directly insured or reinsured with SACE. For reinsurance policies, this remission of insurance taxes applied not only to the portion of the risk covered by SACE, but also the remaining portion covered by the private insurance company. As a result, export credit insurance policies sold by SIAC and LV during the POR were totally exempt from the insurance tax by virtue of its reinsurance agreement with SACE. Export credit insurance policies sold by other private insurance companies, however, were not exempt from the insurance tax. The insurance tax rate was 12.5 percent of premia paid.

In *Pasta from Italy*, we determined that the exemption from the insurance tax for policies directly insured or reinsured with SACE was a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the GOI and confers tax savings on the companies. Also, because export credit insurance was available only to exporters and was by its nature contingent upon export performance, we found the remission of taxes on export credit insurance to be specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

Fabianelli obtained export credit insurance from SIAC for its exports to the United States and, therefore, was exempted from the insurance tax. To calculate the benefit, we multiplied the premia paid by Fabianelli during the POR for exports to the United States by the insurance tax rate and divided the amount by the company's total exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.03 percent ad valorem for Fabianelli.

F. Export Restitution Payments

Since 1962, the EU has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. Generally, under this program, a restitution payment is available to any EU exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EU. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate on the date of exportation by the weight of the unmilled durum wheat used to produce the exported pasta. The weight of the unmilled durum wheat is calculated by applying a conversion factor to the weight of the pasta. The EU calculates the restitution payment rate, on a monthly basis, by first computing the difference between the world market price of durum wheat and an internal EU price and then adding a monthly increment (in all months except June and July, which are harvest months). The EU will not normally allow the restitution payment rate to be higher than the levy that the EU imposes on imported durum wheat, as such a situation would lead to circular trade. Because there was no significant price difference between the EU price and the world market price on durum wheat in the POR, the restitution payment rate was zero during the POR. However, export restitution payments were received in the POR for shipments made prior to the POR. Fabianelli, Audisio, and Riscossa received export restitution payments during the POR for shipments to the United States.

In *Pasta from Italy*, the Department determined that export restitution payments were countervailable subsidies within the meaning of section 771(5) of the Act. Each payment represented a direct transfer of funds from the EU providing a benefit in the amount of the payment. The restitution payments were found to be specific because their receipt is contingent upon export performance. In this review, the GOI, the EU, and the responding companies did not provide new information which would warrant reconsideration of this determination.

In accordance with our normal practice of recognizing subsidy benefits when there is a cash-flow effect, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POR. Export restitution benefits are not ''automatic'' in that their receipt is not certain until an application has been filed. The amounts received, while generally quite close to the amounts requested, do not always equal the amount indicated by the company on its request form. Thus, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POR.

To calculate the subsidy, we divided the export restitution payments received by each company in the POR on shipments to the United States by that company's pasta exports to the United States in the POR. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.22 percent ad valorem for Delverde/Tamma, 0.42 percent ad valorem for Fabianelli, 1.03 percent ad valorem for Audisio, and 0.81 percent ad valorem for Riscossa.

III. Program For Which We Need More Information

European Social Fund—Objective 4

The European Social Fund (''ESF''), one of the Structural Funds of the EU, was created under Article 123 of the Treaty of Rome to improve employment opportunities for workers and to help raise their living standards. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions: Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under 25; Objective 4 funds training for employees in companies undergoing industrial changes; Objective 5 pertains to agricultural areas; and, Objective 6 pertains to regions with very low population (*i.e.*, the far north). The ESF provides vocational training and employment aids.

In *Pasta from Italy* and *Pasta First Review,* the Department determined that ESF grants were regionally specific and constituted countervailable subsidies within the meaning of section 771(5) of the Act because such grants were provided to companies located in Objective 1, Objective 2, and Objective 5(b) regions. During the POR of the current review, Audisio received ESF assistance for training activities through a provincial body pursuant to EEC Reg. 2081/93 Objective 4. According to the responses, the training was funded by the ESF, the GOI through its Rotational Fund, and other participants. In the *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Italy,* 63 FR 40474 (July 29, 1998) and *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy,* 64 FR 15508 (March 31, 1999), we altered the manner in which we determine the specificity of ESF programs. Therein, we examined the specificity of the funding under each Objective separately. However, we do not have sufficient information on the record to determine the specificity of the Objective 4 funding received by Audisio. Therefore, we have decided to seek more information on this program before our final determination.

IV. Programs Preliminarily Determined to Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for nor receive benefits under these programs during the POR:

A. Local Income Tax (''ILOR'') Exemptions
B. VAT Reductions
C. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
D. Export Credits Under Law 227/77
E. Capital Grants Under Law 675/77
F. Retraining Grants Under Law 675/77
G. Interest Contributions on Bank Loans Under Law 675/77
H. Interest Grants Financed by IRI Bonds
I. Preferential Financing for Export Promotion Under Law 394/81
J. Corporate Income Tax (''IRPEG'') Exemptions
K. Urban Redevelopment Under Law 181
L. Debt Consolidation Law 341/95
M. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (''PRISMA'')
N. European Agricultural Guidance and Guarantee Fund (''EAGGF'')
O. European Regional Development Fund (''ERDF'')

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties at these net subsidy rates.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See, Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of these review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. (''Barilla'') and Gruppo Agricoltura Sana S.r.L. (''Gruppo'') (which were excluded from the order during the investigation), at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy,* 61 FR 38544 (July 24, 1996), the most recently published countervailing duty rates for companies not reviewed in this administrative review.

These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo (which were excluded from the order during the original investigation).

Company	*Ad valorem* rate
Delverde, S.r.L.	4.05
Tamma Industrie Alimentari di Capitanata, S.r.L.	4.05
Audisio Industrie Alimentari S.p.A.	1.03
Pastificio Fabianelli S.p.A.	0.45
Pastificio Riscossa F.lli Mastromauro S.r.L	2.13

Public Comment

Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit an argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9050 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management National Ocean Service National Oceanic and Atmospheric Administration Department of Commerce.

ACTION: Notice of availability of final evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Alaska, Delaware, Massachusetts, Pennsylvania, and Virgin Islands Coastal Management Programs, and the Chesapeake Bay (Virginia), Waquoit Bay (Massachusetts), and Old Woman Creek (Ohio) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approved coastal management programs and the operation and management of NERRs.

The States of Alaska, Delaware, Massachusetts, and Pennsylvania, and the Territory of the Virgin Islands were found to be implementing and enforcing their Federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards.

Old Woman Creek, Waquoit Bay and Chesapeake Bay NERRs were found to be adhering to programmatic requirements of the NERR System. Copies of these final evaluation findings may be obtained upon written request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3086, Extension 126.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Ted Lillestolen,

Deputy Assistant Administrator.

[FR Doc. 99–8984 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040699A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Mackerel Advisory Panel (AP) and Scientific and Statistical Committee (SSC).

DATES: The AP meeting is scheduled to begin at 8:00 a.m. on Monday, April 26, 1999 and adjourn at 3:30 p.m. The Standing and Special Mackerel SSC meeting will be convened at 8:00 a.m. on Tuesday, April 27, 1999 and will conclude at 12:00 noon. The Standing SSC will reconvene at 1:00 p.m. and finish its business by 3:30 p.m.

ADDRESSES: The meeting will be held at the at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, at the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SSC will review the 1999 stock assessment updates for both king and Spanish Mackerel, the Mackerel Stock Assessment Panel (MSAP) report, and the report of the Socioeconomic Panel (SEP) that includes economic and social information related to the range of acceptable biological catch (ABC) and other management considerations for mackerels in the Gulf of Mexico and South Atlantic. Based on this review, the SSC may recommend to the Council levels for total allowable catch (TAC), bag limits, size limits, commercial quotas, and other measures for these species for the 1999–2000 fishing season. The Mackerel AP will review the same information and formulate their recommendations based on their perspectives as users of these resources. The Standing SSC will review a recently completed report of a bycatch reduction device (BRD) evaluation study that was developed by NMFS. The SSC may make recommendations regarding the scientific validity of this study and/or future evaluation efforts.

Copies of the agendas can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the SSC and Mackerel AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues

specifically identified in the agendas listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 19, 1999.

Dated: April 7, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9056 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

[Docket No. 990405086–9086–01]

RIN 0660–ZA08

Market for Satellite Communications and the Role of Intergovernmental Satellite Organizations

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice, request for comments.

SUMMARY: The Department of Commerce requests comments regarding the advantages accorded signatories of intergovernmental satellite organizations (ISOs), in terms of immunities, market access, or otherwise, in the countries or regions served by the International Telecommunications Satellite Organization (INTELSAT) and the International Mobile Satellite Organization (Inmarsat), the reason for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of those organizations. The International Anti-Bribery and Fair Competition Act of 1998 implements the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention). In that legislation, the U.S. Congress imposed certain reporting requirements for the Department of Commerce that are due on July 1, 1999 and each of the next five years. The House report on the legislation expresses an expectation for extensive fact-findings on the nature of the market for satellite communications and, in particular, the role of the ISOs, INTELSAT and Inmarsat. The Department notes that Inmarsat is scheduled for privatization on April 15, 1999. The reporting requirements monitor the implementation and enforcement of other nations' commitments under the OECD Convention and promote the reduction of privileges and immunities for the ISOs. This Request for Comments (RFC) will assist the Secretary of Commerce in responding to those reporting requirements regarding the ISOs' privileges and immunities.

DATES: Comments must be received by May 12, 1999.

ADDRESSES: The Department invites the public to submit written comments in paper or electronic form. Comments may be mailed to Milton Brown, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format.

Comments submitted in electronic form may be sent to isocomments@ntia.doc.gov. Electronic comments should be submitted in the formats specified above.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA/OCC, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Background

INTELSAT is a treaty-based global communications satellite cooperative with 143 member countries. INTELSAT was created to enhance global communications and to spread the risks of creating a global satellite system across telephone operating companies from many countries.[1] Inmarsat was created to improve the global maritime communications satellite system that would provide distress, safety, and communications services to seafaring nations in a cooperative, cost-sharing entity. Inmarsat is scheduled for privatization on April 15, 1999.

As intergovernmental satellite organizations, both INTELSAT and Inmarsat are governed by ''Parties'' and managed by ''signatories.'' The Parties are the national government members of the INTELSAT and Inmarsat agreements. Signatories are designated by each party to participate in the commercial operations of the organization. They hold ownership interests in varying degrees. They also assist with the operation and management of the systems and are distributors of ISO services in their own countries. Signatories may be government-owned or controlled telecommunications monopolies or other telecommunications service providers. The publically traded Comsat Corp. is the U.S. Signatory to INTELSAT. ISOs are subject to oversight by the Assembly of Parties, and signatories are subject to oversight by their respective governments.

To implement public service obligations effectively and as part of the ISOs' unique treaty status, the ISOs benefit from certain privileges and immunities. As such, these ISOs are generally immune from suit, including private or public prosecution on antitrust charges. Moreover, neither ISO pays taxes on revenues, and exemption extends to import duties and taxes, communications and property taxes. Signatories, however, are subject to national taxes, including for their share of the organizations' distributed returns.

The International Anti-Bribery and Fair Competition Act of 1998 requires the Secretary of Commerce to submit a report to the House of Representatives and the Senate which contains information regarding the OECD Convention which includes the following: (1) A list of countries that have ratified the Convention; (2) a description of the domestic laws enacted by each party to the Convention that implements commitments under the Convention; and (3) an assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention. See Pub. L. No 105–366, sec. 6(a). Accordingly, the Secretary of Commerce is required to report, inter alia, on the ''terms of market access, government ownership, government contracts or connections, privileges and immunities, favorable treatment by national regulatory authorities or tax treatment . . . in the countries or regions served by the [ISOs], and the reasons for such advantages.'' H.R. REP. NO. 105–802, at 9 (1998). In preparation for this report, the Secretary of Commerce is required to seek and incorporate comments from the private sector, including competing satellite companies and satellite services users. Id.

We are now formally soliciting public comment on the advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by INTELSAT and Inmarsat, the reasons for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of those

[1] See Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

organizations. ''Pro-competitive privatization'' is defined as ''privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services.'' See Pub. L. No 105–366, sec. 5(a)(2). Respondents should find it useful to review the full text of the International Anti-Bribery and Fair Competition Act of 1998.

Kathy Smith,

Acting Chief Counsel.

[FR Doc. 99–8952 Filed 4–9–99; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3:00 p.m., Wednesday, April 28, 1999.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–9208 Filed 4–8–99; 3:00 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

National Senior Service Corps; Schedule of Income Eligibility Levels

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP), and the Senior Companion Program (SCP) of the Corporation for National and Community Service (Corporation), published at 63 FR 19903 on April 22, 1998.

DATES: These guidelines go into effect on April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, National Senior Service Corps, Ruth Archie, 1201 New York Avenue NW, Washington, DC 20525, or by telephone at (202) 606–5000, ext. 289.

SUPPLEMENTARY INFORMATION: The revised schedules are based on changes in the Poverty Guidelines issued by the Department of Health and Human Services (DHHS), published in 64 FR 13428, March 18, 1999. In accordance with program regulations, the income eligibility level for each State, Puerto Rico, the Virgin Islands and the District of Columbia is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of higher cost of living. In such instances, the guidelines shall be 135 percent of the DHHS Poverty levels. The level of eligibility is rounded to the next highest multiple of $5.00.

In determining income eligibility, consideration should be given to the following, as set forth in 59 FR 15120, March 31, 1994:

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, shall not exceed 15 percent of the applicable Corporation income guideline.

Annual inome is counted for the past 12 months and includes: The applicant or enrollee's income and the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Sponsors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee or spouse.

Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

1999 FGP/5CP INCOME ELIGIBILITY LEVELS
[Based on 125 percent of DHHS poverty guidelines]

	Family units of—			
States	One	Two	Three	Four
All, except High Cost Areas, Alaska and Hawaii.	$10,300	$13,825	$17,350	$20,875

For family units with more than four members, add $3,525 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.

1999 FGP/SCP INCOME ELIGIBILITY LEVELS
[Based on 135 Percent of DHHS Poverty Guidelines]

	Family Units of			
	One	Two	Three	Four
All, except Alaska & Hawaii	$11,125	$14,935	$18,740	$22,545
Alaska	13,935	18,685	23,440	28,190
Hawaii	12,815	17,190	21,560	25,935

(For family units with more than four members, add $3,807 for all areas, $4,755 for Alaska, and $4,375 for Hawaii, for each additional member.)

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas

(Including all Counties/Locations Included in that Area as Defined by the Office of Management and Budget.)

Alaska

(All Locations.)

California

Los Angeles-Compton-San Gabriel-Long Beach-Hawthorne (Los Angeles County.)
Santa Barbara/Santa Maria/Lompoc (Santa Barbara County.)
Santa Cruz-Watsonville (Santa Cruz County.)
Santa Rosa-Petaluma (Sonoma County.)
San Diego-El Cajon (San Diego County.)
San Jose-Los Gatos (Santa Clara County.)
San Francisco/San Rafael (Marin County.)
San Francisco/Redwood City (San Mateo County.)
San Francisco (San Francisco County.)
Oakland-Berkeley (Alameda County.)
Oakland-Martinez (Contra Costa County.)
Anaheim-Santa Ana (Orange County.)
Oxnard-Ventura (Ventura County.)

District of Columbia/Maryland/Virginia

District of Columbia and Surrounding Counties in Maryland and Virginia. MD counties: Calvert, Charles, Cecil, Frederick, Montgomery and Prince Georges Counties. VA counties: Arlington, Fairfax, Loudoun, Prince William, Stafford, Alexandria City, Fairfax City, Falls Church City, Manassas City and Manassas Park City.

Hawaii

(All Locations.)

ILLINOIS

Chicago-Des Plaines-Oak Park-Wheaton-Woodstock (Cook, DuPage and McHenry Counties.)

MASSACHUSETTS

Fall River (Bristol County.)
Boston-Malden (Essex, Norfolk, Plymouth, Middlesex and Suffolk Counties.)
Salem-Gloucester (Essex County.)
Worcester (Worcester County.)
Brockton-Quincy-Braintree (Norfolk County.)
Dorchester (Suffolk County.)
Fitchburg-Leominster (Worcester County.)

NEW JERSEY

Bergen-Passaic-Paterson (Bergen and Passaic Counties.)

Middlesex-Somerset-Hunterdon (Hunterdon, Middlesex and Somerset Counties.)

Monmouth-Ocean-Spring Lake (Monmouth and Ocean Counties.)

Newark-East Orange (Essex, Morris, Sussex and Union Counties.)

Trenton (Mercer County.)

NEW YORK

Nassau-Suffolk-Long Beach-Huntington (Suffolk and Nassau Counties.)

New York-Bronx-Brooklyn (Bronx, Kings, New York, Putnam, Queens, Richmond and Rockland Counties.)

Westchester-White Plains-Yonkers-Valhalla (Westchester County.)

PENNSYLVANIA

Philadelphia-Doylestown-West Chester-Media-Norristown (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties.)

WYOMING

(All Locations.)

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

1999 DHHS POVERTY GUIDELINES FOR ALL STATES

States	Family Units of One	Two	Three	Four
All, except Alaska/Hawaii	$8,240	$11,060	$13,880	$16,700
Alaska	10,320	13,840	17,360	20,880
Hawaii	9,490	12,730	15,970	19,210

Authority: These programs are authorized pursuant to 42 U.S.C. 5011 and 5013 of the Domestic Volunteer Service Act of 1973, as amended. The income eligibility levels are determined by the current guidelines published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Dated: April 7, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9046 Filed 4–9–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 588–0159.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: April 5, 1999.

L. M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 08

SYSTEM NAME:

Health Affairs Survey Data Base *(December 5, 1997, 62 FR 64364).*

CHANGE:

* * * * *

RETRIEVABILITY:

Delete the first paragraph under *Annual Beneficiary Survey:* and replace with '1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address for purposes of initiating follow-up contacts to obtain a response to the survey; but after 90 days, the name and address are permanently deleted so that the survey respondent cannot be identified.'

* * * * *

DHA 08

SYSTEM NAME:

Health Affairs Survey Data Base *(December 5, 1997, 62 FR 64364).*

SYSTEM LOCATION:

Primary location: Directorate of Information Management, Fort Detrick, MD 21702–5020.

Secondary locations: Survey distribution and response tracking files are located at the contractor facilities.

Survey result data files are located at the Office of the Assistant Secretary of Defense (Health Affairs), the Commanders and Intermediate Commanders of the Services Medical Treatment Facilities, the Surgeons General of the Military Services and Regional Managers of TRICARE facilities. The addresses for the secondary locations may be obtained from the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Annual Beneficiary Survey: Individuals eligible for health care under Title 10 (including active duty personnel, reserve personnel and their family members (dependents); retired Armed Forces personnel and their family members; surviving dependents of deceased active duty and retired personnel; and certain others including individuals and their dependents affiliated with the U.S. Coast Guard, U.S. Public Health Service and the National Oceanic and Atmospheric Administration.

Customer Satisfaction Survey: Active duty members of the Armed Forces, civilian personnel, and contract personnel serving as health care providers for individuals eligible for health care under Title 10 in military medical and dental treatment facilities and other treatment settings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Annual Beneficiary Survey: Name, rank, age, gender, race, address, sponsor Social Security Number and family member prefix code of individuals who will be surveyed; verification that a survey has been completed and returned by the individual; and response data from the completed surveys.

Customer Satisfaction Survey: Medical and dental care provider name, provider type, specialty and rank; medical treatment facility, and clinic where care was provided; and response data from the completed surveys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 138, Assistant Secretaries of Defense; 10 U.S.C. 1071 (NOTE); 10 U.S.C. Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

Annual Beneficiary Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about their individual health and health care (including access to care, health status, use of care, familiarity with programs and services available, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/or forecast future health care needs or to implement plans in response to new health care requirements. Retaining beneficiary specifics allows for individual follow-up to improve response rates; scientific analysis of the data; and to validate survey responses by comparing responses to independent sources of data.

Customer Satisfaction Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about health care provided during specific visits (including access to care, quality of care, satisfaction with how care was delivered, satisfaction with the specific care provider, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/or forecast future health care needs or to implement plans in response to new health care requirements. Specific care provider information is analyzed in order to alert medical authorities to potential problem areas where additional educational and corrective measures may be required in order to improve customer satisfaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records stored on magnetic and/or optical media.

RETRIEVABILITY:

Annual Beneficiary Survey:

1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address for purposes of initiating follow-up contacts to obtain a response to the survey; but after 90 days, the name and address are permanently deleted so that the survey respondent cannot be identified.

2. Response Records: Survey data is normally retrieved using demographic or other non-personalized elements.

3. The beneficiary and response records contain a randomly generated code which permits the identification of the survey respondent.

Customer Satisfaction Survey:

1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address, but the beneficiary identifying personal data is deleted 20 days after the mailing of the survey when follow-up correspondence (a reminder) is sent to all individuals being surveyed.

2. Response Records: Records of care providers who furnished care at a specific facility/clinic may be retrieved

only by the facility/clinic commander by name, rank (if military), provider type (e.g., physician, clinical nurse, etc.) and specialty (e.g., pediatrician.

SAFEGUARDS:

Media at the primary location are stored in a locked cage in a controlled access area when not in use; when maintained at the contract location, media are stored in cabinets or storage areas when not being used and are placed in a locked container or space within a building that is secured after hours. Result data that includes patient or provider identification is maintained in locked storage cabinets or locked areas in buildings that are secured after hours. Only authorized personnel who have received Privacy Act training are permitted access to information in the system.

Specific instructions are provided MTF commanders on the safeguards required in handling and maintaining Customer Satisfaction Survey information.

RETENTION AND DISPOSAL:

Hard copy surveys are destroyed after the information contained in survey responses is entered into a computer system.

Annual Beneficiary Survey: Data files with beneficiary specifics and results will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

Customer Satisfaction Survey: Data files with results and provider specifics will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs)/Program Review and Evaluation, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records and for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources include Services medical and dental treatment facilities and facilities contracted by DoD to perform medical care for Military members, former members and dependents. Survey information is provided by the individual patient or a parent or guardian of the individual patient. Demographic information that may be related to the patient is provided by the Defense Enrollment Eligibility Reporting System (DEERS), the Ambulatory Data System (ADS), and the Composite Health Care System (CHCS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8803 Filed 4–9–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.
ACTION: Notice of system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to add three system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on (May 12, 1999) unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240-5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607-3743.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on March 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 5, 1999.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7340

SYSTEM NAME:

Defense Joint Military Pay System-Active Component.

SYSTEM LOCATION:

Air Force military member records are located at the Defense Accounting and Finance Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–3000.

Army military member records are located at the Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

Navy military member records are located at the Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Marine Corps military member records are located at the Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military members and their dependents; retired and separated military personnel; officers of the Air Reserve, Army Reserve, and Air National Guard on extended active duty; officers and airmen of the Air Reserve and Air National Guard on active duty where strength accountability remains with the reserve component; individuals to whom active duty military personnel authorize a direct payment of a portion of their pay; military academy cadets; Navy Reserve on extended active duty; Armed Forces Health Professional Scholarship Program (AFHPSP) students; former armed forces personnel who are entitled to receive either voluntary separation incentive (VSI) or special separation benefit (SSB).

CATEGORIES OF RECORDS IN THE SYSTEM:

TYPES OF RECORDS: Master individual military pay accounts; wage and tax summaries; leave and earnings statements; Basic Military Training master record; and other generated records substantiating or authorizing Active Component military pay and allowance entitlement, deduction, or collection actions.

PAY ENTITLEMENT AND ALLOWANCES: Base pay; allowances (such as basic allowance for subsistence, basic allowance for quarters, family separations, clothing maintenance, and monetary allowances); death gratuities; time-in-service; special compensation for positions such as medical, dental, veterinary, and optometry; special pay and bonus, such as foreign duty, proficiency, hostile fire, and diving duty; incentive pay such as flying duty, parachute duty, and submarine duty; and other entitlement in accordance with the DoD Pay and Allowance Entitlement Manual. Personnel and entitlement data necessary for payment of Voluntary Separation Incentive or SSB, including member's full name, Social Security Number, pay grade, branch of service, payment address, Form W–2 address, federal and state tax withholding data (Forms W–2 and W–4), and annual installment amount.

DEDUCTIONS FROM PAY: Federal and State income tax withholding rate and amount (including authorization control files), withholding for Federal Insurance Contributions Act (FICA), Serviceman's Group Life Insurance deductions, allotments (including allottee name and address, amount, term (in months), and account or policy number), bond authorizations (including bond owner and co-owner/beneficiary names and Social Security Numbers, and recipient's address), and indebtedness and collections.

OTHER PAY INFORMATION: Name, pay grade, Social Security Number, check issue, pay dates, leave account, payment address, and Form W–2 address.

DUTY STATUS: Status adjustments relating to leave, entrance on active duty, absent without leave, confinement, desertion, sick, injured, mentally incompetent, missing, interned, promotions and demotions, and separation document code; and Armed Forces Health Professions Scholarship Program gain.

PERSONNEL INFORMATION: Rank; enlistment contract or officer acceptance form identification; duty information (duty station, personnel assignment, and unit); security investigation; test scores; language proficiency; military and civilian off-duty education; training; awards; combat tours; aviation, pilot, and flying time data; lineal precedence number; limited duty officer/warrant officer footnote; temporary active duty data; power of attorney; years in service; promotional data.

PERSONAL INFORMATION: Date of birth, citizenship, marital status, home of record, dependent information, record of emergency data, population group, sex, ethnic group, and health care coverage.

SUPPORTING DOCUMENTATION: Includes, but is not limited to, travel orders and requests; payroll attendance lists and rosters; document records establishing, supporting, reducing, or canceling entitlement; certificates and statements changing address, name, military assignment, and other individual data necessary to identify and provide accurate and timely military pay and performance credit; allotment start, stop, or change records; declarations of benefits and waivers; military pay and personnel orders; medical certifications and determinations; death and disability documents; check issuing and cancellation records and schedules; payroll vouchers; money lists and accounting records; pay adjustment authorization records; system input certifications; member indebtedness and tax levy documentation; earnings statements; employees' wage and tax reports and statements; casual payment authorization and control logs; and other documentation authorizing or substantiating Active Component military pay and allowances, entitlement, deductions, or collections. Also inquiry files, sundry lists, reports, letters, correspondence, and rosters including, but not limited to, Congressional inquiries, Internal Revenue Service notices and reports, state tax and insurance reports, Social Security Administration reports, Department of Veterans Affairs reports, inter-DoD requests, Treasury Department reports, and health education and institution inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 37 U.S.C.; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure accurate and timely military pay and allowances to active component military members (including those who are enrolled at a military academy and those who participate in voluntary separation pay, Armed Forces Health Professions Scholarship Program, basic military trainees or payment to a financial organization through electronic fund transfer program (including allotments and issuance and cancellation of United States treasury checks and bonds)); to document and account for military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayment; to establish, control, and maintain member indebtedness notices and levies; and to provide timely, complete master individual pay account review; and to provide internal and external managers with statistical and monetary reports and to maintain a record of related personnel data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits, and to compute or resolve tax liability or tax levies.

To federal, state, and local agencies to conduct computer matching programs regulated by the privacy act of 1974, for those programs authorized by law.

To the Social Security Administration to report earned wages by members for the Federal Insurance Contribution Act (FICA), accounting or tax audits, and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and

audits, life insurance accounting, disbursement and benefit determinations, and death notices.

To the American Red Cross and military relief societies to assist military personnel and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions; and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic tapes and disks, computer printouts, computer output products (microform and reports); file folders, notebooks, binders, card files, and bulk storage, and other documents.

RETRIEVABILITY:

Information is retrieved by name and Social Security Number.

SAFEGUARDS:

As a minimum, records are accessed by the person(s) responsible for servicing and authorized to use the record system in performance of their official duties, and who are properly screened and cleared for need-to-know. Additionally, at some centers, records are in office buildings protected by guards and controlled by personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

For Air Force military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–1500.

For the Army military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

For the Navy military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

For the Marine Corps military members, the system manager is the Director Military Pay, Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual should furnish full name, Social Security Number, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual should furnish full name, Social Security Number, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Individual members; DoD staff and field installations; recruiting, disbursing, and administrative offices; allotment and bond authorization forms; Social Security Administration, Treasury Department, Internal Revenue Service, Department of Veterans Affairs, and other federal agencies; financial, medical, and educational institutions; DoD Components; the on-line Allotment/Bond Authorization process, and the End-User Computer Equipment (EUCE); and state and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

T7346

SYSTEM NAME:

Defense Joint Military Pay System-Reserve Component.

SYSTEM LOCATION:

Navy reserve military member records are located at the Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Air Force reserve military member records are located at the Defense Finance And Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Army reserve military member records are located at the Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

Marine Corps reserve military member records are located at the Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Air Reserve and Air National Guard Forces in a military pay status. U.S. Army Reserve and National Guard members in a military pay status. Marine Corps reservists in the Selected, Individual Ready, Standby, and Fleet Marine Corps Reserve categories. Active Naval reservists in pay and non-pay drill units. Naval Reserve Officer Training Corps students.

Reserve military on extended active duty are covered under the Defense Joint Military Pay System-Active Component.

CATEGORIES OF RECORDS IN THE SYSTEM:

TYPES OF RECORDS: Master individual military pay accounts; wage and tax summaries; leave and earnings statements; and other generated records substantiating or authorizing Reserve Forces military pay and allowance entitlement, deduction, or collection actions.

PAY ENTITLEMENTS AND ALLOWANCES: Base pay; allowances (such as basic allowance for subsistence, basic allowance for quarters, family separations, clothing maintenance and monetary allowances); special compensation for positions such as medical, dental, veterinary, and optometry; special pay and bonus, such as foreign duty, proficiency, hostile fire, and diving duty; incentive pay such as flying duty, parachute duty, and submarine duty; and other entitlements in accordance with the DoD Financial Management Regulations, Volume 7A.

DEDUCTIONS FROM PAY: Federal and state income tax withholding rate and amount (including authorization control files), withholding for Federal Insurance Contributions Act (FICA), Serviceman's Group Life Insurance deductions, allotments (including allottee name and address, amount, term (in months), and account or policy number), bond authorizations (including bond owner and co-owner/beneficiary names and Social Security Numbers, and recipient's address), and indebtedness and collections.

OTHER PAY INFORMATION: Name, pay grade, Social Security Number, Reserve Forces calendar day performances (drill record), check issue, pay dates, leave account, payment address, and Form W–2 address.

DUTY STATUS: Status adjustments relating to leave, entrance on active duty, absent without leave, confinement, desertion, sick or injured, mentally incompetent, missing, interned, promotions and demotions, and separation document code.

PERSONNEL INFORMATION: Rank; enlistment contract or officer acceptance form identification; duty information (duty station, personnel assignment, and unit); security investigation; test scores; language proficiency; military and civilian off-duty education; training; awards; combat tours; aviation, pilot, and flying time data; lineal precedence number; limited duty officer/warrant officer footnote; temporary active duty data; power of attorney; years in service; promotional data.

PERSONAL INFORMATION: Date of birth, citizenship, marital status, home of record, dependent information, record of emergency data, population group, sex, ethnic group, and health care coverage.

SUPPORTING DOCUMENTATION: Includes, but is not limited to, travel orders and requests; payroll attendance lists and rosters; document records establishing, supporting, reducing, or canceling entitlements; certificates and statements changing address, name, military assignment, and other individual data necessary to identify and provide accurate and timely Air Reserve Forces military pay and performance credit; allotment start, stop, or change records; declarations of benefits and waivers; military pay and personnel orders; medical certifications and determinations; death and disability documents; check issuing and cancellation records and schedules; payroll vouchers; money lists and accounting records; pay adjustment authorization records; system input certifications; member indebtedness and tax levy documentation; earnings statements; employees' wage and tax reports and statements; casual payment authorization and control logs; and other documentation authorizing or substantiating Reserve Forces military pay and allowances, entitlements, deductions, or collections. Also inquiry files, sundry lists, reports, letters, correspondence, and rosters including, but not limited to, Congressional inquiries, Internal Revenue Service notices and reports, state tax and insurance reports, Social Security Administration reports, Department of Veterans Affairs reports, Treasury Department reports, inter-DoD requests, and health education and institution inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 11; 37 U.S.C.; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure accurate and timely pay and allowances to Active Reserve component military members (including those who participate in Voluntary Separation Incentive, Armed Forces Health Professional Scholarship Program, Basic Military Training, and Naval Reserve Officers Training Corps programs) or payment to a financial organization through electronic fund transfer program (including allotments and issuance and cancellation of United States treasury checks and bonds); to document and account for reserve military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayments; to establish, control, and maintain member indebtedness notices and levies; to provide timely, complete master individual pay account review; to provide internal and external managers with statistical and monetary reports and to maintain a record of related personnel data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits; to compute or resolve tax liability or tax levies.

To the Social Security Administration to report earned wages by members for FICA; accounting or tax audits; and death notices.

To the Department of Veterans Affairs to report compensation, waivers, and audits; life insurance accounting; disbursement and benefit determinations; and death notices.

To National Guard Bureaus to furnish budget data to account for expenditures within established categories.

To individual National Guard state associations to furnish reports and associated checks regarding state sponsored life insurance premiums withheld.

To the American Red Cross and military relief societies to assist military personnel and their dependents in determining the status of monthly pay, dependents' allotments, loans, and related financial transactions, and to perform other relief-related duties as requested by the service member.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts

To Federal, state, and local agencies to conduct computer matching programs regulated by the Privacy Act of 1974 for those programs authorized by law.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal

government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic tapes and disks, computer printouts, computer output products (microform and reports); file folders, notebooks, binders, card files, and bulk storage, and other documents.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing the record and who are authorized to use the record system in performance of their official duties. Additionally, at some Centers, records are in office buildings protected by guards and controlled by personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

For Navy reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

For Air Force reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

For Army reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

For Marine Corps reserve military members, the system manager is the Director of Military Pay Operations, Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act officer at the appropriate DFAS Center.

Individuals should provide name, Social Security Number, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Individual members; DoD staff and field installations; recruiting, disbursing, and administrative offices; allotment and bond authorization forms; Social Security Administration, Treasury Department, Internal Revenue Service, Department of Veterans Affairs, and other federal agencies; financial, medical, and educational institutions; DoD components; the on-line Allotment/Bond Authorization process, and the End-User Computer Equipment (EUCE); and state and local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

T7347b

SYSTEM NAME:

Defense Military Retiree and Annuity Pay System.

SYSTEM LOCATION:

Military retiree pay records are located at the Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199-2055.

Annuitant pay records are located at the Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–3000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military retirees, their dependents, and their survivors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Military retiree and annuitant pay master files with supporting documentation relating to entitlements and deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 73; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain pay and personnel information for use in the computation of military retired pay and survivor annuity pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records are provided to the Internal Revenue Service for normal wage and tax withholding.

Disclosures are made to the Department of Veterans Affairs (DVA) regarding establishments, changes and discontinuing of DVA compensation to retirees and annuitants.

Information is provided to trustees or guardians of survivors (children).

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders/notebooks/binder/visible file binders/cabinets/card files, computer magnetic tapes and paper printouts, on roll microfilm, microfiche, and optical disk.

RETRIEVABILITY:

Retrieved by name and Social Security Number of the retiree or annuitant.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official

duties who are properly screened and cleared as need-to-know. Records are stored in security file containers/cabinets/vaults/locked cabinets or rooms, protected by guards, and controlled by personnel screening, visitor registers and computer system software.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

For retiree pay records: Director of Retired Pay, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

For annuitant pay records: Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the appropriate system manager, ATTN: Privacy Act Officer.

The requester should be able to provide name, Social Security Number, place of employment, or other information available from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate system manager, ATTN: Privacy Act Officer.

The requester should be able to provide sufficient proof of identity, such as name, Social Security Number, place of employment, or other information available from the record itself.

Individuals seeking access to records in person may do so by visiting the Defense Finance and Accounting Service - Denver Center for annuitant pay records or the Director of Retired Pay, Defense Finance and Accounting Service - Cleveland Center for retiree pay records. Office hours are Monday through Friday, 8 a.m. - 3:30 p.m. The visitor must have identification such as a driver's license and Social Security card as positive proof of identity.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

From the individual concerned; financial, educational, and medical institutions; other DoD Components; state or local governments; and source documents such as reports. Members' survivors, members, guardians of survivors (children), private law firms which are executors of estates in casualty cases, and other government agencies such as the Department of Veterans Affairs and the Social Security Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8805 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice of a system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240-5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607-3743.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on March 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 5, 1999.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5015c

SYSTEM NAME:

Freedom of Information Act Requests.

SYSTEM LOCATION:

Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240-5291.

Defense Finance and Accounting Service - Denver Center, 6760 E. Irvington Place, Denver, CO 80279-5000.

Defense Finance and Accounting Service - Indianapolis Center, Indianapolis, IN 46249-0001.

Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199-2055.

Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64997-0001.

Defense Finance and Accounting Service - Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219-1879.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have requested documents under the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552).

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from the public requesting information under the Freedom of Information Act and the reply, which may include copies of the released record(s), denials, and appeals. Correspondence pertaining to the requests, the information released or withheld, summaries, logs of actions taken, and correspondence from and to other DoD and Federal agencies regarding specific requests of mutual interest.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, the Freedom of Information Act, as amended, as implemented by DFAS Regulation 5400.7-R.

PURPOSE(S):

To control administrative processing of requests for information made under the provisions of the Freedom of Information Act (FOIA), and to record statistics for the annual FOIA report.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE

Paper records in file folders and in automated formats.

RETRIEVABILITY

Retrieved by individual's name or by control number assigned to the individual case file.

SAFEGUARDS

As a minimum, records are accessed by person(s) responsible for servicing and authorized to use the record system in performance of their official duties, properly screened and cleared for the need to know. Additionally, at some locations, records are in office buildings protected by guards and controlled through personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Records are retained for a minimum of 2 years; replies to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay agency fees (request not appealed), 2 years; requests appealed, 6 years after final determination by agency; control logs, 6 years, report files, 2 years; administrative files, 2 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240-5291.

FOIA Officer, Defense Finance and Accounting Service - Denver Center, 6760 E. Irvington Place, Denver, CO 80279-5000.

FOIA Officer, Defense Finance and Accounting Service - Indianapolis Center, Indianapolis, IN 46249-0001.

FOIA Officer, Defense Finance and Accounting Service - Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199-2055.

FOIA Officer, Defense Finance and Accounting Service - Kansas City Center, 1500 East 95th Street, Kansas City, MO 64997-0001.

FOIA Officer, Defense Finance and Accounting Service - Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219-1879.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide full name, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide full name, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from requesters, from other federal agencies with collateral interest in a request, and from records which were the subject of requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8806 Filed 4–9–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Evolved Expendable Launch Vehicle (EELV) Program

This notifies the public that the Department of the Air Force, through Space and Missile Systems Center's Evolved Expendable Launch Vehicle (EELV) System Program Office (SMC/MV), intends to supplement the EELV Final Environment Impact Statement (FEIS) and Record of Decision (ROD) dated June 8, 1998. The Air Force supplement will be prepared to further the purposes of the National Environmental Policy Act (NEPA) by inviting public involvement in the evaluation of a new, supplemental proposal to the action analyzed in the original NEPA document.

The FEIS documented the impact of implementing the EELV program. At that time, two baseline vehicle configurations were evaluated: (1) A liquid-oxygen/liquid-hydrogen core booster (with the option of small, strap-on solid rocket motors), and (2) a liquid-oxygen/kerosene core booster. The Supplemental Environmental Impact Statement (SEIS) will evaluate the proposed use of some EELV vehicle variants using large, strap-on solid rocket motors to reduce launch costs, increase mission launch options, protect launch schedules, and improve mission responsiveness. These launches would take place at Cape Canaveral Air Station (CCAS) in Florida and Vandenberg Air Force Base (VAFB) in California.

In 1994, a multi-agency Space Launch Modernization Plan was developed to evaluate national space launch systems and to improve United States launch capability. The current EELV program objectives evolved from the resulting study. The purpose of the development and deployment of the EELV is to meet the U.S. Government National Mission Model, both medium and heavy-lift, at a lower cost of launch to the nation than the present expendable launch systems (which consist primarily of Delta II, Atlas II, Titan II, and Titan IV). EELV is intended to launch national security, civil, and commercial payloads. No crew-rated or cargo-return missions are planned.

On October 16, 1998, the EELV System Program Office awarded Development Agreements and Initial Launch Services contracts to two contractors, McDonnell Douglas Corporation (a wholly-owned subsidiary of the Boeing Company) and Lockheed Martin Astronautics. Furthermore, the Air Force is preparing to enter into real property agreements with both contractors to permit the use of Air Force facilities for deployment of EELV systems. These decisions were supported by the June 8, 1998 ROD as premised upon in the EELV FEIS. Full descriptions of the previously analyzed EELV systems are available in the FEIS at the following Internet address: http://ax.laafb.af.mil/axf/EELV.htm.

In accordance with the Council on Environmental Quality Regulations implementing NEPA, specifically 40 CFR 1502.9(c), ''an agency shall prepare supplements to either draft or final environmental impact statements when substantial changes in the proposed action are made relevant to environmental concerns.'' The proposed action to consider permitting the use of EELV vehicles using larger strap-on solid rocket motors may be considered a substantial change to the action

previously analyzed in the FEIS and would present different potential environmental impacts due to the use of different propellants. The size and number of solid rocket motors to be used on each launch vehicle will be proposed by the launch vehicle contractors, Lockheed Martin and the Boeing Company. The solid propellant to be used in the strap-on motors will most likely consist of ammonium perchlorate, aluminum, and organic binder. Details regarding propellant composition, propellant masses, and emissions impacts will be included in the SEIS. Because of the projected differences in the environmental impacts between the systems previously examined and the new alternative, the Department of the Air Force will prepare a supplement to the EELV FEIS.

The SEIS will analyze the potential environmental impacts resulting from the use of solid rocket motors on EELV vehicles. Both government and commercial launches will be analyzed to assess cumulative effects. The total EELV launch rate including launches using solid rocket motors are not expected to exceed those addressed in the FEIS. The first launch of a solid rocket motor variant is anticipated in 2001 at CCAS and 2002 at VAFB. EELV launches using solid rocket motors are not expected to exceed 7 to 12 per year from VAFB and 14 to 21 launches per year from CCAS.

The no-action alternative to the proposed action is to limit EELV launches from Air Force facilities to those launch vehicle variants previously analyzed in the FEIS. That is, the Government could choose not to permit the use of strap-on solid rocket motors. This would result in the use of only the systems considered in the June 1998 ROD.

Environmental issues to be analyzed in the SEIS include, but are not limited to: air quality, hazardous materials processing, hazardous waste, stratospheric impacts, health and safety, launch debris, launch noise, sonic boom impacts, construction modifications due to program changes from FEIS, and effects of new launch variants on biological species, ground waters, and all other natural and cultural resources.

The Air Force is soliciting public input and comments concerning the environmental aspects to be addressed in the SEIS. To ensure that the Air Force has sufficient time to fully consider public response, written comments need to be received no later than April 26, 1999. Comments should be mailed to: SMC/AXFV, Attn: Ted Krawczyk, Environmental Engineer, 2420 Vela Way, Suite 1467, El Segundo, CA 90245–4659. Comments may also be sent via fax (310) 363–1503, and e-mail: Theodore.Krawcyzk@losangeles.af.mil.

The SEIS is expected to be available for public review in Summer 1999. A notice of availability will be published in the **Federal Register** announcing issuance of the draft SEIS.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8977 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force proposes to amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 614–7819.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: April 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 AFCA A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Communications Agency (AFCA), Air Force installations and Military Affiliate Radio System (MARS) member stations. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by authorized personnel in the course of their official duties who are properly screened and cleared for need-to-know. Stored in locked file cabinets.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retained until reassignment or termination of membership, then destroyed by tearing to pieces, shredding, pulping, macerating or burning.'

* * * * *

F033 AFCA A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records.

SYSTEM LOCATION:

Air Force Communications Agency (AFCA), Air Force installations and Military Affiliate Radio System (MARS) member stations. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Amateur Radio Operators licensed by United States Air Force (USAF) Military Affiliate Radio System.

CATEGORIES OF RECORDS IN THE SYSTEM:

MARS Personnel Action Notification and Application for Membership in Military Affiliate Radio System. Information includes individuals name, MARS call sign, amateur call sign,

mailing address, Federal Communications Commission license class, military status, telephone number, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of Air Force, powers and duties; delegation by; as implemented by Air Force Instruction 33-106.

PURPOSE(S):

To identify MARS members, to describe and update information concerning members, to assign call signs and designator, mailing address, amateur license, telephone number, and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer diskettes.

RETRIEVABILITY:

Retrieved by name, by call sign or designator and geographic location.

SAFEGUARDS:

Records are accessed by authorized personnel in the course of their official duties who are properly screened and cleared for need-to-know. Stored in locked file cabinets.

RETENTION AND DISPOSAL:

Retained until reassignment or termination of membership, then destroyed by tearing to pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Global Communications, HQ AFCA/GCGS, 203 W. Losey Street, Room 3065, Scott Air Force Base, IL 62225–5222.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director, Global Communications, HQ AFCA/GCGS, 203 W. Losey Street, Room 3065, Scott Air Force Base, IL 62225–5222.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Director, Global Communications, HQ AFCA/GCGS, 203 W. Losey Street, Room 3065, Scott Air Force Base, IL 62225–5222.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual members and Military Affiliate Radio System officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA D

SYSTEM NAME:

Class Committee Products *(October 15, 1997, 62 FR 53599).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Registrar, Dean of the Faculty, HQ USAFA/DFR, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.'

* * * * *

CATEGORIES OF RECORDS COVERED IN THE SYSTEM:

After 'committees;' delete 'reports committee decisions' and insert 'Academy Board letter, Academic Review Committee Actions (ARC) (copies)'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.'

* * * * *

F036 USAFA D

SYSTEM NAME:

Class Committee Products.

SYSTEM LOCATION:

Office of the Registrar, Dean of the Faculty, HQ USAFA/DFR, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of cadets academically deficient at progress reports; grades, instructor comment cards, military order of merit and other military and entrance data on cadets meeting committees; Academy Board letter, Academic Review Committee Actions (ARC) (copies) and includes worksheets with coded recommendations to the Academy Board at the end of the semester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

PURPOSE(S):

Provides data on academically deficient cadets to Academic Review Committee who makes recommendations concerning cadets' future to the Academy Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, electronically in the Cadet Administrative Management Information System (CAMIS) data base and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Destroyed one year after graduation or when purpose has been served,

whichever is sooner. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Office of the Registrar, Dean of the Faculty, 2354 Fairchild Drive, Suite 6D87, U.S. Air Force Academy, CO 80840-6210.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are compiled from cadet grading and rating cycles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA H

SYSTEM NAME:

United States Air Force Academy Athletic Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Director of Athletics, HQ USAFA/AH, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry '(5) Athletic Review Committee Action.'

* * * * *

PURPOSE(S):

Add to the end of paragraph (2), 'for news releases.'

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in file folders, card files, on computers in the Sports Recruiting and Cadet Administrative Management Information data bases, and computer output products, and microfilm.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.'

* * * * *

F036 USAFA H

SYSTEM NAME:

United States Air Force Academy Athletic Records.

SYSTEM LOCATION:

Director of Athletics, HQ USAFA/AH, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy applicants, nominees and cadets; members of coaches intercollegiate booster clubs; users of Academy athletic facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Applicants/Nominees: High school transcript, athletic questionnaire, correspondence, test scores.

(2) Cadets: (a) Athletic performance tests, (b) Counseling record, (c) Intramural record, (d) Physical education record, (e) Physical fitness test, (f) Sports publicity information.

(3) Physical fitness and endurance research.

(4) Reservation forms and mailing lists.

(5) Athletic Review Committee Action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 903, United States Air Force Academy.

PURPOSE(S):

(1) Verify and evaluate athletic and academic background for possible appointment to the Air Force Academy.

(2) Monitor cadet participation and progress in physical education/intercollegiate/intramural programs for news releases.

(3) Establish standards and improve athletic programs.

(4) Contact booster club members and individuals who reserve Academy athletic facilities by mail and telephone.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Record from this system of records may be used for news releases.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files, on computers in the Sports Recruiting and Cadet Administrative Management Information data bases, and computer output products, and microfilm.

RETRIEVABILITY:

By name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in security file containers/cabinets, locked rooms and on computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

(1) Destroy one year after graduation or one year after cadet would have graduated.

(2) (a) Destroy 30 days after end of academic year. (b) Destroy upon graduation. (c) Destroy after 1 year. (d) Destroy when no longer needed. (e) Destroy after four academic years. (f) Destroy when no longer needed.

(3) Destroy when no longer needed.

(4) Destroy when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system should address written inquiries to or visit Director of Athletics, HQ USAFA/HA, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840-4475.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applicant, nominee or cadet; coaches, instructors and squadron athletic officers; educational institutions; the media; officers in charge of individual sports; Registrar's Office, and Curriculum and Scheduling Office; Stone Human Performance Laboratory; DOD agencies; individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA M

SYSTEM NAME:

Thomas D. White National Defense Award *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Plans and Current Operations Division, HQ USAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.'

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry 'nominators'.

* * * * *

F036 USAFA M

SYSTEM NAME:

Thomas D. White National Defense Award.

SYSTEM LOCATION:

Chief, Plans and Current Operations Division, HQ USAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States citizens who have contributed significantly to the national defense and security of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Nominations and supporting biographical information on nominees for the Thomas D. White Defense Award.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by.

PURPOSE(S):

Data pertaining to the Thomas D. White National Defense Award is used by a selection board in identifying an appropriate recipient for the award. The elements, which may consist of citations, certificates, and/or trophies are prepared using information provided by the nominating activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, on microfiche and in computer databases.

RETRIEVABILITY:

Retrieved by Name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Plans and Current Operations Division, HQ UAFA/XPO, 2304 Cadet Drive, Suite 350, U.S. Air Force Academy, CO 80840-5002.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers, nominators, and from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8802 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army;

Command and General Staff College (CGSC) Advisory Committee

AGENCY: U.S. Army Command and General Staff College, Ft. Leavenworth, KS.

ACTION: Notice of Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Dates of Meeting: 24–26 May 1999.

Place of Meeting: Bell Hall, Room 113, Fort Leavenworth, Kansas 66027–1352.

Time of Meeting: 17030–2000 on May 1999; 7030–2100 on 25 May 1999; and 0730–1400 on 26 May 1999.

Proposed Agenda:

1700–2000, 24 May: Review of CGSC educational program.
0730–2100, 25 May: Continuation of review.
0730–1030, 26 May: Continuation of review.
1030–1130, 26 May: Executive Session.
1300–1400, 26 May: Report to Commandant.

FOR FURTHER INFORMATION CONTACT: Dr. Philip J. Brookes, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–1352; or phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8959 Filed 4–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a routine use to the system of records notice.

DATES: This proposed action will be effective without further notice on May 12, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0210–190 TAPC

SYSTEM NAME:

Individual Gravesite Reservation Files *(July 7, 1997, 62 FR 36270).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Individual Gravesite Interment Files.'

SYSTEM LOCATION:

Delete entry and replace with 'Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 22331-0482 for Army post cemeteries and at Army installations.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active and former Armed Forces personnel and their dependents who are or will be interred in grave plots in Army post cemeteries or who reserved grave plots prior to 1975.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Gravesite record of interment (DA Forms 2122 and 2123); reservations prior to 1961; deceased individuals' name, address, date of birth, date of death, and section of grave reserved or interred in, military service, or dependent name and the relationship to service member.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To maintain records of individuals interred in Army post cemeteries; to conduct periodic surveys to determine validity of reservations; and to respond to inquiries.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To the Department of Veteran Affairs for the purposes of issuing a government headstone.'

* * * * *

A0210–190 TAPC

SYSTEM NAME:

Individual Gravesite Interment Files.

SYSTEM LOCATION:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 22331–0482 for Army post cemeteries and at Army installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and former Armed Forces personnel and their dependents who are or will be interred in grave plots in Army post cemeteries or who reserved grave plots prior to 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Gravesite record of interment (DA Forms 2122 and 2123); reservations prior to 1961; deceased individuals' name, address, date of birth, date of death, and section of grave reserved or interred in, military service, or dependent name and the relationship to service member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To maintain records of individuals interred in Army post cemeteries; to conduct periodic surveys to determine validity of reservations; and to respond to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs for the purposes of issuing a government headstone.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor in the performance of their duties. Records are kept in secure office areas in a secure building.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482 for Army post cemeteries.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this records system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482.

Individual should provide full name of veteran, or deceased individual's name and sufficient details to permit locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PED-A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482.

Individual should provide full name of veteran, or deceased individual's name and sufficient details to permit locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her representative or next-of-kin; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8804 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 12, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0210–130 DALO

SYSTEM NAME:

Laundry and Dry Cleaning Accounting Files *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Laundry Accounting Files'.

SYSTEM LOCATION:

Delete entry and replace with 'Laundry and Dry Cleaning Facilities located on Army installations world-wide. Official mailing addresses are published as an appendix to the Army's compilation of system of record notices'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry 'and/or dry cleaning' and 'or dry cleaning'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'Army Regulation 210-130, Laundry and Dry Cleaning Operations'.

* * * * *

PURPOSE(S):

Delete from entry 'and dry cleaning'.

* * * * *

STORAGE:

Delete 'magnetic tape'.

* * * * *

RETENTION AND DISPOSAL:

Delete 'or dry cleaning' from entry.

* * * * *

A0210–130 DALO

SYSTEM NAME:

Laundry Accounting Files.

SYSTEM LOCATION:

Laundry and Dry Cleaning Facilities located on Army installations world-wide. Official mailing addresses are published as an appendix to the Army's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel who are authorized payroll deduction service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for laundry start or stop deductions (DA Form 3799), laundry mark, organizational code number, amount deducted from pay monthly for laundry service, date, and organization name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and Army Regulation 210-130, Laundry and Dry Cleaning Operations.

PURPOSE(S):

To determine patrons authorized laundry service, to verify receipt and shipment of individual laundry bundles, and amount of money deducted from soldier's pay; for management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records

or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessible only to authorized individuals having need therefor.

RETENTION AND DISPOSAL:

Records are retained for 1 year, after which they are destroyed by shredding/erasing, DA Form 3799 is retained indefinitely until laundry service is canceled by the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, 500 Army Pentagon, ATTN: DALO-TST, Washington, DC 20310–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Laundry Facility at the Army installation/activity where service was obtained.

Individual should provide name and pertinent data that will facilitate locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Laundry Facility at the installation providing service.

Individual should provide name and pertinent data that will facilitate locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and DA Form 3799.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8856 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add systems of records.

SUMMARY: The Defense Logistics Agency proposes to add two systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, weer submitted on March 29, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S400.50 CA

SYSTEM NAME:

Family Support Program Volunteer Files.

SYSTEM LOCATION:

Records are maintained by the Office of Human Resources, Corporate Administration, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to assist with family support programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files contain name, Social Security Number, electronic and physical addresses, telephone numbers, date of birth, education and training, experience, honors and awards, and associated data. The file will also contain information pertaining to selection, duties, performance, and separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1588, Authority to accept certain voluntary services; and E.O. 9397 (SSN).

PURPOSE(S):

To screen volunteers who wish to assist with family support programs and to document participation in those programs. Records may also be used as a basis to waive or reduce fees associated with participation in DLA family or day care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

To government and private vendor training facilities and educational institutions for training purposes.

To physicians, dentists, medical technicians, hospitals, or health care providers in the course of obtaining emergency medical attention.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in secure buildings or areas with access limited to only those individuals whose duties require access. The computer files are password controlled with system generated forced password-change protocols. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Files are retained for 2 years after the individual departs and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Military Personnel and Quality of Life Group, Office of Human Resources, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular Defense Logistics Agency Primary Level Field Activities involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular Defense Logistics Agency Primary Level Field Activities involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject, individuals listed as references, employers, supervisors, and training facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S400.60 CA

SYSTEM NAME:

DLA Guest Lodging Files.

SYSTEM LOCATION:

Records are maintained by the Quality of Life Offices of the Defense Supply Center Columbus, 3990 Broad Street, Columbus, OH 43216-5000; the Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297-5000; and the Defense Depot Susquehanna Pennsylvania (DDSP-HMF), 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply to stay in DLA guest lodging during temporary duty travel, permanent change of station moves, house-hunting trips, and similar situations warranting facility use.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files include name; Social Security Number; home and electronic addresses; home telephone number; travel order data; family member data; driver's license number; license plate number; vehicle number, make, model, and year; and billing and payment data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 9397 (SSN); DoD Directive 4001.1, Installation Management; and DoD Directive 4165.63, DoD Housing.

PURPOSE(S):

The records are maintained to determine eligibility for facility use; to register and bill occupants for use of guest lodging; and to account for rentals, furnishings, and cash receipts. The records may also be used to prepare statistical reports, stripped of personal identifiers, on occupancy use and cost effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in secure buildings or areas with access limited to only those individuals whose duties require access. The computer files are password controlled with system generated forced password-change protocols. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Records are cutoff at the end of the fiscal year, retained for three fiscal years, and then destroyed. Rejected applications are destroyed 1 year from date of rejection.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Military Personnel and Quality of Life Group, Office of Human Resources, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221; the Commanders of the Defense Supply Center Columbus, 3990 Broad Street, Columbus, OH 43216-5000; the Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297-5000; and the Defense Depot Susquehanna Pennsylvania (DDSP-HMF), 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy

Act Officer of the particular DLA activity involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA activity involved.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject and gathered from travel orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8807 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Environmental Impact Statement For Proposed Open-Water Placement of Dredged Material At Site 104 Queen Anne's County, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Extension of Comment Period.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is announcing today the extension of the comment period for the Draft Environmental Impact Statement For Proposed Open-Water Placement of Dredged Material At Site 104 Queen Anne's County, Maryland.

DATES: Submit comments on or before June 1, 1999.

ADDRESSES: Questions, comments, or requests for copies of the Draft Environmental Impact Statement should be directed to Mr. Wesley E. Coleman Jr. at the Corps of Engineers, Baltimore District (ATTN: CENAB-PL-P), P.O. Box 1715, Baltimore, MD 21203–1715. Or e-mail wesley.e.coleman@usace.army.mil

FOR FURTHER INFORMATION CONTACT: Mr. Wesley E. Coleman Jr. at facsimile (410) 962–4698.

SUPPLEMENTARY INFORMATION: A Notice of Availability (NOA) and a summary of the proposed action was published in the **Federal Register** (64 FR 9480) on February 26, 1999. The U.S. Army Corps of Engineers, Baltimore District is evaluating the potential use of Site 104 as an open-water placement area. Site 104 is located in the Chesapeake Bay one-half mile north of the Chesapeake Bay Bridge and one mile west of Kent Island. Open-water placement is proposed for approximately 18 million cubic yards of dredged material from the mainstem Chesapeake Bay channels leading to the port of Baltimore. The Maryland Port Administration has recommended the use of Site 104 for open-water placement of clean sediment beginning in 1999. No decision has been made to use the site. The Baltimore District will analyze and incorporate all public comments on this Draft Environmental Impact Statement before making a final decision.

The DEIS and associated technical appendices are available at the following area libraries:

Anne Arundel County Public Library, North County Branch, 1010 Eastway Drive, Glen Burnie, MD 21060; Queen Anne's County Free Library, 121 South Commerce Street, Centreville, MD 21617; Kent County Public Library, 408 High Street Chestertown, MD 21620; Frederick Douglas Library, University of MD, Eastern Shore, Backbone Road, Princess Anne, MD 21853–1299; Miller Library, Washington College, 300 Washington Avenue, Chestertown, MD 21620; MD State Law Library, Court of Appeals Building, 361, Rowe Boulevard, Annapolis, MD 21401; Queen Anne's County Public Library, Kent Island Branch, 200 Library Circle, Stevensville, MD 21666; Annapolis Library, 1410 West Street, Annapolis, MD 21401; Broadneck Library, 1275 Green Holly Drive, Annapolis MD 21401; Reference Library, State Department of Legislation, 90 State Circle, Annapolis MD 21401.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–9149 Filed 4–9–99; 8:45 am]

BILLING CODE 3710–41–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Supplement to the Final Environmental Impact Statement (SEIS) for the New Hampshire Department of Transportation (NHDOT) Circumferential Highway Project—Nashua, Hudson, Litchfield, and Merrimack, New Hampshire

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The New England District of the U.S. Army Corps of Engineers announces its intent to prepare a Supplement to the Final Environmental Impact Statement (SEIS) for the New Hampshire Department of Transportation (NHDOT) Circumferential Highway Project-Nashua, Hudson, Litchfield, and Merrimack, New Hampshire. The Corps of Engineers will be evaluating a permit application for the proposed work under section 404 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the SEIS should be addressed to Mr. Frank DelGiudice, Senior Project Manager, New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742–2751. Phone: (978) 318–8832.

SUPPLEMENTARY INFORMATION:

1. The Nashua-Hudson region of southern New Hampshire is experiencing rapid population and economic growth which necessitates the expansion of the region's transportation system. The construction of a By-Pass Highway around Nashua's northeast quadrant is proposed to provide relief for existing and projected highway capacity deficiencies and to enhance traffic flow in the area. Various social, economic, and environmental impacts will occur and were documented for a Full Build Circumferential Highway in the Final Environmental Impact Statement (FEIS) published in October 1993. The applicant is proposing to proceed with a Partial Build including the northern segment from NH route 111 in the Town of Hudson northerly and westerly to an improved section of the FE Everett Turnpike in the Town of Merrimack. The Army Corps of Engineers will have to decide whether and under what circumstances to grant a Federal permit for the proposed Partial Build work. Therefore we have decided to prepare an SEIS to aid in agency decision making and to assure compliance with the National

Environmental Policy Act (NEPA). Evaluation and documentation of impacts to historic, archaeological, public park, and recreation areas will be prepared in conformance with Section 4(f) of the U.S. Department of Transportation Act.

2. That FEIS did not completely document impacts of a Partial Build, therefore a Supplement to the FEIS will be prepared to insure major issues associated with the Partial Build alternative have been identified. Due to the time elapsed since release of the FEIS, potential changes in transportation patterns and existing environmental conditions, the SEIS will include updates to the existing conditions information contained in the FEIS.

3. Proposed Action: The Partial Build project proposed by the applicant is a 7.50 mile long section of the previously studied 12 mile long 4-lane limited access circumferential highway. It is to be built on a new alignment located primarily easterly and northerly of the City of Nashua forming an arc around the central business districts of Nashua and Hudson. As documented in the FEIS, Alternative 9 was defined for the Full Build which was a combination of sections of other alternatives. The proposed Partial Build of Alternative 9 begins at NH Route 111 in the center of Hudson running northerly and then westerly through Litchfield, crossing the Merrimack River and returning to the FE Everett Turnpike at a new Exit 9 in Merrimack. The interchange at Exit 9 will include improvements to the FE Everett Turnpike in that section. The purpose of the proposed Partial Build is to add a new crossing of the Merrimack River north of the existing crossings connecting Nashua and Hudson to assist east-west traffic movements in the central and northern greater Nashua region. Should other reasonable and practicable alternatives arise out of the scoping process they too will be evaluated.

4. Alternatives: In the FEIS various alternative alignments were considered to reduce traffic in the region, particularly in the Central Business Districts of Nashua and Hudson. In addition to these alignments, No Action and Transportation System Management/Transportation Demand Management (TSM/TDM) alternatives were considered. Based on the consideration of the impacts presented and public input, Alternative 9 was defined for the Full Build which was a combination of other alternatives. The FEIS information separated the highway into a southern and northern segment.

a. *The Southern Segment*: A 0.75 mile section of the Southern Segment is currently being constructed as a connection from NH Route 3–A in southern Hudson to the new Exit 2 of the FE Everett Turnpike in southern Nashua. The remainder of the Southern Segment from NH Route 3–A to NH Route 111 is not being proposed as part of the project.

b. *The Northern Segment*: A 7.5 mile section from NH Route 111 in Hudson northerly and westerly to the FE Everett Turnpike in Merrimack has been defined which consists of four linked sections that have individual as well as additive benefits. The sections are: (1) From the FE Everett Turnpike, proposed Exit 9 southerly and easterly to US Route 3, Daniel Webster Highway in Merrimack; (2) from US Route 3, DW Highway in Merrimack, crossing the Merrimack River, easterly to NH Route 3-A in Litchfield; (3) from NH Route 3-A easterly to NH Route 102 in Litchfield; and (4) from NH Route 3-A in Litchfield southerly to NH Route 111 in Hudson.

c. *No Action Alternative*: Under the No Action Alternative, the traffic will continue to use the existing street and highway network.

d. *The TSM/TDM Alternative*: The purpose of studying the TSM/TDM alternative in the FEIS was to encourage maximum utilization and energy efficiency of the existing transportation system. Many projects have been implemented in the region for purposes of TSM and TDM improvements.

5. Scoping process:

a. Public meetings were conducted during the period of June 1990 to July 1992 introducing the Full Build project and soliciting comments. The Corps of Engineers has held a preliminary coordination meeting with Federal and State agencies to identify issues of concern to be studied in the SEIS.

b. The opportunity for public comment will occur at three times during the SEIS process. The first set of public meetings will be the Scoping/ Kick-off Meeting Workshops held in each impacted municipality in May 1999. The second opportunity will be at Public Informational workshops held in each municipality for purposes of informal comment on the Draft SEIS in the fall 1999. The third opportunity will be at the Public Hearing held by the Corps of Engineers immediately following the Public Informational Workshops in the fall of 1999.

c. It is anticipated that the following agencies will continue to accept Cooperating Agency status for the SEIS study:

(1) U.S. Environmental Protection Agency.

(2) U.S. Department of Interior—Fish and Wildlife Service.

(3) U.S. Department of Transportation—Federal Highway Administration.

(4) U.S. Department of Agriculture—Natural Resource Conservation Service.

d. The SEIS will analyze the potential social, economic, and environmental impacts to the region resulting from the proposed Partial Build. The study will include analysis of the updated existing traffic conditions and projections of the Partial Build and related impacts to air quality, noise, water quality, and wetlands. Construction and operational phase impacts of the four sections will be considered as well as cumulative and secondary impact. The SEIS will include the evaluation and documentation of impacts to historic, archeological, public park, and recreation areas will be prepared in conformance with Section 4(f) of the U.S. Department of Transportation Act.

6. Scoping Kick-off Meetings: The Corps of Engineers in coordination with NHDOT plans to hold four individual Scoping Kick-off Meeting Workshops in each of the affected municipalities. These workshops will be conducted with an open forum format and held at the following locations from 4:00 to 8:00 PM:

a. Tuesday, May 4, 1999—Griffen Memorial School, Litchfield, NH.

b. Thursday, May 6, 1999—Town Hall Court Room, Merrimack, NH.

c. Tuesday, May 11, 1999—Alvirne High School, Hudson, NH.

d. Thursday, May 13, 1999—City Hall Auditorium, Nashua, NH.

All interested agencies, organizations and publics are invited to attend this meeting. Sufficient local notification will be provided.

7. Availability: It is anticipated that the Draft SEIS would be made available for review in October 1999. The Final SEIS on this permit action is anticipated in late 1999.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–8958 Filed 4–9–99; 8:45 am]

BILLING CODE 3710–GT–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Delete and amend record systems.

SUMMARY: The Department of the Navy proposes to delete two systems of records and amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES The actions will be effective on May 12, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete and amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: April 5, 1999.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

Deletions

N05371–1

SYSTEM NAME:

Conflicts of Interest and Employment Activities (*February 22, 1993, 58 FR 10759*).

Reason: Records are no longer maintained or retrieved by name and/or personal identifier. All ''personal'' records have been destroyed.

N12950–4

SYSTEM NAME:

Naval Audit Training Database (*February 22, 1993, 58 FR 10826*).

Reason: System of records is no longer needed. The Department of the Navy's system of records notice N05000–2, entitled ''Administrative Personnel Management System'', meets the collection requirements.

Amendments

N04064–1

SYSTEM NAME:

USNA Laundry and Drycleaning Charge Account (*September 9, 1996, 61 FR 47483*).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''USNA Laundry-Drycleaning Computer Business System.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who utilize the Naval Academy Laundry and Drycleaning Plant as cash, credit, or charge customers.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Information is collected on Form NDW–USNA–DMH–4064/14 and includes applicant's name; Social Security Number, rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from the business system and/or recorded on accounts receivable, ledgers, journals, charge tickets and check listings, and to the business system database. Customer transaction information is collected via the computer business system which supports the billing process. In addition to customer transactions, the system maintains the customers' address, telephone number, and preference of provided service.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To allow for the establishment of an individual charge account at the Naval Academy Laundry and Drycleaning Plant. To allow for the tracking of customer usage of the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing and management (resource allocation) purposes by the officials and employees of the Plant.''

* * * * *

STORAGE:

Delete entry and replace with ''Hard copy, magnetic minicassette tape form, and magnetic data cartridge.''

RETRIEVABILITY:

Delete entry and replace with ''Name and telephone number.''

SAFEGUARDS:

Add to entry ''Computer records are safeguarded through selective file access, passwords, and port controls.''

* * * * *

N04064–1

SYSTEM NAME:

USNA Laundry-Drycleaning Computer Business system.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who utilize the Naval Academy Laundry and Drycleaning Plant as cash, credit, or charge customers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW–USNA–DMH–4064/14 and includes applicant's name; Social Security Number; rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from the business system and/or recorded on accounts receivable, ledgers, journals, charge tickets and check listings, and to the business system database. Customer transaction information is collected via the computer business system which supports the billing process. In addition to customer transactions, the system maintains the customers' address, telephone number, and preference of provided service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To allow for the establishment of an individual charge account at the Naval Academy Laundry and Drycleaning Plant. To allow for the tracking of customer usage of the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing and management (resource allocation) purposes by the officials and employees of the Plant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the

DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, magnetic minicassette tape form, and magnetic data cartridge.

RETRIEVABILITY:

Name and telephone number.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is routinely limited to the billing clerk processing the application and recording activity on the account. Records are secured within a locked office in a locked building on a military installation when not actually in use. Computer records are safeguarded through selective file access, passwords, and port controls.

RETENTION AND DISPOSAL:

Hard copy records are retained in the current file area as long as the charge account is active. These records are then retired and kept in secured storage for two years and then destroyed. Cassette tape records are of two types, daily and journal (monthly recapitulation). These tapes are erased on a daily or monthly basis, respectively, during the preparation of the following day's or month's activity record.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for the charge account, from daily laundry and drycleaning will-call tickets (charges for goods and services provided) and from records of payment by charge account holders (check listings).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant for cash or credit settlement for damaged or lost articles.''

* * * * *

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant for cash or credit settlement for damaged or lost articles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW–USNA–DMH–4064/15 and includes claimant's name; Social Security Number; rank (if applicable); home and work addresses and telephone numbers; description, original cost and date of purchase of item(s) for which claim is filed, and circumstances of loss or extent of damage; claim number, disposition, and remarks by approving authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To investigate claims for cash or credit settlement for damaged or lost articles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy form.

RETRIEVABILITY:

Name of customer and date laundry was turned in for cleaning.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is limited to the official processing of the claim and the clerk who maintains the file and prepares the administrative paperwork. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Retained in the current file area for one calendar year after the close of the individual's claim. The record is then stored for one more year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual who filed the claim and offices who are processing the claim.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8801 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 12, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: April 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05820–1

SYSTEM NAME:

International Legal Hold Files *(February 22, 1993, 58 FR 10781).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Foreign Criminal Jurisdiction Files''.

SYSTEM LOCATION:

Delete entry and replace with ''U.S. Naval Legal Officers in a foreign country and the Office of the Judge Advocate General (International and Operational Law Division), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Military personnel, members of civilian component and their dependents, and contractor employees and their dependents who have had criminal charges lodged against them in a foreign country.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry ''10 U.S.C. 1037''.

PURPOSE(S):

In line 6, delete the word ''the'' and insert the words ''foreign criminal litigation, foreign confinement, and''.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy when 2 years old or purpose is served, whichever is earlier''.

SYTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Policy Official: Judge Advocate General, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

Record Holder: Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices''.

* * * * *

N05820–1

SYSTEM NAME:

Foreign Criminal Jurisdiction Files.

SYSTEM LOCATION:

U.S. Naval Legal Offices in a foreign country and the Office of the Judge Advocate General (International and Operational Law Division), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, members of civilian component and their dependents, and contractor employees and their dependents who have had criminal charges lodged against them in a foreign country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized summaries and card files containing copies of legal documents received and filed relative to the case, statements, affidavits, handwritten notes, and other miscellaneous data about the particular case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1037; and E.O. 9397 (SSN).

PURPOSE(S):

Used by foreign civilian attorneys in representing the accused, by the accused's military advisor in seeking an expeditious settlement of the case; by supervisory personnel in the performance of their official duties when monitoring foreign criminal litigation, foreign confinement, and legal hold status of the individuals involved.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computers, magnetic tape, file folders and file cards.

RETRIEVABILITY:

Files are retrieved by name and Social Security Number.

SAFEGUARDS:

Only personnel in the International and Operational Law Department are authorized access. Offices are kept locked when not occupied. Computers are password protected.

RETENTION AND DISPOSAL:

Destroy when 2 years old or purpose is served, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Judge Advocate General, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

Record Holder.—Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law), 1322 Patterson Avenue SE, Suite 3000. Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law Division), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide name, rate and service number, Military I.D. or any standard I.D. showing applicant's photo shall be sufficient for personal visits.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system, should address written inquiries to the Commanding Officer, head of the organization in question, or the Deputy Assistant Judge Advocate General (International and Operational Law), 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide name, rate and service number, Military I.D. or any standard I.D. showing applicant's photo shall be sufficient for personal visits.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Foreign judicial system, accused, attorneys representing accused, military legal advisor, Provost Marshal's office, subject's commanding officer, witnesses, and the complainant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8857 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

[FE Docket No. 96–99–LNG]

Office of Fossil Energy; Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Order Extending Authorization to Export Liquefied Natural Gas From Alaska

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that DOE issued DOE/FE Opinion and Order No. 1473 (Order 1473) on April 2, 1999, extending the authorization held by Phillips Alaska Natural Gas Corporation and Marathon Oil Company (Applicants) to export liquefied natural gas (LNG) from the State of Alaska to Japan for an additional five years, from April 1, 2004, through March 31, 2009. The Applicants currently are authorized to export approximately 64.4 billion cubic feet of LNG per year. This export originally was approved by the Federal Power Commission in 1967 (37 F.P.C. ¶ 777). During the extension period, the natural gas to be exported will be produced from gas fields owned or controlled by the Applicants in the Cook Inlet area of Alaska. The natural gas will be manufactured into LNG at their existing liquefaction plant near Kenai, Alaska, and transported by tanker to Japan for sale to Tokyo Electric Power Company, Inc. and Tokyo Gas Company, Ltd., the two largest electric and gas utilities in Japan. In approving the export extension, DOE determined there are sufficient regional supplies of natural gas to satisfy local and export demand through the extension period and, in addition, an extension would continue tangible benefits to the Alaskan economy, energy production, and international trade.

Order 1473 may be found on the FE web site at http://www.fe.doe.gov, or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0334, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 5, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99–9000 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Rocky Flats Field Office; Notice of Intent To Solicit Applications, Competitiveness for Financial Assistance

AGENCY: Rocky Flats Field Office (DOE).

ACTION: Notice of intent to solicit competitive applications/proposals for financial assistance.

SUMMARY: The Rocky Flats Field Office (RFFO) of the Department of Energy is entrusted to contribute to the welfare of the nation by providing the scientific foundation, technology, policy and institutional leadership necessary to achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure National defense. RFFO intends

to fund a series of grants in special emphasis programs to encourage programs to train Native American, African American, Hispanic American, Asian-Pacific American, Women and Disabled Students to pursue training in the fields of sciences and engineering; and to fund local community projects contributing to diversity-related programs.

DATES: Applications may be submitted on or before May 12, 1999. Applications received within 30 days from the date of this announcement, will be considered; applications received after that date may or may not be considered depending on the status of proposal review and selection.

ADDRESSES: Department of Energy, Rocky Flats Field Office, Contracts Management Division, P.O. Box 928, B460, Golden, Colorado 80402–0928

FOR FURTHER INFORMATION CONTACT: Hugh Miller, Department of Energy Rocky Flats Field Office, P.O. Box 928, B460, Golden, Colorado 80402–0928, (303) 966–7411, for application forms and additional information. Completed applications or proposal must be sent to the addresses heading.

SUPPLEMENTARY INFORMATION: DOE is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications/proposals submitted in response to this notice.

Availability Of Fiscal Year 1999 Funds

With this publication; DOE RFFO is announcing the availability of up to $300,000 in grant funds for fiscal year 1999. RFFO anticipates that six or less grants will be made for a total not to exceed $300,000. The awards will be made through a competitive process. Projects may cover a period of up to 3 years.

Restricted Eligibility

Eligible applicants for the purposes of funding under this notice include organizations residing in Colorado proposing to implement minority science and engineering projects in Colorado as described in the summary section of this announcement. Applicants are encouraged to propose project cost-sharing or sharing of in-kind services or resources. The awards will be made through a competitive process to organizations and institutions located in the State of Colorado. The Catalog of Federal Domestic Assistance number assigned to this program is 81.116.

Evaluation Criteria

Applications will be reviewed by a panel composed of Department of Energy RFFO representatives. Successful proposal(s) will be selected on the opinion of panel members of proposals most able to meet the objectives listed in the summary section of this announcement and best able to meet the needs of this office.

DOE RFFO hereby reserves the right to fund, in part or whole, any, all, or none of the proposals submitted in response to this request. All applicants will be notified in writing of the action taken on their applications. Applicants should allow approximately 90 days for DOE evaluation. The status of any application during the evaluation and selection process will not be discussed with applicants. Unsuccessful applications will not be returned to the applicant.

Issued in Golden, Colorado.

Dated: March 29, 1999.

Hugh G. Miller,

Contracting Officer.

[FR Doc. 99–9001 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 19, 1999, 1:00 p.m. to 6:00 p.m.; Thursday, May 20, 1999, 8:30 a.m. to 6:00 p.m.; and Friday, May 21, 1999, 8:30 a.m. to 12:00 noon.

ADDRESSES: Princeton Plasma Physics Laboratory (Melvin Gottlieb Auditorium); U.S. Route #1; Princeton, N.J., 08543.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Committee will hear presentations on fusion research at Princeton Plasma Physics Laboratory (PPPL), Naval Research Laboratory, and universities. The Committee will tour the PPPL facilities and receive a briefing on the three ongoing proof-of-principle programs.

Tentative Agenda

Wednesday, May 19, 1999

1:00 p.m.—Tour PPPL Facilities

6:00 p.m.—Briefing on Fusion Research at PPPL

Thursday, May 20, 1999

8:30 a.m.

Continue PPPL Briefing

Report on Status of Proof-of-Principle Programs

Briefing on Fusion Research at the Naval Research Laboratory

Briefing on Fusion Research at the Universities

Report on Status of the Goals and Metrics Panel Activities

6:00 p.m.—Adjourn

Friday, May 21, 1999

8:30 a.m.—Continue Discussions, Public Comments

12:00 noon—Adjourn

Public Participation

The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (email). Please make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes

We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; I–190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on April 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9002 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board—Task Force on Fusion Energy.

DATES AND TIMES: Thursday, April 29, 1999, 8:30 a.m.–5:00 p.m. and Friday, April 30, 1999, 8:30 a.m.–12:30 p.m.

ADDRESSES: Princeton Plasma Physics Laboratory, Conference Room B–318, Route 1 North, Plainsboro, New Jersey 08543.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on Fusion Energy is to review the Department of Energy's plans for research and development of four fusion related technologies—pulsed-power, lasers, ion drivers, and magnetic fusion—and to provide advice to the Secretary of Energy Advisory Board on how to structure the Department's fusion energy programs, both inertial and magnetic. The review is to focus on the scientific quality of the programs, the goals and objectives of the programs, and the energy potential of each technology. The findings and recommendation of the Task Force on Fusion Energy are to comment on the goals and objectives of the Department's fusion energy related programs, provide a critique of the current development strategies, suggest changes in the overall fusion energy roadmap, and recommended funding levels.

Tentative Agenda

Thursday, April 29, 1999

8:30–8:45 a.m.—Opening Remarks, Introductions and Objectives—Dr. Richard Meserve, Task Force Chairman

8:45–10:45 a.m.—Briefing and Discussion: Fusion Energy Potential in the Energy Marketplace

10:45–11:00 a.m.—Break

11:00–12:00 p.m.—Briefing and Discussion: Fusion Energy's Links to Other Fields

12:00–1:00 p.m.—Lunch

1:00–2:00 p.m.—Briefing and Discussion: International Fusion Energy Programs and Collaborations

2:00–4:30 p.m.—Briefing and Discussion: Magnetic Fusion—Key Science Issues

4:30–4:45 p.m.—Public Comment Period

4:45 p.m.—Adjourn

Friday, April 30, 1999

8:30–8:35 a.m.—Opening Remarks and Objectives—Dr. Richard Meserve, Task Force Chairman

8:35–10:30 a.m.—Briefing and Discussion: Magnetic Fusion Portfolio

10:30–10:45 a.m.—Break

10:45–11:45 a.m.—Briefing and Discussion: Magnetic Fusion Technology

11:45–12:15 p.m.—Briefing and Discussion: Magnetic Fusion Summary and Budget Requirements

12:15–12:30 p.m.—Public Comment Period

12:30 p.m.—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Plainsboro, New Jersey, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Further information on the Task Force on Fusion Energy may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on April 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9003 Filed 4–9–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–271–000]

Algonquin Gas Transmission Company; Notice of Application

April 6, 1999.

Take notice that on March 25, 1999, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77251–1642, filed an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity to construct, own, operate, and maintain a pipeline lateral, meter station, tap, and appurtenant facilities (collectively called the Lake Road Lateral) to render a firm lateral transportation service for up to 146,000 Dth/d to Lake Road Generating Company, L.P. (Lake Road), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Algonquin proposes to construct, own, operate, and maintain 9,500 feet of 16-inch pipeline lateral extending from a point on its 24-inch and 30-inch mainline system in the Town of Putnam, Windham County, Connecticut to a proposed tie-in with the proposed Lake Road Plant, a new electric generating facility that will be located in Killingly County, Connecticut. The pipeline lateral is proposed to traverse the Quinebaug River by way of the horizontal directional drill method. Additionally, Algonquin will also construct a metering station, tap, and appurtenant facilities at the Lake Road Plant. The estimated cost of the proposed facilities is $4.7 million. The proposed in-service date is August 1, 2000, and Algonquin proposes to commence construction in May 2000. Algonquin states that it has entered into a Precedent Agreement and a Service Agreement with Lake Road to transport up to 146,000 Dth per day, for a primary term of 20 years. Algonquin states that the transportation service will be performed under Algonquin's

existing Part 284 Rate Schedule AFT–CL. Algonquin contends that gas will be delivered to the Lake Road Lateral by other shippers who have firm entitlements on the existing Algonquin system, or by shippers utilizing interruptible transportation or by firm capacity released by shippers with existing firm capacity rights on the system.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before April 15, 1999, file with the Federal Energy Regulatory Commission, 888 1st 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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 to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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 Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission 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 Algonquin to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–8969 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1915–000]

SCC–L2, L.L.C.; Notice of Filing

April 6, 1999.

Take notice that on April 2, 1999, SCC–L2, L.L.C. (SCC–L2) filed a Supplement to its Application to the Commission for acceptance of SCC–L2 Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; the waiver of certain Commission regulations; acceptance and approval of two power purchase agreements with Enron Power Marketing, Inc. and an Interconnection Agreement with the Tennessee Valley Authority. The Supplement consists of the Interconnection Agreement with the Tennessee Valley Authority which had not been executed at the time SCC–L2 filed its Application.

SCC–L2 intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8970 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–59–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

April 5, 1999.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company Geysers Power

[Docket No. EC99–59–000]

Take notice that on March 31, 1999, Pacific Gas and Electric Company (PG&E) and Geysers Power Company, LLC (Geysers Power) tendered for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a Joint Application for Authorization to Transfer Jurisdictional Assets and Request for Expedited Approval Pursuant to Section 203 of the Federal Power Act (Joint 203 Application) in conjunction with a series of transactions through which PG&E will divest certain generating assets, and related FERC-jurisdictional facilities, by sale to Geysers Power.

Copies of this filing were served on the California Public Utilities Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. SCC–L1 L.L.C.

[Docket No. EG99–80–000]

Take notice that on March 31, 1999, SCC–L1, L.L.C. (SCC–L1), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an Amendment to Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L1 would consist of a 460 MW natural gas-fired simple cycle power plant in Haywood County, Tennessee and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. SCC–L3 L.L.C.

[Docket No. EG99–84–000]

Take notice that on March 31, 1999, SCC–L3, L.L.C. (SCC–L3), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an Amendment to Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L3 would consist of a 390 MW natural gas-fired simple cycle power plant in Union County, Mississippi and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. New Hampshire Electric Cooperative Inc. v. Public Service Company of New Hampshire

[Docket No. EL99–52–000]

Take notice that on March 29, 1999, New Hampshire Electric Cooperative, Inc. tendered for filing a Complaint Request for Initiation of Investigation, Motion for Consolidation for Purposes of Hearing and Decision and, to the Extent Necessary, Request for Rehearing of New Hampshire Electric Cooperative, Inc.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Michigan Gas Exchange, L.L.C.

[Docket No. ER99–1156–000]

Take notice that on March 31, 1999, Michigan Gas Exchange, L.L.C. (MGE) submitted its petitioned to the Commission for Change in Status. MGE amends that filing with additional statements.

Comment date: April 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER99–2307–000]

Take notice that on March 30, 1999, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission executed form Service Agreements between NMPC and multiple parties (Purchasers). The Service Agreements specify that the Purchasers have signed on to and have agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchasers to enter into separately scheduled transactions under which NMPC will sell to the Purchasers capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for each Purchaser.

NMPC is requesting an effective date of April 1, 1999 for the agreements.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER99–2308–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on March 30, 1999 tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to PP&L EnergyPlus Co. (PP&L EnergyPlus) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement with PP&L EnergyPlus becomes effective as of March 31, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and PP&L EnergyPlus.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corporation on behalf of Monongahela Power Company; The Potomac Edison Company; West Penn Power Company (Allegheny Power)

[Docket No. ER99–2309–000]

Take notice that on March 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 20 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of March 29, 1999, to Duke Energy Trading and Marketing, L.L.C.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on behalf of Monongahela Power Company; The Potomac Edison Company, and West; Penn Power Company (Allegheny Power)

[Docket No. ER99–2310–000]

Take notice that on March 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 49 to add American Municipal Power-Ohio, Inc. to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

Copies of the filing have been provided to the Public Utilities

Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER99–2311–000]

Take notice that on March 30, 1999, Carolina Power & Light Company (CP&L) tendered for filing revised versions of its market-based rate schedule and code of conduct. CP&L's proposed revisions to its market-based rate schedule enable it to sell energy and capacity at market-based rates to a marketing affiliate subject to the usual restrictions on sales by regulated utilities to affiliates engaged in power-marketing activities. CP&L's proposed revisions to its code of conduct authorize it to broker energy and capacity on behalf of its marketing affiliate, subject to certain restrictions designed to protect the CP&L ratepayers.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER99–2312–000]

Take notice that on March 31, 1999, Southern California Edison Company (SCE) tendered for filing the Amendment No. 2 to the Los Angeles-Edison Exchange Agreement (Amendment) between SCE and The Department of Water and Power of the City of Los Angeles (Los Angeles).

The Amendment modifies certain rate and termination provisions of Los Angeles-Edison Exchange Agreement regarding the Palo Verde-Devers transmission service provided to Los Angeles under the agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Agway Energy Services—PA, Inc.

[Docket No. ER99–2313–000]

Take notice that on March 31, 1999, Agway Energy Services—PA, Inc. (AES) petitioned the Commission for acceptance of AES–PA Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

AES intends to engage in wholesale electric power and energy purchases and sales as a marketer. AES is not in the business of generating or transmitting electric power.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER99–2318–000]

Take notice that on March 30, 1999, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Duke Solutions, Inc. under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER99–2320–000]

Take notice that on March 30, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the long-term sale of capacity and associated PJM Transmission to meet the Borough of Park Ridge, New Jersey full requirements (less NYPA Allocation) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G requests the agreement to be made effective as of March 1, 1999.

Copies of the filing have been served upon the Borough of Park Ridge and the New Jersey Board of Public Utilities.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER99–2321–000]

Take notice that on March 30, 1999, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and Commonwealth Edison Company, in its wholesale merchant function, (WMD) and a Network Operating Agreement (Operating Agreement) between ComEd and WMD. These two agreements will govern ComEd's provision of network service for WMD under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 1, 1999.

Copies of this filing were served on WMD.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. MEP Investments, LLC

[Docket No. ER99–2322–000]

Take notice that on March 30, 1999, MEP Investments, LLC, an indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing a rate schedule to engage in sales at market-based rates. MEP included in its filing a proposed code of conduct and a generation market power study for UtiliCorp United Inc.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Aquila Energy Marketing Corporation

[Docket No. ER99–2323–000]

Take notice that on March 30, 1999, Aquila Energy Marketing Corporation filed amendments to its rate schedule and code of conduct.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Monroe Power Company

[Docket No. ER99–2324–000]

Take notice that on March 30, 1999, Monroe Power Company (MPC) tendered for filing a rate schedule enabling MPC to make wholesale sales of capacity, energy and ancillary services at market-based rates.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER99–2325–000]

Take notice that on March 30, 1999, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for Firm Point-To-Point Transmission Service with Engage Energy US, L.P. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of March 25, 1999.

Copies of the agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Pacific Gas and Electric Company

[Docket No. ER99–2326–000]

Take notice that on March 31, 1999, Pacific Gas and Electric Company

(PG&E) tendered for filing revisions to its Transmission Owner Tariff (TO Tariff) and Cost support for PG&E specific rates associated with the TO Tariff.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. Moreover, PG&E is providing cost support for PG&E's proposed transmission access charges and PG&E is continuing to request that the Commission establish the transmission revenue requirement to be used in designating wholesale and retail transmission access charges, but that it defer to the California Public Utilities Commission (CPUC) on the allocation of costs among retail classes and the design of retail access charges based on the allocated costs.

In addition, PG&E is proposing changes to the non-rate terms and conditions of its TO Tariff in order to: (a) reflect a regional/local rate methodology that resulted from a settlement-in-principle of Docket Nos. ER97–2358–000 and ER98–2351 and, (b) make other clarifications to the TO Tariff.

Copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of Colorado

[Docket No. ER99–2327–000]

Take notice that on March 31, 1999, Public Service Company of Colorado (PS Colorado) filed the Operating Reserve Supply Agreement between PS Colorado and Basin Electric Power Cooperative under PS Colorado's market-based rate schedule.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Public Service Company of Colorado

[Docket No. ER99–2328–000]

Take notice that on March 31, 1999, Public Service Company of Colorado (PS Colorado) filed a Power Supply Agreement for sales of Unit Contingent Capacity and Associated Energy to Basin Electric Power Cooperative under PS Colorado's market-based rate schedule.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. South Eastern Electric Development Corporation

[Docket No. ER99–2329–000]

Take notice that on March 31, 1999, South Eastern Electric Development Corporation (South Eastern) petitioned the Commission for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. FirstEnergy Corp.

[Docket No. ER99–2330–000]

Take notice that on March 31, 1999, FirstEnergy Corp. (FirstEnergy) filed an application for an order authorizing FirstEnergy to make wholesale sales of electric power at market-based rates as agent for, and on behalf of, the FirstEnergy Operating Companies.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Electric Transmission, a division of Duke Energy Corporation

[Docket No. ER99–2331–000]

Take notice that on March 31, 1999, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing an unexecuted Non-Firm Point-To-Point transmission service agreement and related Operating Agreement between Duke and Cherokee County Cogeneration Partners, L.P.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Sierra Pacific Power Company

[Docket No. ER99–2332–000]

Take notice that on March 31, 1999, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 205 of the Federal Power Act, three Wholesale Generation Tariffs applicable to sales of capacity and energy from the three ''bundles'' of generation that Sierra intends to divest. These tariffs permit sales at market-based rates and terms and conditions, subject to the obligation to provide recourse service at cost-based rates in accordance with the terms of the tariffs.

Sierra Pacific has requested that the Commission issue an order approving the tariffs no later than September 30, 1999, and that the Commission make the tariffs effective as of the date that ownership of each bundle is transferred to the purchaser.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Pool

[Docket No. ER99–2333–000]

Take notice that on March 31, 1999, the New England Power Pool (NEPOOL) Executive Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Bangor Hydro Electric Company, in conjunction with Regional Network Service, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

NEPOOL requests a retroactive effective date of March 1, 1999 for commencement of transmission service.

Copies of this filing were sent to all NEPOOL members, the New England Public Utilities Commission and all parties to the transaction.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool

[Docket No. ER99–2334–000]

Take notice that on March 31, 1999, the New England Power Pool (NEPOOL) Executive Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Northeast Utilities Service Company, in conjunction with Regional Network Service, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented. NEPOOL requests a retroactive effective date of March 1, 1999 for commencement of transmission service. Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. New England Power Pool

[Docket No. ER99–2335–000]

Take notice that on March 31, 1999, the New England Power Pool (NEPOOL)

Executive Committee submitted NEPOOL's proposals for a Congestion Management System and Multi-Settlement System. The NEPOOL Executive Committee states that the Congestion Management System proposal is being filed pursuant to NEPOOL's commitment to submit a Congestion Management System proposal to the Commission by March 31, 1999, and that the Multi-Settlement System proposal is being filed to comply with the Commission's December 17th Order in Docket No. OA97–237–000 *et al.*

The NEPOOL Executive Committee states that copies of these materials were sent to all participants in the New England Power Pool and to the New England state governors and regulatory commissions.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Illinois Power Company

[Docket No. ER99–2336–000]

Take notice that on March 31, 1999, Illinois Power Company (Illinois Power) tendered for filing an Amended And Restated Power Coordination Agreement between Illinois Power and Soyland Power Cooperative, Inc. concerning the provision of electric service to Soyland Power Cooperative, Inc., as a long-term service agreement under its market-based wholesale power sales tariff.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. FPL Energy Services, Inc.

[Docket No. ER99–2337–000]

Take notice that on March 31, 1999, FPL Energy Services, Inc., (FPL Energy Services) tendered for filing a proposed rate schedule that would permit FPL Energy Services to make sales of energy, capacity, and ancillary services at market-based rates.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Nevada Power Company

[Docket No. ER99–2338–000]

Take notice that on March 31, 1999, Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power Act, five Wholesale Generation Tariffs applicable to sales of capacity and energy from the five ''bundles'' of generation that Nevada Power intends to divest. These tariffs permit sales at market-based rates and terms and conditions. The tariffs applicable to the three bundles located inside the Nevada Power load pocket impose a rate cap on sales that initially is set at the rate cap applicable to the California Power Exchange.

Nevada Power has requested that the Commission issue an order approving the tariffs no later than September 30, 1999, and that the Commission make the tariffs effective as of the date that ownership of each bundle is transferred to the purchaser.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Sierra Pacific Power Company, Sierra Pacific Power Company and Nevada Power Company

[Docket Nos. ER99–2339–000 and ER99–34–000 (Not Consolidated)]

Take notice that on March 30, 1999, Sierra Pacific Power Company (Sierra Pacific) tendered for filing pursuant to Section 205 of the Federal Power Act revisions to its transmission services rates under its open-access transmission tariff, FERC Original Volume No. 3. Sierra Pacific also has filed corresponding changes to its pro forma merger transmission tariff in Docket No. ER99–34–000.

Sierra Pacific has requested an effective date of June 1, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. PJM Interconnection L.L.C.

[Docket No. ER99–2340–000]

Take notice that on March 31, 1999, PJM Interconnection L.L.C. tendered for filing a new Part IV to the PJM Interconnection L.L.C. Open Access Transmission Tariff (Tariff) and a new Schedule 6A to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), which together establish procedures for the interconnection of additional generation capacity to the PJM transmission system.

PJM requests an effective date of April 1, 1999, for the Tariff and Operating Agreement revisions.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM control area.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. TransAlta Energy Marketing (California) Inc.

[Docket No. ER99–2343–000]

Take notice that on March 31, 1999, TransAlta Energy Marketing (California) Inc. (TEMCal) tendered for filing an application for an order accepting its FERC Electric Rate Schedule No. 1 which will permit TEMCal to make wholesale sales of electric power and ancillary services to eligible customers in the California market at market-based rates.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Public Service Company of Colorado

[Docket No. ER99–2344–000]

Take notice that on March 31, 1999, Public Service Company of Colorado filed an amendment to an agreement with Holy Cross Electric Association, Inc.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. NGE Generation, Inc.

[Docket No. ER99–2345–000]

Take notice that NGE Generation, Inc. (NGE Gen) on March 31, 1999, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement (the Service Agreement) under which NGE Gen may provide capacity and/or energy to Exelon Energy (Exelon) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreement becomes effective as of April 1, 1999.

NGE Gen's filing of the Service Agreement is subject to the Commission's order issued on January 29, 1999 in Docket No. EC99–22–000.

NGE Gen has served copies of the filing upon the New York State Public Service Commission and Exelon.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Southwestern Electric Power

[Docket No. ER99–2346–000]

Take notice that on March 31, 1999, Southwestern Electric Power Company (SWEPCO) filed Amendment No. 2 to the Power Supply Agreement (PSA), dated February 10, 1993, as amended, between SWEPCO and East Texas Electric Cooperative, Inc. (ETEC). SWEPCO states that this filing reflects changes in the PSA to accommodate ETEC's decision to exercise its option under the PSA to receive transmission service pursuant to the Open Access Transmission Services Tariff of the Central and South West Companies

(CSW OATT) rather than pursuant to the PSA.

SWEPCO requests an effective date of January 1, 1999, the date ETEC began receiving transmission service under the CSW OATT and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on ETEC and the Public Utility Commission of Texas.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Southwestern Electric Power Company

[Docket No. ER99–2347–000]

Take notice that on March 31, 1999, Southwestern Electric Power Company (SWEPCO) tendered for filing an estimated return on common equity (Estimated ROE) to be used in establishing estimated formula rates for wholesale service in Contract Year 1999 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc. and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Central Vermont Public Service Corporation

[Docket No. ER99–2348–000]

Take notice that on March 31, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an executed Service Agreement with Duke Energy Trading and Marketing, L.L.C. under its FERC Electric Tariff No. 5. That tariff provides for the sale by Central Vermont of capacity, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests an effective date of October 23, 1994 because the tendered contract is an assignment of Service Agreement No. 89 with Louis Dreyfus Electric Power, Inc. which became effective on October 23, 1994.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Central Vermont Public Service Corporation

[Docket No. ER99–2350–000]

Take notice that on March 31, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an executed Service Agreement with Duke Energy Trading and Marketing, L.L.C. under its FERC Electric Tariff No. 8. The tariff provides for the sale by Central Vermont of capacity and/or energy at market rates.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on March 31, 1999.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Wisconsin Electric Power Company

[Docket No. ER99–2351–000]

Take notice that on March 31, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a notification indicating its consent to the assignment of rights and obligations under an electric service agreement for its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) as requested by the customer.

Wisconsin Electric respectfully requests March 31, 1999, as the effective date when Service Agreement No. 56 with National Gas & Electric L.P. is assigned to PanCanadian Energy Services Inc. (PanCanadian).

Copies of the filing have been served on PanCanadian, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 20, 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 such 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 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8994 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Motions to Intervene, and Protests

April 6, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of Licenses.

b. Projects Nos: (1) 2188–042, (2) 1869–035, (3) 2301–014.

c. Date Filed: March 19, 1999.

d. Applicants: Montana Power Company (MPC) and PP&L Montana, LLC (PPLM).

e. Name and Location of Projects: (1) Missouri-Madison: On the Missouri and Madison Rivers in Cascade, Gallatin, Lewis and Clark, and Madison Counties, Montana. The project occupies federal lands within Gallatin and Helena National Forests. (2) Thompson Falls: On the Clark Fork River in Sanders County, Montana. The project occupies Federal lands within Lolo National Forest. (3) Mystic Lake: On West Rosebud Creek in Stillwater County, Montana. The project occupies federal lands within Custer National Forest.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 801.

g. Applicant Contacts: For MPC: Mr. Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701 (406) 497–2456 and Mr. Nicholas W. Fels, Covington & Burling, P.O. Box 7655, 201 Pennsylvania Ave., NW, Washington, DC 20044–7566 (202) 662–5648. For PPLM: Mr. Robert W. Burke, Jr., PP&L Global, Inc., 11350 Random Hills Road, Fairfax, VA 22030–6044 (703) 293–2617 and Mr. David R. Poe, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Ave., NW, Suite 1200, Washington, DC 20009–5728 (202) 986–8039.

h. FERC Contact: Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. Deadline for filing comments and or motions: May 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission 888 First Street, NE, Washington, DC 20426.

Please include the project numbers noted in item b above on any comments or motions filed.

j. Description of Proposal: Transfer of the licenses for these projects to PPLM is being sought in connection with PPLM's purchase of certain generation assets from MPC.

The transfer application was filed within five years of the expiration of the license for Project No. 2188, which is the subject of a pending relicense application. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preamble 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318). The transfer would lead to the substitution of the transferee for the transferor as the applicant in the relicensing proceedings for Project No. 2188.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–8972 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 6, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment to License.

b. project No: 11243–016.

c. Date Filed: March 8, 1999.

d. Applicant: Whitewater Engineering Corp.

e. Name of Project: Power Creek.

f. Location: On Power Creek, near the town of Cordova, in southeast Alaska. The project is located entirely on Eyak River on Eyak Lands, a native corporation, and is adjacent to the Chugach National Forest.

g. Filed Pursuant to: 18 CFR 4.200.

h. Applicant contact: Thom A. Fisher, P.E., President, Whitewater Engineering Corp., 625 Cornwall Avenue, Bellingham, WA 98225 (360) 738–9999.

i. FERC Contact: Any questions on this notice should be addressed to Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address:anumzziatta.purchironi@ferc.fed.us.

j. Deadline for filing comments and or motions: May 13, 1998.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy regulatory commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (11243–016) on any comments or motions filed.

k. Description of Amendment: The licensee proposes to reroute the project transmission lien from the authorized subterranean route to an underwater routing beneath Eyak Lake near Cordova.

The line has not yet been built and the change does not involve a change in the project boundary.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies

provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–8973 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Public Meeting

April 6, 1999.

Take notice that the Commission staff will hold a public meeting with Pacific Gas & Electric Company (PG&E) the applicant for the Mokelumne Hydroelectric Project No. 137, the U.S. Forest Service, and other interested parties to discuss alternatives for completing the processing of this relicense.

The project is located on the Mokelumne River in Amador and Calaveras Counties, California. The meeting will be held on Wednesday, May 5, 1999, from 10:00 a.m. to 4:00 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so that they can get through security. All interested persons are invited to attend the meeting.

For further informaiton, please contact Robert Bell at (202) 219–2806.

David P. Boergers,

Secretary.

[FR Doc. 99–8971 Filed 4–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

April 7, 1999.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 14, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note—**Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda: however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 717th Meeting—April 14, 1999; Regular Meeting (10:00 a.m.)

CAH–1.
OMITTED
CAH–2.
DOCKET# P–2213, 001, Public Utility District No. 1 of Cowlitz County, Washington
CAH–3.
OMITTED
CAH–4.
DOCKET# P–4715, 017, Felts Mills Energy Partners, L.P.
CAH–5.
DOCKET# P–2042, 008, Public Utility District No. 1 of Pend Oreille County, Washington

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–2175, 000, New England Power Pool and ISO New England, Inc.
CAE–2.
DOCKET# ER99–994, 000, Wisconsin Public Service Corporation
CAE–3.
DOCKET# ER99–1550, 000, PJM Interconnection, L.L.C.
CAE–4.
DOCKET# ER99–1875, 000, Canadian Niagara Power Company, Limited
CAE–5.
DOCKET# ER99–1829, 000, Northeast Utilities Service Company
OTHER#S ER99–1936, 000, PDI New England, Inc. and PDI Canada, Inc.
ER99–1940, 000, Penobscot Hydro, LLC
CAE–6.
DOCKET# ER99–1914, 000, SCC–L1, L.L.C.
OTHER#S ER99–1915, 000, SCC–L2, L.L.C.
ER99–1942, 000, SCC–L3, L.L.C.
CAE–7.
DOCKET# ER99–1883, 000, California Power Exchange Corporation
CAE–8.
DOCKET# ER99–1964, 000, Ocean State Power II
OTHER#S ER99–1965, 000, Ocean State Power
CAE–9.
DOCKET# ER99–1913, 000, Virginia Electric and Power Company
CAE–10.
DOCKET# OA97–24, 004, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
OTHER#S ER98–4611, 002, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
CAE–11.
DOCKET# OA97–163, 000 Mid-Continent Area Power Pool
OTHER#S EL97–53, 000, Enron Power Marketing, Inc. v. Mid-Continent Area Power Pool
EL98–76, 000, Western Resources, Inc. v. Mid-Continent Area Power Pool
ER96–1447, 001, Mid-Continent Area Power Pool
ER97–1162, 000, Mid-Continent Area Power Pool
OA97–658, 000, Mid-Continent Area Power Pool
CAE–12.
DOCKET# EC99–1, 000, Sierra Pacific Power Company and Nevada Power Company
OTHER#S ER99–34, 000, Sierra Pacific Power Company and Nevada Power Company
CAE–13.
DOCKET# ER98–1438, 002, Midwest Independent Transmission System Operator, Inc.
OTHER#S EC98–24, 002, Cincinnati Gas & Electric Company, Commonwealth Edison Company, and Commonwealth Edison Company of Indiana, et al.
CAE–14.
DOCKET# ER99–1663, 000, Montaup Electric Company
CAE–15.
DOCKET# ER99–1855, 000, Petitioning Distribution Cooperatives
CAE–16.
OMITTED
CAE–17.
DOCKET# TX94–4, 000, Tex-La Electric Cooperative of Texas, Inc.
OTHER#S ER94–1385, 000, West Texas Utilities Company
ER94–1385, 001, West Texas Utilities Company
TX94–4, 001, Tex-La Electric Cooperative of Texas, Inc.
TX94–4, 002, Tex-La Electric Cooperative of Texas, Inc.
CAE–18.
DOCKET EC99–23, 001, Bangor Hydro-Electric Company

OTHER#S ER99–1166, 001, Bangor Hydro-Electric Company
CAE–19.
DOCKET# ER98–3220, 001, Carolina Power & Light Company
CAE–20.
DOCKET# TX98–4, 001, Prairieland Energy, Inc.
CAE–21.
DOCKET# OA97–24, 003, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
OTHER#S ER98–4609, 001, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
ER98–4611. 001, Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company, et al.
CAE–22.
DOCKET# RM87–3, 031, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (CNG Power Services)
OTHER#S RM87–3, 032, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Citizens Power Sales)
RM87–3 033, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Phibro Inc.)
RM87–3, 034, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Vitol Gas & Electric LLC)
CAE–23.
DOCKET# EL91–29, 004, Southern Company Services, Inc.
OTHER#S EL94–85, 002, Southern Company Services, Inc.
CAE–24.
DOCKET# ER99–35, 001, Boston Edison Company
CAE–25.
DOCKET# EL99–10, 000, Western Systems Coordinating Council
CAE–26.
DOCKET# EL99–42, 000, City of Las Cruces, New Mexico v. El Paso, Electric Company
OTHER#S EL99–10, 001, City of Las Cruces, New Mexico v. El Paso, Electric Company
CAE–27.
DOCKET# ER99–42, 000, Montaup Electric Power Company v. El Paso Edison Company
CAE–28.
DOCKET# ER97–3593, 000, Sierra Pacific Power Company
OTHER#S ER97–4462, 000, Sierra Pacific Power Company

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# PR99–4, 000, Consumers Energy Company
OTHER#S PR99–4, 001, Consumers Energy Company
CAG–2.
DOCKET# IS99–144, 000, SFPP, L.P.
CAG–3.
OMITTED
CAG–4.
OMITTED
CAG–5.
DOCKET# RP99–199, 002, Panhandle Easter Pipe Line Company
CAG–6.
DOCKET# RP99–200, 002, Trunkline Gas Company
CAG–7.
DOCKET# RP91–203, 068, Tennessee Gas Pipeline Company
OTHER#S RP92–132, 058, Tennessee Gas Pipeline Company
RP95–112, 025, Tennessee Gas Pipeline Company
CAG–8.
OMITTED
CAG–9.
DOCKET# RP95–197, 000, Transcontinental Gas Pipe Line Corporation
OTHER#s RP97–71, 000, Transcontinental Gas Pipe Line Corporation
CAG–10.
DOCKET# MG99–5, 001, Destin Pipeline Company, L.L.C.
CAG–11.
DOCKET# MG99–12, 000, Total Peaking Services, L.L.C.
CAG–12.
DOCKET# MG99–13, 000, Dynegy Midstream Pipeline, Inc.
CAG–13.
OMITTED
CAG–14.
DOCKET# CP98–761, 000, Viking Gas Transmission Company
OTHER#s CP99–140, 000, Viking Gas Transmission Company
CAG–15.
DOCKET# CP99–16, 000, Dauphin Island Gathering Partners
OTHER#s CP99–18, 000, Texas Eastern Transmission Corporation
CAG–16.
DOCKET# CP99–82, 000, Equitrans, L.P.
CAG–17.
DOCKET# CP97–26, 002, Trunkline LNG Company
CAG–18.
OMITTED
CAG–19.
DOCKET# CP96–809, 008, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP96–178, 008, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP96–809, 007, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP97–238, 008, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP98–724, 000, Maritimes & Northeast Pipeline, L.L.C.
OTHER#s CP98–797, 000, Maritimes & Northeast Pipeline, L.L.C.
CAG–20.
DOCKET# PL99–2, 000, Anticipated Demand for Gas in the Eastern Half of the United States

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 99–9229 Filed 4–8–99; 3:47 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6322–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Revision of the Information Collection Request for the National Pretreatment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for the National Pretreatment Program (40 CFR part 403), EPA ICR 0002.08 (expires October 31, 1999), OMB Control Number 2040–009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 11. 1999.

ADDRESSES: Interested persons may obtain a copy of this ICR without charge by contacting Jan Marie Pickrel, Office of Wastewater Management (4203), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–7904, E-mail address pickrel.jan@epa.gov.

FOR FURTHER INFORMATION CONTACT: Jan Marie Pickrel, telephone number (202) 260–7904, facsimile number (202) 260–1460, E-mail address pickrel.jan@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those subject to the regulations under 40 CFR part 403, including private industries, State, local and Federal governments.

Title: Revision of the Information Collection Request for the National Pretreatment Program (40 CFR part 403),

EPA ICR 0002.08, OMB Control Number 2040–009. Expiration date is October 31, 2002.

Abstract: This Information Collection Request (ICR) calculates the burden and costs associated with managing the National Pretreatment Program mandated by sections 402(a) and (b) and 307(b) of the Clean Water Act. This ICR is a renewal of the Revision of the Information Collection Request for the National Pretreatment Program (OMB Control No. 2040–009, ICR No. 0002.08).

Management of the pretreatment program is the responsibility of the Office of Wastewater Management (OWM) in the Office of Water (OW), Environmental Protection Agency (EPA). The Clean Water Act requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into Publicly Owned Treatment Works (POTWs). These standards limit the level of certain pollutants in IU wastewaters. EPA administers the pretreatment program through the National Pollutant Discharge Elimination System (NPDES) permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their respective levels. OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the regulations, as well as to authorize program administration at the State or local (POTW) level. The data collected from IUs includes the mass, frequency, and content of their discharges, their schedules for installing pretreatment equipment, and actual or anticipated discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). States and POTWs applying for approval of pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentration, and schedules for completion of major project requirements. IUs and POTWs submit written reports. These data may then be entered into the NPDES databases by the approved State or EPA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The information collection will involve an estimated 33,526 respondents at an annual cost of $90,597,238 to those respondents. The total annual cost to both respondents and government (excluding Federal government) is estimated at $94,933,075. The annual number of responses will be 202,882 or 6.05 responses per respondent. The time required for a response ranges from 15 minutes to 400 hours, with an average response time of 6.538 hours. An estimated 33,526 respondents are required to keep records at an average annual burden of 6.853 hours per record keeper. The pretreatment program will entail 229,741 hours of record keeping, 1,326,402 hours of reporting, and 209,013 hours for governments as users of the data, for a total of 1,765,156 burden hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 20, 1999.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 99–8947 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6323–1]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before June 11, 1999.

ADDRESSES: U.S. EPA, Office of Compliance, 401 M Street SW, Washington, D.C. 20460, Mail code 2223A.

Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740 or by e-mail at farmer.sandy@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael Sánchez, United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, S.W. Telephone: (202) 564–7028. Facsimile: (202) 564–0050.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities affected by this action are those owners and operators of benzene storage vessels that store benzene having a specific gravity within the range of specific gravities specified in ASTM D 836–84 for Industrial Grade Benzene, ASTM D 835–85 for Refined Benzene-535 and ASTM D 4734–87 for Refined Benzene-545.

Title: NESHAP for Benzene Emissions from Benzene Storage Vessels—40 CFR part 61, subpart Y, OMB No. 2060–0185, Expiration Date: 1/31/99.

Abstract: Respondents are all owners or operators of benzene storage vessels. It is estimated that 126 existing plants

are subject to the standard. All owners and operators of new or reconstructed plants would also have to respond.

In the General Provisions of 40 CFR part 61 applicable to storage vessels, up to four separate one-time-only reports are required for each owner or operator: notification of construction or reconstruction, initial source report, notification of physical/operational changes, notification of anticipated and actual startup. The initial source report is the only one of these reports that would be required from existing sources under the standard.

Certain records and reports are necessary to assist EPA and State agencies to which enforcement has been delegated in determining compliance with the standard.

An initial emissions test is not required because conducting an emission test is not feasible. Therefore, the format of the standard is that of an equipment standard. Owners or operators of vessels equipped with the specified controls are required to submit, along with the notifications required by the General Provisions, a report that describes the control equipment used to comply with the regulation. Thereafter, an annual visual inspection is required of the primary seal of internal floating roof vessels (IFR's) (in cases where no secondary seal is present). An annual seal gap measurement of the secondary seal system on external floating roof vessels (EFR's) is required. The following inspections are required every five years: (1) internal inspection of seal system on IFR's equipped with primary and secondary seals in situations where the owner or operator has decided to forego the annual visual inspection; and (2) measurement of gaps between the tank wall and primary seal on EFR's. An internal inspection in which the tank is emptied and degassed is required at least every 10 years for IFR's.

Another control option allowed is for owners or operators to equip vessels with closed-vent systems and 95-percent efficient control devices. It is expected that very few, if any, vessels will be equipped with these systems; however, owners or operators of vessels with such systems are required to submit, for the Administrator's approval, an operating plan describing system design specifications and an operation, maintenance, and inspection plan for the system. In the event the owner or operator has installed a flare, a report showing compliance with visible emission provisions shall be furnished to the Administrator. For closed-vent systems with control devices, quarterly reports are required informing the Administrator of each occurrence that results in excess emissions. Annual reports of the results of these inspections and seal gap measurements are required. These reports will identify each storage vessel that is determined to be out of compliance with the standard, the nature of the defects, and the date the vessel was emptied or the repair was made. The owner or operator will keep copies of all reports and records resulting from these inspections for two years.

The owner or operator of each benzene storage vessel will, for the life of the source, keep readily accessible records showing the dimension of the vessel and an analysis showing the capacity of the storage vessel. For each vessel with a closed vent system and 95-percent efficient control device, records of the operating plan will be kept for the life of the control device. Records of monitored parameters and maintenance will be kept for two years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For subpart Y, EPA estimated the nationwide annualized cost to respondents at a $47,045/yr over a 3-year period. The respondent burden is estimated at 1,545 person-hours/yr. Respondent costs are estimated based on a cost of $14.50 per hour, and on an overhead rate of 110 percent (for a total cost per hour of $30.45). The annual reporting burden is estimated at a $39,372/yr over a 3-year period. The number of responses per year is estimated to be 162. The number of responses per respondent is estimated to be five. The total annual responses are estimated to be 810. The number of hours per response per year is estimated to be four. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 2, 1999.

John B. Rasnic,

Director, Manufacturing, Energy and Transportation, Division, Office of Compliance.

[FR Doc. 99–9063 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6322–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1867.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1867.01. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1867.01.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership (EPA ICR No. 1867.01). This

is a new collection. As such there is no OMB Control No. for this ICR.

Abstract: In April 1993, President Clinton issued the Climate Change Action Plan, which establishes the nation's commitment to returning U.S. greenhouse gas emissions to their 1990 levels by the year 2000. EPA's Voluntary Aluminum Industrial Partnership (VAIP) is an important voluntary program contributing to the overall reduction in greenhouse gas emissions. This program focuses on reducing perfluorocarbon (PFC) emissions from aluminum smelting operations. The twelve companies that have joined the VAIP have cumulatively committed to reduce their PFC emissions 45 percent from 1990 levels by the year 2000. PFCs are very potent greenhouse gases that are persistent in the atmosphere and have a high global warming potential. The VAIP, along with Energy Star Buildings and Green Lights, Energy Star Labeling, and other EPA programs is a voluntary program aimed at preventing pollution rather than controlling it after its creation. All of these programs focus on greenhouse gas emissions.

EPA has developed this ICR to obtain authorization to collect information from companies participating in the VAIP. Companies that join the VAIP voluntarily agree to the following: designating a VAIP liaison; undertaking technically feasible and cost-effective actions to reduce PFC emissions; and reporting to EPA, on an annual basis, the success of such actions. The information contained in the annual reports of the companies that join the VAIP may be considered confidential business information and is maintained as such. EPA uses the data obtained from the companies to assess the success of the program in achieving its goals.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 18, 1998 (63 FR 49909); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 321.13 hours per response. 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.

Respondents/Affected Entities: Aluminum companies.

Estimated Number of Respondents: 12.

Frequency of Response: One per respondent per year.

Estimated Total Annual Hour Burden: 1,866 hours.

Estimated Total Annual Labor Cost Burden: $208,889.

Estimated Total Annual Operating and Maintenance Cost Burden: $17,509.

Send comments 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 to the following addresses. Please refer to EPA ICR No. 1867.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 15, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–8951 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6323–2]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Project XL Proposed Final Project Agreement: Exxon Fairmont Coke Works Superfund Site Clean-up.

SUMMARY: EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for Exxon Company, U.S.A. (hereafter ''Exxon''). The FPA is a voluntary agreement developed collaboratively by Exxon, the West Virginia Division of Environmental Protection (WVDEP), the Fairmont Community Liaison Panel (FCLP) and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects undertaken in full partnership with the states.

The draft FPA presents an alternative strategy for clean-up of the Sharon Steel Fairmont Coke Works Superfund Site located in Fairmont, WV. The Site was placed on the National Priorities List (NPL) by EPA under the Superfund clean-up program on December 23, 1996. Exxon is the only Potentially Responsible Party (PRP) working with the EPA and WVDEP to clean up the Site.

In the draft FPA, Exxon proposes that changes to the traditional Superfund clean-up process be made in (a) the regulatory approach used to characterize and clean-up the site, (b) risk assessment, (c) the management of onsite landfills (designation of an ''Area of Contamination''), (d) mitigation requirements for EPA-created wetlands onsite, (e) the commercial/industrial redevelopment of the Site, (f) the stakeholder/community involvement process, (g) reduction of paperwork, (h) quality assurance and (i) the support of regulatory involvement. Mechanisms for the implementation of these proposed changes, which represent the regulatory flexibilities being requested, are also presented.

DATES: The period for submission of comments ends on May 12, 1999.

ADDRESSEES: All comments on the proposed Final Project Agreement should be sent to: Melissa Whittington, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103, or John DuPree, U.S. EPA, Room M3802 (1802), 401 M Street, SW, Washington, DC 20460. Comments may also be faxed to Ms. Whittington at (215) 814–3002 or Mr. DuPree (202) 260–3125. Comments may also be received via electronic mail sent to: whittington.melissa@epa.gov or dupree.john@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed Final Project Agreement or Fact Sheet, contact: Melissa Whittington, U.S. EPA, Region III, 1650 Arch Street (3HS23),

Philadelphia, PA 19103, or John DuPree, U.S. EPA, 401 M Street SW Room M3802 (1802), Washington DC 20460. The FPA and related documents are also available via the Internet at the following location: http://www.epa.gov/ProjectXL. In addition, public files on the project, including the FPA, are located at Marion County Library, 321 Monroe Street, Fairmont, WV 26554, (304) 366–1210. Questions to EPA regarding the documents can be directed to Melissa Whittington at (215) 814–3225 or John DuPree at (202) 260–4468. To be included on the Exxon Project XL mailing list about future public meetings, XL progress reports and other mailings from Exxon on the XL project, contact Art Chin at (908) 474–7295, Exxon Company, U.S.A., P.O. Box 728, Linden, NJ 07036. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Reinvention, United States Environmental Protection Agency, 401 M Street, SW Room M3802 (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at http://www.epa.gov/ProjectXL.

Dated: April 2, 1999.

Lisa Lund,

Deputy Associate Administrator, Office of Reinvention.

[FR Doc. 99–9064 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6322–6]

Atlantic Wood Industries, Inc. Superfund Site CERCLA § 122(h) Administrative Settlement; Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Atlantic Wood Industries, Inc. Superfund Site, Portsmouth, Virginia (Proposed Settlement). The Proposed Settlement with Atlantic Wood Industries, Inc. and the United States Department of the Navy (Settling Parties) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The Proposed Settlement was signed by the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region III, on April 1, 1999, pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), and is subject to review by the public pursuant to this document.

The Proposed Settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Parties, and requires the Settling Parties to pay to the EPA Hazardous Substance Superfund $864,000 in reimbursement of Past Response Costs, which had totaled 1,133,287.51. This sum includes $700,000 reimbursement for Removal and RI/FS Oversight/Response Costs and $164,000 reimbursement for other non-oversight response costs. Atlantic Wood Industries, Inc. and the Navy have agreed among themselves that they will each pay 50% of the $864,000.

For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before May 12, 1999.

ADDRESSES: The proposed settlement agreement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed settlement agreement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2476. Comments should reference the ''Atlantic Wood Industries, Inc. Superfund Site'' and ''EPA Docket No. III–98–014–DC'' and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Charles Hayden (3RC44), (215) 814-2668, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Dated: April 1, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–8948 Filed 4–9–99; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DEPARTMENT OF LABOR

Coordination of Functions; Memorandum of Understanding

AGENCIES: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Final notice.

SUMMARY: the Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP) have adopted final revisions to their 1981 Memorandum of Understanding, originally published at 46 FR 7435, Jan. 23, 1981. The revisions include updated charge processing procedures to increase coordination and efficiency and to minimize duplication in the agencies' overlapping EEO enforcement activities. Modeled on the 1992 joint rule for processing disability complaints under Section 503 of the Rehabilitation Act and Title I of the Americans with Disabilities Act, the revisions authorize OFCCP to act as EEOC's agent to process and resolve the Title VII component of complaints/charges dual filed with OFCCP under Executive Order 11246, as amended, and Title VII of the Civil Rights Act of 1964, as amended. The revisions also add a paragraph to address Title VII's confidentiality requirements. Additional minor changes have been made to update other sections of the 1981 agreement, such as changes in the titles of agency officials.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel For Coordination, Equal Employment Opportunity Commission, (202) 663–4639 (voice), 202–663–7026 (TTY); or James I. Melvin, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs,

Department of Labor, (202) 693–0102 (voice), (202) 693–1308 (TTY).

SUPPLEMENTARY INFORMATION: The revised Memorandum of Understanding (MOU) sets forth complaint processing and information sharing procedures, as did the original 1981 MOU, to coordinate enforcement efforts under Executive Order 11246 and Title VII. The revised MOU retains the same general division of labor between the agencies as set forth in the 1981 agreement regarding Executive Order 11246 complaints filed with OFCCP. OFCCP will normally refer dual-filed complaints/charges of an individual nature to EEOC for processing, and will normally retain systemic or class dual-filed complaints/charges. The revised MOU authorizes OFCCP to act as EEOC's agent in processing and resolving the Title VII component of dual-filed complaints/charges that OFCCP retains under the agreement.

The agencies published a proposed notice on December 14, 1998, at 63 FR 68764, inviting public comment on the proposed changes to the 1981 MOU's charge processing provisions and the proposed new paragraph addressing Title VII's confidentiality requirements.

The agencies received 27 comments from a variety of stakeholders. Many of the commenters endorsed the proposed changes as steps that would strengthen EEO enforcement and increase the agencies' efficiency and effectiveness. One commenter criticized the proposed revisions on the grounds that they are an unauthorized expansion of OFCCP's powers. Another commenter challenged the general distribution of responsibilities between the agencies for systemic and class claims. Set out below are specific points and suggestions for changes raised by various commenters and the agencies' response.

Numerous commenters recommended broadening the scope of the MOU to authorize OFCCP to act as EEOC's agent in the course of OFCCP compliance reviews, in the interests of further maximizing the efficiency and effectiveness of the agencies' enforcement efforts. Three commenters opposed this view, and two commenters asked that the MOU explicitly provide that OFCCP's authority to act as EEOC's agent is limited to complaints and charges and does not extend to compliance reviews. An agency can delegate no more authority than it has. Because EEOC's enforcement authority under Title VII is premised on the receipt of charges, there can be no delegation to OFCCP when there is no charge/complaint. Therefore, the revised MOU retains the language published in the proposed notice stating that OFCCP is authorized to act as EEOC's agent only with respect to the Title VII component of complaints or charges filed with, and retained by, OFCCP pursuant to paragraph 7 of the MOU.

Numerous commenters recommended that the agencies consider the complaint's preference when requesting deviation from the MOU's normal charge referral procedures. Normally, OFCCP retains systemic or class claims and refers individual claims to EEOC. However, EEOC may request referral of systemic or class claims and OFCCP may request retention of individual claims, in appropriate cases. It is not necessary to consult with the complainant when OFCCP requests retention of an individual claim, given that the complaint/charge was filed with OFCCP in the first instance. When EEOC requests referral of systemic or class claims, it will consult with the charging party when appropriate and practical to do so. In any instance of charge referral under the MOU, OFCCP will continue to notify the complainant/charging party that her/his charge has been referred to the EEOC for processing.

Two commenters focused on the standards to be used by OFCCP when it processes Title VII claims pursuant to the MOU. The commenters mistakenly believed that the revised MOU omits language in the 1981 MOU that addressed the agencies' use of consistent internal enforcement standards and procedures. This language has not been omitted; it is included in its entirety as paragraph 9 in the revised MOU. One of the commenters remarked, in particular, that, in conciliating Title VII claims, OFCCP should follow EEOC's remedies policy, under which cases may be settled for ''substantial'' rather than ''full'' relief. This concern is addressed both by paragraph 9 of the revised MOU and, more explicitly, by language in paragraph 7 explaining that OFCCP's efforts to obtain relief in Title VII claims shall be ''consistent with EEOC's standards for remedies.'' More generally, the two commenters emphasized that OFCCP should adhere to Title VII law on liability and damages when processing Title VII claims as EEOC's agent. This is consistent with the agencies' intent and the new MOU's delegation of authority, and we have therefore added a provision to this effect in the new MOU.

One commenter recommended that systemic or class Title VII claims in complaints filed with OFCCP be referred to EEOC in the first instance. The commenter argued that OFCCP should pursue only those systemic or class claims that EEOC has decided not to pursue. The division of labor between the agencies as contemplated by the revised MOU is a long-standing arrangement that, in the agencies' experience, has been and remains an effective means of coordinating enforcement functions. Since adoption of the 1981 MOU, OFCCP has retained systemic or class claims, with allowance for EEOC to request referral of these claims in appropriate cases. OFCCP is well-suited to process systemic and class claims given its thirty-plus years of systemic enforcement experience.

Two commenters opposed the revised MOU on the belief that it is an unauthorized expansion of OFCCP's powers. One commenter assumed that OFCCP will act as EEOC's agent in OFCCP compliance reviews which, for the reasons discussed above, will not be the case. The other commenter argued that the decision whether to delegate authority to OFCCP to investigate and seek damages in individual Title VII charges should be left to Congress. The revised MOU's delegation of authority to OFCCP to process and resolve the Title VII component of certain charges/complaints is consistent with EEOC's authority under Title VII and Executive Order 12067 to implement agreements and procedures that minimize duplication and maximize efficiency and coordination in EEO compliance and enforcement.

New paragraph 8 of the MOU addressed the application of Title VII's confidentiality provisions to OFCCP's receipt of certain information. After consideration by the agencies, the text of subparagraphs 8(a) and 8(b) of the MOU, as published in the proposed notice, has been revised to add references to the confidentiality provisions of the Trade Secrets Act and the Privacy Act, in addition to Title VII.

The text of new paragraphs 7 and 8 of the MOU is set out below. The entire text of the MOU is included as an Appendix. It is also available on EEOC's Home Page at www.eeoc.gov, and on DOL's Employment Standards

Administration Home Page at www.dol.gov/dol/esa.

Ida L. Castro,

Chairwoman, Equal Employment Opportunity Commission.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

New Paragraphs 7 and 8 of the Memorandum of Understanding

7. Processing of Complaints Filed With OFCCP

(a) Duel-Filed Complaints/Charges—Complaints of employment discrimination filed with OFCCP under Executive Order 11246 will be considered charges simultaneously filed under Title VII whenever the complaints also fall within the jurisdiction of Title VII. For the purpose of determining the timeliness of such a charge, which will be considered dual filed under this paragraph, the date the matter was received by OFCCP shall be deemed to be the date it was received by EEOC.

(b) Systemic or Class Allegations—OFCCP will retain, investigate, and resolve allegations of discrimination of a systemic or class nature on the basis of race, color, religion, sex, or national origin, over which it has jurisdiction. OFCCP shall promptly notify EEOC's Director, Office of Field Programs, of OFCCP's receipt of complaints/charges that include such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). In addition, OFCCP shall make available to EEOC, upon request, information obtained in the investigation and processing of such allegations, pursuant to paragraphs 1 and 6(b) herein. In appropriate cases, may request that it be referred systemic or class allegations under Title VII so as to avoid duplication and assure effective law enforcement.

(c) Individual Allegations—OFCCP will refer to the appropriate EEOC field office allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin in dual filed complaints/charges. In appropriate cases OFCCP may request that it retain such allegations so as to avoid duplication and assure effective law enforcement.

(d) Appointment of OFCCP as EEOC's Agent—OFCCP will act as EEOC's agent for the purposes of receiving, investigating, and processing the Title VII component of complaints/charges that it retains under this paragraph. OFCCP shall investigate and process such dual filed complaints/charges as set forth in this subparagraph, and in a manner consistent with Title VII principles on liability and damages.

(1) Notice of Receipt of Complaint/Charge—Within ten days of receipt of the complaint/charge, OFCCP shall notify the contractor/respondent that it has received a charge of employment discrimination under Executive Order 11246 and Title VII. This notification shall state the date, place, and circumstances of the alleged unlawful employment practice(s).

(2) Fair Employment Practice Agency Deferral Perios—Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral for dual filed Title VII charges that OFCCP received will be waived.

(3) Not Reasonable Cause Findings—If the OFCCP investigation of a dual filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-sue. OFCCP will close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(4) Reasonable Cause Findings—

(i) Successful Conciliation—If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for remedies, for all aggrieved persons covered by the Title VII charge. If conciliation is successful, the conciliation agreement will state that the complaint/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the complaint/charge, and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(ii) Unsuccessful Conciliation—When conciliation is not successful, the Executive Order 11246 component of the complaint/charge will be considered for further OFCCP processing consistent with OFCCP's usual procedures. At the conclusion of OFCCP processing, OFCCP shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate. If EEOC declines to pursue further action, EEOC will close the Title VII charge and issue a notice of right-to-sue.

(5) Issuance of Notice of Right-to-Sue Upon Request—Consistent with the Title VII procedures set forth at 29 CFR 1601.28, after 180 days from the date the complaint/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a complaint/charge that it retains. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of Title VII to further process the Title VII component of the complaint/charge.

(6) Subsequent Attempts to File an EEOC Charge Covering the Same Facts and Issues—If an individual who has already filed an OFCCP complaint/charge that is deemed dual filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing.

8. Confidentiality

(a) When EEOC provides information to OFCCP, then the confidentiality requirements of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964 apply to that information. When OFCCP receives the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source. However, OFCCP will also observe any confidentiality requirements imposed on such information by the Trade Secrets Act or the Privacy Act.

(b) When OFCCP obtains information from its receipt, investigation, and processing of the Title VII component of a dual filed charge, or when OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, OFCCP will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, and sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964.

(c) Questions concerning confidentiality under Title VII shall be directed to EEOC's Deputy Legal Counsel for Legal Services, Office of Legal Counsel.

(d) Questions concerning confidentiality under Executive Order 11246, as amended, or 38 U.S.C. 4212 (Section 402 of VEVRAA) shall be directed to OFCCP, Director, Division of Program Operations.

Appendix: Memorandum of Understanding

This Memorandum of Understanding (MOU) between the U.S. Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC) is being

implemented to further the objectives of Congress under Section 715 of title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; of Executive Order 12067, 43 FR 28967; and Section 6 of Reorganization Plan No. 1 of 1978 (43 FR 19807). These objectives are to develop and implement agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, completion, duplication and inconsistency among the operations, functions and jurisdictions of the parties to the MOU.

The parties to this MOU agree as follows:

1. The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration (ESA), DOL shall make available to the appropriate requesting official of the EEOC or his or her designee for inspection and copying and/or loan, any documents in its possession pertaining to the effective enforcement of administration of (a) Title VII of the Civil Rights Act of 1964, as amended; or (b) Reorganization Plan No. 1 of 1978 and Executive Order 12067. All documents will be made available within ten days of such request. Disclosure of such material by EEOC shall be in accordance with paragraph 5 of this Agreement. All transfers of information under this and other paragraphs of this MOU shall only be made where not otherwise prohibited by law.

2. The EEOC shall make available to the appropriate requesting official of the OFCCP or his or her designee for inspection had copying and/or loan any documents pertaining the enforcement and administration of Executive Order 11246; 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974; Section 503 of the Rehabilitation Act of 1973; and Executive Order 12067. All documents in its possession (or to which it has access through a work-sharing agreement as described in paragraph 5(b) of this Agreement) will be made available within ten days of such request. Disclosure of such material by OFCCP shall be in accordance with paragraphs 5 and 8 of this Agreement.

3. ''Appropriate Requesting Officials'' shall, for the purpose of this Agreement, include the following officials, or their successors, or their designees:

(a) For the EEOC:

1. The Chair
2. The Executive Director
3. The General Counsel
4. Any Regional Attorney
5. Any Assistant and Associate General Counsel
6. Any District or Area Office Director
7. The Legal Counsel
8. Director, Office of Field Programs

(b) For the DOL:

1. The Secretary or Deputy Secretary of Labor
2. The Solicitor of Labor
3. Assistant Secretary for Employment Standards
4. The Deputy Assistant Secretary or Deputy Director, OFCCP
5. Associate Solicitor of Labor
6. Any OFCCP Area Office Director
7. Any Regional Solicitor of Labor
8. Any OFCCP Division Director

4. Requests directed to a headquarters office of one agency from a field office of the other shall first be forwarded through the headquarters of the requesting agency. Responses to all requests for informaiton shall be made to the official making such request, or his/her designee.

5. (a) All requests by third parties for disclosure of information shall be coordinated with the agency which initially compiled or collected the information.

(b) Subparagraph 5(a), above, is not applicable to requests for data in EEOC files made by any state or local agency designated as a 706 agency with whom EEOC has a current charge resolution contract and a work-sharing agreement containing provisions required by Sections 706 and 709 of Title VII of the Civil Rights Act of 1964, as amended. Provided, however, that any such agency shall not disclose any of the information, initially compiled by OFCCP, to the public without express written approval by the Deputy Assistant secretary for OFCCP.

6. EEOC and OFCCP shall establish procedures for notification and consultation at verious stages of their respective compliance activities in order to increase efficiency and ensure coordination and minimize duplication. Such procedures shall include:

(a) Establishment of an ongoing Compliance Coordination Committee (CCC) which shall meet at least quarterly to review pending and future compliance plans, the schedule of establishments to be reviewed, potential Commissioner Charges, and potential litigation, and to take such other steps as may be appropriate to increase efficiency and eliminate competition and duplication. Such committees shall be established both in headquarters and in the field. At the conclusion of each quarterly meeting, each field CCC shall forward to the Director, Office of Field Programs, EEOC, and the Director, Division of Program Operations, OFCCP, a report of the rsults of such meeting.

(b) Contact by each agency at the commencement of and during a field investigaiton or compliance review where appropriate to obtain information in the possession of the agency on the employer being investigated.

(c) Notification to OFCCP, in appropriate instances, when EEOC has made a finding of cause and has determined that attempts at conciliation are unsuccessful and that no lawsuit will be filed by EEOC.

(d) Consulation with the appropriate field office of OFCCP when an EEOC field office is contemplating recommending a Commissioner Charge or litigation, and coordination of its activities.

(e) Consultation with the appropriate field office of EEOC when an OFCCP Regional Office is contemplating recommending the issuance of an administrative complaint and coordination of its activities.

7. Processing of Complaints Filed with OFCCP.

(a) Dual-Filed Complaints/Charges—Complaints of employment discrimination filed with OFCCP under Executive Order 11246 will be considered charges simultaneously filed under Title VII whenever the complaints also fall within the jurisdiction of Title VII. For the purpose of determining the timeliness of such a charge, which will be considered dual filed under this paragraph, the date the matter was received by OFCCP shall be deemed to be the date it was received by EEOC.

(b) Systemic or Class Allegations—OFCCP will retain, investigate, and resolve allegations of discrimination of a systemic or class nature on the basis of race, color, religion, sex, or national origin, over which it has jurisdiction. OFCCP shall promptly notify EEOC's Director, Office of Field Programs, of OFCCP's receipt of complaints/charges that include such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). In addition, OFCCP shall make available to EEOC, upon request, information obtained in the investigation and processing of such allegations, pursuant to paragraphs 1 and 6(b) herein. In appropriate cases, EEOC may request that it be referred systemic or class allegations under Title VII so as to avoid duplication and assure effective law enforcement.

(c) Individual Allegations—OFCCP will refer to the appropriate EEOC field office allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin in dual filed complaints/charges. In appropriate cases, OFCCP may request that it retain such allegations so as to avoid duplication and assure effective law enforcement.

(d) Appointment of OFCCP as EEOC's Agent—OFCCP will act as EEOC's agent for the purposes of receiving, investigating, and processing the Title VII component of complaints/charges that it retains under this paragraph. OFCCP shall investigate and process such dual filed complaints/charges as set for in this subparagraph, and in a manner consistent with Title VII principles on liability and damages.

(1) Notice of Receipt of complaint/charge—Within ten days of receipt of the complaint/charge, OFCCP shall notify the contractor/respondent that it has received a charge of employment discrimination under Executive Order 11246 and Title VII. This notification shall state the date, place, and circumstances of the alleged unlawful employment practice(s).

(2) Fair Employment Practice Agency Deferral Period—Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral period for dual filed Title VII charges that OFCCP receives will be waived.

(3) Not Reasonable Cause Findings—If the OFCCP investigation of a dual filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-sue. OFCCP will close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(4) Reasonable Cause Findings—

(i) Successful Conciliation—If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for

remedies, for all aggrieved persons covered by the Title VII charge. If conciliation is successful, the conciliation agreement will state that the complainant/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the compliant/charge, and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(ii) Unsuccessful Conciliation—When conciliation is not successful, the Executive Order 11246 component of the compliant/charge will be considered for further OFCCP processing consistent with OFCCP's usual procedures. At the conclusion of OFCCP processing, OFCCP shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate. If EEOC declines to pursue further action, EEOC will close the Title VII charge and issue a notice of right-to-sue.

(5) Issuance of Notice of Right-to-Sue Upon Request—Consistent with the Title VII procedures set froth at 29 CFR 1601.28, after 180 days from the date the complaint/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a compliant/charge that it retains. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of Title VII to further process the Title VII component of the compliant/charge.

(6) Subsequent Attempts to File an EEOC Charge Covering the Same Facts and Issues—If an individual who has already filed an OFCCP complaint/charge that is deemed dual filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing.

8. Confidentiality.

(a) When EEOC provides information to OFCCP, then the confidentiality requirements of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964 apply to that information. When OFCCP receives the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source. However, OFCCP will also observe any confidentiality requirements imposed on such information by the Trade Secrets Act or the Privacy Act.

(b) When OFCCP obtains information from its receipt, investigation, and processing of the Title VII component of a dual filed charge, or when OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, OFCCP will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, and sections 706(b) and 709(e) of the Civil Rights Act of 1964.

(c) Questions concerning confidentiality under Title VII shall be directed to EEOC's Deputy Legal Counsel for Legal Services, Office of Legal Counsel.

(d) Questions concerning confidentiality under Executive Order 11246, as amended, or 38 U.S.C. 4212 (Section 402 of VEVRAA) shall be directed to OFCCP, Director, Division of Program Operations.

9. OFCCP and EEOC seek to ensure consistent compliance and enforcement standards and procedures that will facilitate consistency of compliance determinations. The agencies also seek to make the most efficient use of their available resources through coordination. Accordingly, the CCC shall advise in the development of standards and procedures for both agencies, including, but not limited to:

- Criteria and mechanisms for selecting industries and organizations for review and investigation;
- Procedures for routine access to and exchanges of electronic data bases, including, but not limited to, lists of proposed and completed compliance reviews, systemic, ELI and individual cases and conciliation agreements and settlements;
- Consistent analytical approaches to identifying and defining employment discrimination and determining appropriate remedies;
- Uniform training programs and training materials;
- Joint Policy statements;
- Procedures for coordinated collection, sharing and analysis of data;
- Joint projects to develop consistent definitions and to share expertise, foster consistency, and reduce duplicative efforts in such areas as: analysis of employee selection procedures, labor market availability and use of employment statistics;
- Procedures to be utilized in obtaining compliance with OFCCP or EEOC requests for data and information, pursuant to investigations under either Title VII or Executive Order 11246.

10. EEOC and OFCCP shall conduct periodic reviews of the implementation of this agreement, on an ongoing basis.

[FR Doc. 99–9065 Filed 4–9–99; 8:45 am]

BILLING CODE 6570–01–M and 4510–27–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Department of Labor

Coordination of Functions; Memorandum of Understanding

AGENCY: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Final notice.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL), Employment Standards Administration (ESA) have adopted a Memorandum of Understanding to maximize the effectiveness of the laws they enforce that prohibit unlawful compensation discrimination.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel For Coordination, Equal Employment Opportunity Commission, (202) 663–4639 (voice), 202–663–7026 (TTY); or James I. Melvin, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor, (202) 693–0102 (voice), (202) 693–1308 (TTY).

SUPPLEMENTARY INFORMATION: The Memorandum of Understanding will enhance enforcement of the federal laws prohibiting compensation discrimination, which are enforced by the EEOC and by the SOL's ESA. The agreement will reduce duplication of effort and result in increased enforcement activity on the issue of compensation discrimination through training of ESA personnel, and through sharing of information and data concerning potential issues of compensation discrimination.

EEOC enforces the Equal Pay Act of 1963 (EPA) and Title VII of the Civil Rights Act of 1964, which prohibit pay discrimination on the basis of sex. ESA's Office of Federal Contract Compliance Programs (OFCCP) enforces nondiscrimination requirements that apply to federal government contractors, primarily Executive Order 11246, and include prohibitions against discrimination in compensation. ESA's Wage and Hour Division enforces federal standards for wages and hours of work.

Ida L. Castro,

Chairwoman, Equal Employment Opportunity Commission.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

MEMORANDUM OF UNDERSTANDING BETWEEN THE EMPLOYMENT STANDARDS ADMINISTRATION AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

I. Background and Purpose

The purpose of this Memorandum of Understanding (MOU) is to maximize the effectiveness of those laws enforced by the Employment Standards Administration (ESA) and the Equal Employment Opportunity Commission (EEOC) which prohibit unlawful compensation discrimination, and other unlawful compensation practices.

Historically, EEOC and ESA have maintained excellent working relationships in areas of mutual law

enforcement interest. EEOC enforces Title VII of the Civil Rights Act of 1964, and the Equal Pay Act of 1963, among other equal employment opportunity laws. The ESA Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, as amended, and other contract-based equal employment opportunity laws. The ESA Wage and Hour Division (WHD) enforces the Fair Labor Standards Act, the Family and Medical Leave Act (FMLA) and other laws establishing minimum wage and labor standards.

The agreement will enhance enforcement efforts to prohibit compensation discrimination and reduce duplication of effort. It will also result in increased enforcement activity on the issue of compensation discrimination through the training of ESA personnel, and through the sharing of information and data.

II. Agency Authorities and Responsibilities

Employment Standards Administration

Office of Federal Contract Compliance Programs: Executive Order 11246, as amended, and its implementing regulations, prohibit covered federal contractors from disciminating in employment on the basis of race, color, sex, religion, or national origin, and require them to take affirmative action to ensure that equal opportunity is provided in all aspects of employment, including compensation.

Wage and Hour Division

The Fair Labor Standards Act of 1938 (FLSA) establishes minimum federal standards for wages and hours of work. The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid job-protected leave a year for qualifying family leave reasons.

EEOC

The Equal Pay Act of 1963 prohibits employers from paying employees at a rate less than employees of the opposite sex at the same establishment ''for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions . . . 29 U.S.C. 206(d)(1). Title VII of the Civil Rights Act of 1964 protects individuals from employment discrimination based on sex, race, color, religion, and national origin.

III. Provisions

Training

Consistent with available resources, EEOC and ESA will develop and provide training to assist WHD enforcement staff in recognizing potential compensation discrimination. EEOC and ESA will determine the exact nature of the training, as well as costs and payment responsibilities, by consensus.

Transfer of Information

When, in the course of its enforcement activities, or through other sources, WHD learns of a potential issue of compensation discrimination, the WHD may, to the extent authorized by law, provide such information to OFCCP for a determination of the employer's contract status and for appropriate action. If OFCCP determines that the employer is not a federal contractor, but may be covered by the Equal Pay Act or Title VII, OFCCP may, to the extent authorized by law, provide the information to EEOC.

When in the course of its activities, OFCCP identifies potential issues of compensation discrimination, OFCCP may, to the extent authorized by law, share such information, as appropriate, with EEOC, as well as any other information that will enhance the effectiveness of the EEOC as an enforcement agency.

Likewise, when, in the course of its enforcement activities, EEOC identifies potential issues of compensation discrimination, EEOC may, to the extent authorized by law, share such information, as appropriate, with OFCP, as well as any other information that will enhance the effectiveness of the Employment Standards Administration's OFCCP and WHD as enforcement agencies or programs.

Exchanges of information will, generally, include any supporting documentation gathered during contact with employers, potential complainants, or other sources of information. The agency receiving information has the responsibility to ensure that any disclosures of the information are in conformance with all provisions of law that apply to the employees of the originating agency, including Section 706(b) and Section 709(e) of Title VII of the Civil Rights Act of 1964. The agency receiving the information is also bound to take all appropriate steps to assure that the information is protected from unauthorized disclosure or use.

ESA and EEOC will provide each other with semi-annual reports of actions taken on compensation discrimination referrals provided pursuant to this MOU. OFCCP and EEOC headquarters staff will meet periodically to coordinate enforcement on questions relating to compensation discrimination.

IV. Agreement

The provisions of this Memorandum of Understanding may be reviewed and jointly modified as appropriate when it is determined by ESA and EEOC that such review and modification is in the interest of their respective enforcement responsibilities.

[FR Doc. 99–9066 Filed 4–9–99; 8:45 am]
BILLING CODE 6570–01–M; 4510–27–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–643]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held at the Federal Communications Commission in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the initial meeting of the Public Safety National Coordination Committee.

DATES: April 29, 1999 at 10:00 a.m.—5:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW-C305, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D'wana R. Terry, telephone (202) 418–0680. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements

For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rulemaking,* FCC 98–191 (1998), 63 FR 58645, November 2, 1998. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the initial meeting of the Public Safety National Coordination Committee.

DATES: April 29, 1999; 10:00 a.m.–5:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW–C305, 445 Twelfth Street, S.W., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Committee Charter and other administrative matters
4. Committee Structure
5. Work Program/Organization of Work
6. Meeting Schedule
7. Agenda for Next Meeting
8. Other Business
9. Closing Remarks

The NCC will have an open membership. Previous expressions of interest in membership have been received in response to the Public Notice released on January 29, 1999 inviting interested persons to become members and to participate in the NCC's processes. All persons who have identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the first meeting of the Public Safety National Coordination Committee, please RSVP to Solita Griffis or Bertram Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC on or before April 22, 1999, by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at bweintra@fcc.gov or solitagriffis@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number. This RSVP is for the purpose of determining the number of people who will attend this first meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Federal Communications Commission

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division Wireless Telecommunications Bureau.

[FR Doc. 99–9076 Filed 4–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P2–99]

In Re: Request That the Commission Issue Section 15 Orders to the Members of the Transpacific Stabilization Agreement; Notice of Extension of Time

On April 2, 1999, 64 FR 15971, the Commission gave notice that a petition requesting the Commission to issue a section 15 order to the members of the Transpacific Stabilization Agreement had been filed by the Coalition for Fair Play in Ocean Shipping. That Notice established April 9, 1999, as the date set for replies. The Transpacific Stabilization Agreement has requested an extension of time to reply to the petition. TSA asks for a date at least 15 days following the latter of publication in the **Federal Register** or ''proper service'' by petitioner.

Time to reply will be extended to April 13, 1999, which is 15 days following receipt of the petition by TSA's counsel. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for Petitioner, Carlos Rodriguez, Esq., Carols Rodriguez & Associates, 1710 Rhode Island Avenue, NW., Washington, DC 20036.

Copies of the petition are available for examination at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046, Washington, DC.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–9023 Filed 4–9–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Summit Bancorp, Princeton, New Jersey, and First Valley Corporation, Bethlehem, Pennsylvania; to acquire 100 percent of the voting shares of Prime Bancorp, Inc., Fort Washington, Pennsylvania, and thereby indirectly acquire Prime Bank, Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, April 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8967 Filed 4–9–99; 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 May 7, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Macks Creek Bancshares, Inc., Macks Creek, Missouri; to become a bank holding company by acquiring at least 80.6 percent of the voting shares of Bank of Macks Creek, Macks Creek, Missouri.

Board of Governors of the Federal Reserve System, April 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9030 Filed 4–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Readlyn Bancshares, Inc., St. Paul, Minnesota; to engage *de novo* in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8966 Filed 4–9–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cancellation of Requirement for Certification of Used Tire Casings from Asia Prior to Entry into the United States

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice of cancellation of requirement for certification of used tire casings from Asia prior to entry into the United States.

SUMMARY: Since January 1, 1988, CDC has required that all used tire casings imported from Asia must be certified as dry, clean, and free of insects, to prevent further importation of the Asian mosquito *Aedes albopictus*. Despite these efforts, the species is now widely established in 28 states. Because the certification requirements have not proved to be effective, CDC is proposing to rescind them, following a thirty (30)-day period for public comment.

DATES: Written Comments must be received on or before May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Barrow (404) 639–8107; E-mail jeb1@cdc.gov), Centers for Disease Control and Prevention, 1600 Clifton Rd., NE, National Center for Infectious Diseases, Division of Quarantine, Mail Stop E–03, Atlanta, Georgia, 30333.

SUPPLEMENTARY INFORMATION:

Background

Investigations conducted by CDC in 1986 established that *Aedes albopictus* and other mosquito species were being imported into the United States from Asia in used tire casings. Since these mosquitoes have the potential to transmit certain viral diseases to humans, such as dengue and other arboviruses including several that are native to the Americas, their presence was considered a potential public health threat. As of October 1, 1987, 15 states were known to be infested with *Aedes albopictus*. Interstate trade in used tires was believed to be a major factor in disseminating the species within the United States. Consequently, effective January 1, 1988, under the authority of section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 71.32(c), CDC imposed a requirement that all used tire casings originating from Asia must be certified as being dry, clean, and disinsected. Specific measures for disinsection and certification were defined in a **Federal Register** notice dated November 20, 1987 (52 FR 44836). In order to monitor compliance with the requirements, the CDC Division of Quarantine conducted an energetic program of random inspections, which showed large-scale noncompliance, even though penalties were imposed.

Despite these enforcement efforts, *Aedes albopictus* has spread to 28 states, the approximate geographic limits of its potential distribution in the United States. A recent CDC study concluded that further colonization within those limits is inevitable. The study, published in the Journal of the American Mosquito Control Association in March 1998 (14:83–94), found that, because of the vast size and distribution of the existing population, the number of mosquitoes that could be introduced from overseas is insignificant. Because of its exploitation of natural and artificial habitats, *Aedes albopictus* is extremely difficult to control and should be considered a permanently established species in the United States. In addition, although it is capable of transmitting numerous viruses, there is to date no evidence of any transmission to humans in the United States. The

effect of the present requirement is therefore negligible, and the cost of the requirement, both to industry and government, can no longer be justified.

Accordingly, CDC is seeking public comment on its proposal to rescind the requirement for certification of used tire casings from Asia prior to entry into the United States. Comments are sought for thirty (30) days, after which CDC will publish in the **Federal Register** a notice and effective date of action.

Dated: April 6, 1999.

Joseph R. Carter,

Acting Associate Director of Management and Operation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8987 Filed 4–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0670]

Agency Information Collection Activities: Proposed Collection; Comment Request; Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each collection of information, including each proposed extension of an existing collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the approval and labeling of color additives.

DATES: Submit written comments on the information collection requirements by June 8, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Labeling requirements for color additives (other than hair dyes)—21 CFR 70.25 and Petitions—21 CFR 71.1 (OMB Control Number 0910–0185—Extension)

Description: Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or unless the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 (21 CFR 71.1) specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use.

FDA scientific personnel review color additive petitions to ensure that the intended use of the color additive in or on food, drugs, cosmetics, and medical devices is suitable and safe. Color additive petitions were specifically provided for by Congress when it enacted the Color Additive Amendments of 1960 (Pub. L. 94–295). If FDA stopped accepting color additive petitions or stopped requiring them to contain the information specified in § 71.1, the number of new color additives approved would decrease.

FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Description of Respondents: Business or other for profit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Average Hours per Response	Total Hours	Total Operating & Maintenance Costs
70.25	5	1	5			
71.1	5	1	5	1,866	9,330	$14,200
Total	5		5		9,330	$14,200

[1] There are no capital costs associated with this collection of information.

This estimate is based on the average number of new color additive petitions received in 1997 and 1998. Although the burden varies with the type of petition submitted, a color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself. Because labeling requirements under § 70.25 for a particular color additive involve information required as part of the color additive petition safety review process, the estimate for the number of respondents is the same for § 70.25 as for § 71.1, and the burden hours for labeling are included in the estimate for § 71.1.

Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from $1,600 to $3,000, depending on the intended use of the color and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of two Category A and three Category B color additive petitions are expected per year. The maximum color additive petition fee for a Category A petition is $2,600 and the maximum color additive petition fee for a Category B petition is $3,000. Because an average of five color additive petitions are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $14,200 (2 x $2,600 + 3 x $3,000 listing fees = $14,200).

Dated: April 5, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8954 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0297]

Draft Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 19, 1999 (64 FR 13587). The document announced an opportunity for public comment on a draft guidance entitled ''Formal Dispute Resolution; Appeals Above the Division Level.'' The notice was published with two inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–6749, appearing on page 13587 in the **Federal Register** of Friday, March 19, 1999, the following corrections are made:

1. On page 13587, in the first column, under the **DATES** caption, the last sentence is corrected to read ''Written comments on the information collection provisions must be submitted to the Dockets Management Branch (address below) by May 19, 1999. All comments should be identified with the docket number found in brackets in the heading of this document.''

2. On page 13589, in first column, the last paragraph of the document is removed.

Dated: April 6, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8997 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0296]

Draft Guidance for Industry on Formal Meetings with Sponsors and Applicants for PDUFA Products; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 19, 1999 (64 FR 13591). The document announced an opportunity for public comment on a draft guidance entitled ''Formal Meetings with Sponsors and Applicants for PDUFA Products.'' The notice was published with two inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–6748, appearing on page 13591 in the **Federal Register** of Friday, March 19, 1999, the following corrections are made:

1. On page 13591, in the third column, under the **DATES** caption, after the last sentence two sentences are added to read ''Written comments on the information collection provisions must be submitted to the Dockets Management Branch (address below) by May 19, 1999. All comments should be identified with the docket number found in brackets in the heading of this document.''

2. On page 13594, in the first column, the last paragraph of the document is removed.

Dated: April 6, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8998 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–460]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Participating Physician or Supplier Agreement, HCFA–460;

Form No.: HCFA–460 (OMB# 0938–0373);

Use: The HCFA–460 is completed by nonparticipating physicians and

supplier if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits.;

Frequency: Once, unless re-enrolled;

Affected Public: Business or other for-profit, and Individuals or Households;

Number of Respondents: 45,000;

Total Annual Responses: 45,000;

Total Annual Hours: 11,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 31, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–8979 Filed 4–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 8396, dated February 19, 1999) is amended to reflect the restructuring of the Division of Public Health Surveillance and Informatics, Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC).

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Division of Public Health Surveillance and Informatics (CB5)* and insert the following:

(1) Collects, performs analyses, and disseminates public health surveillance information; (2) manages and operates the National Electronic Telecommunications System for Surveillance (NETSS), the National Notifiable Diseases Surveillance System (NNDSS), and the 121 Cities Mortality Reporting System; plans, coordinates, and produces tables, graphs, maps, and figures for the ''Annual Morbidity and Mortality Weekly Report (MMWR) Summary of Notifiable Diseases, U.S.'' and produces MMWR tables from NNDSS; (3) coordinates, develops, implements, and supports CDC-wide public health information systems, including informational and communications applications, directly, as well as in collaboration with other Centers/Institute/Offices (CIOs); (4) develops improved surveillance and public health informatics methods; (5) provides consultation, technical assistance, and training on public health surveillance and health information systems to CDC and to other agencies and domestic and international organizations; (6) coordinates activities of the CDC Surveillance Coordination Group; (7) provides policy and staff support for CDC's Health Information and Surveillance Systems Board; (8) coordinates a CDC-wide initiative aimed at building State and local capacity to perform the core public health function of assessment and use of data for policy development and assurance; (9) provides program support for the development and administration of a CDC training effort in public health informatics; and (10) provides guidance and supervision to EIS Officers and Preventive Medicine Residents assigned to the Division.

Delete the functional statement for the *Office of the Director (CB51)* and insert the following:

(1) Provides leadership and overall direction for the Division; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) establishes Division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) provides management, administrative, and support services, and coordinates with appropriate EPO offices on program and administrative matters; (6) provides liaison with other CDC organizations, other governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other constituent groups and partners; (7) provides leadership and direction, in collaboration with other CIOs, in the planning and development of computer software for use in surveillance and epidemiology, including testing and revising computer programs; (8) disseminates software for use by public health professionals; (9) plans, allocates, and monitors resources; (10) provides scientific leadership and guidance to the Division to assure highest scientific quality and ethical standards; (11) serves as the Executive Secretariat for CDC's Health Information and Surveillance Systems Board; (12) provides policy support to the Board, including coordination of the activities of the Board's subcommittees and work groups; (13) provides technical assistance, consultation, and guidance to the Board, CDC programs, and constituents on issues related to public health surveillance and health information systems and the Internet; and (14) plans and coordinates the activities of the CDC Surveillance Coordination Group.

Delete in their entirety the title and functional statement for the *Public Health Information Systems Branch (CB53)* and insert the following:

Applied Sciences Branch (CB54). (1) Provides scientific and epidemiologic leadership and direction in public health surveillance and health information systems to CDC and to other agencies and domestic and international organizations; (2) researches and develops new and innovative approaches to the use of technology in surveillance activities; (3) provides guidelines for development, evaluation, and integration of NETSS and other CDC surveillance systems; (4) promotes the dissemination and use of surveillance data; (5) evaluates applicability of outside standards and standard vocabularies to CDC data needs; (6) provides guidance and supervision to EIS Officers, Preventive Medicine Residents, and Public Health Practice Specialists; (7) coordinates a CDC-wide initiative aimed at building

State and local capacity to perform the core public health function of assessment and use of data for policy development and assurance; (8) responsible for management and technical assistance of the Assessment Initiative Cooperative Agreement; (9) provides program support for the development and administration of a CDC training effort in public health informatics; (10) designs curriculum and experiences for the CDC Public Health Informatics Fellowship; and (11) recruits candidates and provides supervision and oversite for the CDC Public Health Informatics Fellows.

Information Technology Branch (CB57). (1) Coordinates, designs, develops, implements, and supports CDC-wide public health, epidemiologic, scientific, and laboratory information systems, including database, informational, and communications applications, in collaboration with other CDC organizations with subject matter expertise and responsibility; (2) collaborates with CDC organizations to jointly develop, test, and implement CDC-wide public health information systems; (3) participates in the development or implementation of CDC plans for public health information systems; (4) researches and develops new and innovative approaches to public health applications development and database design; (5) determines appropriate technology architecture and methodology for Branch-developed systems; (6) maintains inventories and data dictionaries of CDC's public health data; (7) develops and recommends approaches for public health systems and interfaces between various information technologies for sharing data and performing cooperative applications processing; (8) determines, in consultation with CDC organizations and the CDC Systems Security Officer, applicable database and applications security measures in accordance with sensitivity and criticality of the data or system; (9) directly, as well as in collaboration with other CIOs, evaluates and recommends CDC-wide equipment and software acquisition for public health database and communications systems; (10) coordinates the provision of technical support and training in the use of CDC-wide public health information systems purchased or developed by the Branch; and (11) coordinates public health information resource management user groups.

Delete in their entirety the title and functional statement for the *Systems Operation and Information Branch (CB59)* and insert the following:

Surveillance Systems Branch (CB5A). (1) Provides support, technical assistance, and training for new, developmental systems and software for use in surveillance and epidemiology; (2) directly, as well as in collaboration with other CIOs, provides support, technical assistance, consultation, and training on computerized surveillance system development, maintenance, and operation for CDC, States, and international organizations; (3) provides service and support in the expansion of the NETSS; (4) plans and coordinates State-supported activities related to the NETSS; (5) analyzes needs and designs computer systems for use by public health professionals in the effective practice of public health surveillance and epidemiology; (6) assures user support for programs developed and released by the Division; (7) operates and maintains the NETSS, the NNDSS, and the 121 Cities Mortality Reporting System; (8) provides service and support to other CDC programs and State and local health departments to enable program-specific surveillance information to be collected and disseminated through the NETSS; (9) provides support, technical assistance, consultation, and training on surveillance system development, maintenance, and operation for CDC, States, and international organizations; (10) provides leadership and direction in the development of mainframe systems for use in surveillance and epidemiology, directly, as well as in collaboration with other CIOs; (11) plans, coordinates, and produces tables, graphs, maps, and figures for the Annual MMWR Summary of Notifiable Diseases, U.S.; (12) produces MMWR tables from NNDSS; (13) plans, coordinates and develops training and educational materials for all surveillance systems; (14) provides guidance in the development, implementation, and analysis of electronic public health data to international, State, and local groups; and (15) creates, maintains, disseminates, and archives historical public health data in an electronic format.

Dated: April 1, 1999.

Jeffrey P. Koplan,

Director.

[FR Doc. 99–9043 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Giant Panda Research Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of the availability of the Zoological Society of San Diego's Giant Panda Research Reports.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Zoological Society of San Diego's (ZSSD) giant panda research reports. The Service issued a permit in 1995 to the ZSSD to import two giant pandas for scientific research. The ZSSD imported the pandas in September 1996. Their research is focused on investigations of the communication system of giant pandas, particularly olfaction. The ZSSD is required to submit an annual report summarizing their research results for each year. The Service is making the reports received to date available to help educate the public and to promote cooperation/collaboration in giant panda conservation efforts.

DATES: The Service will accept requests to obtain a copy of the research reports for 60 days after April 12, 1999.

ADDRESSES: Send your requests to obtain a copy of the research reports to the Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203. You may also send your request by fax at 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, telephone (703) 358–2093 or fax (703) 358–2280, (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION: The giant panda is subject to strict protection by its listing as an endangered species under the U.S. Endangered Species Act (ESA) and it inclusion in Appendix-I of the Convention on International Trade in Endangered Species (CITES). The Service is responsible for protecting pandas by regulating certain activities, including whether to grant permits to allow their movement into and within the United States. In making these decisions under the ESA, the Service must determine whether the proposed activity is not likely to jeopardize the continued existence of the giant panda and would be for scientific research that promotes conservation of the species or enhancement of propagation or survival. Under CITES, the Service must determine if the activity would be for

purposes that are not detrimental to the survival of the species and that are not primarily commercial.

The ZSSD applied for and was granted a permit in 1995 to import two giant pandas for scientific research. They imported the pandas in September 1996. Conditions of the permit require the ZSSD to submit an annual report summarizing the research they conducted for that year. The ZSSD's research is primarily focused on investigating the communication system of giant pandas, particularly the olfactory modality. Their investigations on captive pandas can have implications for management of pandas in the wild. Olfactory signaling plays a key role in mate location, maintaining community social structure and spatial regulation. The ZSSD's panda research has four basic goals: (1) to develop new methodologies for assessing population trends and habitat use in China's spatially restricted reserves; (2) to increase the understanding of physiology, behavior, and reproductive biology, in particular those aspects that would assist in the management of the wild population; (3) to contribute to a more viable collaborative structure for international research efforts in all spheres where giant pandas are found; and (4) to contribute to the process of educating governments, conservation NGOs and the general public on the giant panda's attributes and vulnerability to extinction.

The ZSSD is addressing these goals through a series of studies that have specific aims. The reports reflect the progress that the ZSSD has made toward these goals.

Dated: March 30, 1999.

Teiko Saito,

Chief, Office of Management Authority.

[FR Doc. 99–9028 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–065–1220–00]

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater Districts, Idaho.

ACTION: Notice of Closure and Restriction Order for BLM Lands in Fiddle Creek Area, Order No. ID–060–14.

SUMMARY: By order, the following closures and restrictions apply to the area known as ''Fiddle Creek,'' described as all public land administered by the Bureau of Land Management in T.25N., R.1E., sections 22, 23, and 27, Idaho County, Idaho.

(1) Camping is prohibited.

(2) The possession or consumption of alcoholic beverages by persons under the age of 21 is prohibited.

For the purpose of this closure, camping is defined as erecting a tent or shelter, preparing a sleeping bag or other bedding material for use, parking a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

The authority for establishing these closures and restrictions is Title 43, CFR, Section 8364.1.

The closures and restrictions are in effect from April 15, 1999 through April 20, 1999.

The closures and restrictions do not apply to:

(1) Any Federal, State, or local law enforcement, rescue or fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, or contractor while in the performance of an official duty.

The closures and restrictions are necessary to protect persons, property, public lands and resources. Persons abusing alcohol cause a public disturbance, particularly at night, and create a risk to other persons on public lands.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, Area Manager, Bureau of Land Management, Cottonwood Field Office, Route 3, Box 181, Cottonwood, ID 83522.

Dated: March 3, 1999.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 99–8956 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–99–1030–00]

Notice of Realty Action: Lease

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Realty Action, proposal to lease Public Land in Lewis & Clark County, Montana.

SUMMARY: The Bureau of Land Management proposes to issue a non-competitive lease on the following described public land to resolve an unintentional occupancy trespass:

Principal Meridian, Montana

T. 12 N., R. 6 W., Sec. 36, a Metes and Bounds tract within Lot 35; comprising 0.90 acres.

The public land is located near Marysville, Montana approximately 20 miles northwest of Helena, Montana.

The lease would be issued under Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976: 43 U.S.C. 1732, and subsequent regulations found at 43 CFR Part 2920. The lease would be issued for a term of 30 years with the right of renewal. Fair market rental will be collected on 5 year intervals subject to reappraisal at the beginning of each period. A final determination on the lease of the public land will be made after completion of the environmental assessment.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Butte Field Manager, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: Gary Beals, Realty Specialist, P.O. Box 3088, Butte, Montana 59702; telephone 406–494–5059.

Dated: March 30, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–9032 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV030–5700–77; N–49077]

Notice of Realty Action: Amendment to Airport Lease; Lyon County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has received a request to amend an airport lease for the Tiger Field Airport (BLM Public Airport Lease N–49077) pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) to extend the lease term for a 10-year period (October 19, 1999 through October 18, 2009), to partially assign the lease so that it is held by Sheri Hill and Toybox Enterprises, Inc. and to add 84.68 acres to the lease. The amended lease area would include the following described lands:

All that certain land situated in a portion of section 36, Township 20 North, Range 24 East, Mount Diablo Meridian, Lyon County, Nevada; beginning at the south ¼ corner of section 36, thence from said point of

beginning and along the southerly line of said section 36, north 89°25′26″ west a distance of 317.89 feet; thence leaving said southerly line, north 17°06′18″ west a distance of 4,800.87 feet; thence south 65°51′05″ west a distance of 1,159.26 feet to a point on the westerly line of said section 36; thence along the said westerly line, north 1°49′18″ west a distance of 1,182.74 feet to the northwest corner of said section 36; thence along the northerly line of said section 36, south 89°44′15″ east a distance of 1,713.19 feet to a point on the westerly right of way of U.S. Highway Alternate 95 as shown on said record of survey; thence along said right of way south 16°33′14″ east a distance of 3,979.45 feet to a point of intersection with the north-south ¼ section of said section 36; thence along said north-south ¼ section line, south 0°50′22″ west a distance of 1,477.39 feet to the point of beginning.

Containing 111.71 acres more or less.

DATES AND ADDRESSES: Upon publication of this notice in the **Federal Register**, those public lands described above, not previously segregated, will become segregated from appropriation under the public land and mining laws, but not the mineral leasing laws. For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to Margaret L. Jensen, Assistant Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: On October 19, 1989, certain public lands in Lyon County, Nevada were leased to Leland B. Hill for public airport purposes. The lease was amended on June 14, 1995 to reflect an adjustment in lease boundaries. Leland B. Hill is now deceased and the original lease term of 10 years is nearing expiration. Airport use is anticipated to continue and increase based on residential and recreational development on adjoining private lands. For further information contact Jo Ann Hufnagle, Bureau of Land Management Carson City Field Office at (775) 885–6000.

Dated this 1st day of April, 1999.

Margaret L. Jensen,

Assistant Manager, Carson City Field Office.

[FR Doc. 99–8980 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–51528]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land in Elko County, Nevada, has been examined and identified as suitable for classification for lease, with the option to purchase after development, under the provisions of the Recreation and Public Purpose (R&PP) Act of June 14, 1926, as amended, (43 U.S.C. 869 *et seq.*). The City of Elko proposes to use the land for expansion of the existing Elko municipal golf course.

Mount Diablo Meridian, Nevada

T. 34 N., R. 55 E.

Section 3, E½SW¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼.

Containing 50.00 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The land would not be offered for lease until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The City of Elko has made application to acquire the land to expand the existing Elko municipal golf course. The action would allow construction of an additional nine holes. The lease/patent, when issued, would be subject to the provisions of the Recreation and Public Purpose Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under application law and such regulations as the Secretary may prescribe.

Upon publication of this Notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws except for lease or conveyance under the Recreation and Public Purpose Act, the general mining laws, and leasing under the mineral leasing laws. The segregative effect will terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever comes first.

For a period of 45 days from the date of this publication in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the land to the District Manager, Elko Field Office, 3900 E. Idaho St., Elko, Nevada, 89801. Any objections will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a golf course. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a golf course.

Dated: April 2, 1999.

David L. Stout,

Associate Field Manager.

[FR Doc. 99–9031 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held April 21 and 22, 1999; assemble at 8:30 a.m. in the Auditorium at Stove Pipe Wells Motel, Death Valley National Park, Death Valley, California.

The main agenda will include:

- Updates on various Development Concept Plans and other plans
- Updates on Fee Demonstration and other programs in the park
- Field trip to various locations within Death Valley National Park

The Advisory Commission was established by PL # 03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Robert Revert, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Richard H. Martin,

Superintendent, Death Valley National Park.

[FR Doc. 99–8841 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday, April 23, 1999, at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Rose Ochi, Chairperson, William Michael, Vice Chairperson, Keith Bright, Martha Davis, Sue Kunitomi Embrey, Gann Matsuda, Vernon Miller, Mas Okui, Glenn Singley, Richard Stewart.

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after June 1, 1999. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: April 1, 1999.

Richard H. Martin,

Superintendent, Manzanar National Historic Site.

[FR Doc. 99–8868 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on May 10, 11 and 12, in Durango, Colorado.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet on the campus of Fort Lewis College of Durango, Colorado in the Memorial Lounge at the CUB (student center) on the campus of Fort Lewis College in Durango, Colorado. Matters to be discussed will include, officer and task force reports on NCPTT development and systems, and Millenium projects; Northwestern University report; staff program updates; the establishment of non-Federal support for the Center's programs; grant application review report; grant program, and long range plan considerations.

Monday, May 10 the meeting will start at 8:30 a.m. and end at 5:00 p.m. On Tuesday, May 11 the meeting will start at 8:30 a.m. and end at 11:30 a.m. On Wednesday, May 12, the meeting will be begin at 8:30 a.m. and end at 11:30 a.m. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, P.O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, 1849 C Street NW, Washington, DC 20240, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: April 7, 1999.

John A. Burns,

Acting Chief, HABS/HAER Designated Federal Official, National Park Service.

[FR Doc. 99–9055 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application of Temporary Replacement Card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following

information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 13, 1998 at 63 FR 43417, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Application of Temporary Replacement Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–695, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collected on this application will be used by the INS to consider application for replacement of temporary resident card. Also used to request a new card when previously lost, stolen or destroyed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 396 responses at 10 minutes (.166) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 66 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8961 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Guidelines on Producing Master Exhibits for Asylum Applications.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 1998 at 63 FR 45517, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Guidelines for Producing Master Exhibits for Asylum Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number,

Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstracts:* Primary: Not-for-Profit Institutions. Master Exhibits area means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses at 80 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8962 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Emergency Federal Law Enforcement Assistance.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 27, 1998 at 63 FR 45863, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Emergency Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number, Office of General Counsel Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. This collection of information is needed for the States and localities to submit claims for reimbursement in connection with immigration emergencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directive and Instruments Branch, Immigration and Naturalization Service U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8963 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Notice of Immigration Pilot Program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45261, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Notice of Immigration Pilot Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This information collection is used by the Service to determine participants in the Pilot Immigration Program provided for by section 610 of the Appropriations Act. The Service will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses at 40 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8964 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; application to adjust status from temporary to permanent resident.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 11, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Reinstatement without change of previously approved collection.*

(2) Title of the Form/Collection: Application to Adjust Status from Temporary to Permanent Resident.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–698. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form will be used by the Service to collect necessary information to adjudicate the application for permanent residence and issue an Alien Registration Card.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,179 responses at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,179 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and

Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8965 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Reinstatement, without change, of a previously approved collection for which approval has expired; BJA-Byrne Formula Grant Program annual institutionalization survey for subgrants.

The Department of Justice, Office of Justice Programs has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register** on May 2, 1997, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C., 20530. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information, will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information to those who are to respond, including through the use appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* BJA-Byrne Formula Grant Program Annual Institutionalization Survey for Subgrants

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form:* None. Bureau of Justice Assistance, Office of Justice Programs, United Stated Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Government (State Administrative Agencies). *Other:* None. The Byrne Formula Grant Program was created by the Anti-Drug Abuse Act of 1988, and is designed to provide support to its constituency group of state and local criminal justice agencies to initiate innovative projects that respond effectively to crime problems and improve operations of the Nation's criminal justice system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 56 respondents to complete the surveys for all 3,936 projects funded in FY 1992, is 5 minutes per survey. The time burden of the 56 respondents to complete the surveys for the estimated 520 projects that were expected to continue after Byrne funding ceased in FY 1992, but were not refunded, is 45 minutes per survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete surveys for the FY 1992 Byrne-funded projects and those that were not refunded is 720 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: April 6, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–8989 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; National crime victimization survey, Police public contact survey (Revision of a currently approved collection).

The Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is being sought for information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 22, 1999, allowing for 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until May 12, 1999. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320, 10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the

Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technologies collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Regular collection (Revision of a currently approved collection.)

(2) *The title of the form/collection:* National Crime Victimization Survey, Police Public Contact Supplement.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* PPCS–1.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Eligible respondents to the survey must be age 12 or older. The Police Public Contract Supplement fulfills the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of the excessive force by law enforcement personnel. The survey will be conducted as a supplement to the National Crime Victimization Survey in all sample households for a six (6) month period. *Other:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 94,500 respondent at an average of 0.05 hours (1 minute each) plus the 55 minutes for the NCVS questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collecton:* 4,734 total hours in addition to the 88,282 total hours for the NCVS questionnaire for a grand total of 93,016 hours.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Sutie 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 6, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–8990 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (Reinvestment without change, of a previously approved collection for which approval has expired). Denial of Federal benefits for drug offenders.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 3, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technologies collection techniques or other forms of information technology, e.g., permitting electronic submission of responses

Overview of this information:

(1) *Type of information collection:* Reinstatement without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Denial of Federal Benefits for Drug Offenders.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 3500/2, Office of Justice Programs, Bureau of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Courts. *Other:* none.

The Denial of Federal Benefits for Drug Offenders, P.L. 100–690, contains a collection of information requirements to ensure that convicted offenders do not receive Federal benefits that have been denied by court action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will compete this form. A respondent will take an estimate of 5 minutes to complete each form.

(6) *An estimate of the total public (in hours) associated with the collection:* It is estimated that the total public burden associated with this collection is 41 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 7, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–8991 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 11:00 a.m., Wednesday, April 14, 1999.

PLACE: Friendship Heights Village Center, Classroom #2, 4433 South Park Avenue, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion regarding the costs of Home Detention.
4. Discussion regarding the Special Parole Term Circuit Split.

AGENCY CONTACT: TOM KOWALSKI, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: April 6, 1999.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 99–9176 Filed 4–8–99; 2:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Wednesday, April 14, 1999.

PLACE: Friendship Heights Village Center, Classroom #2, 4433 South Park Avenue, Chevy Chase, Maryland 20815.

STATUS: Closed-Meeting.

MATTERS CONSIDERED:

The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately six cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: April 6, 1999.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 99–9177 Filed 4–8–99; 2:21 pm]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime Agency; Information Collection Activities; Proposed Collection Comment Request

ACTION: Notice of information collection under review; Reinstatement with no change, of a previously approved collection for which approval has expired; Victims of Crime Act, Crime Victim Assistance Grant Program Performance Report.

Office of Management and Budget (OMB) approval is being sought for the information collected listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comment from May 12, 1999. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies should addressed the following points:

(1) Does the proposed information collection instrument include all relevant program performance measures;

(2) Does the proposed information to be collected have practical utility;

(3) Does the proposed information to be collected enhance the quality and clarity of the information to be collected; and

(4) Does the proposed information to be collected minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Reinstatement, with no change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Victims of Crime Act, Crime Victim Assistance Grant Program Performance Report.

(3) The agency form number if any, the applicable component of the Department sponsoring the collection. *Form:* OJP Admin. Form 7330 (Rev. 11/95), Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. *Primary:* State government. *Other:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent/reply:* The information to compile these reports will be drawn from victim assistance program data to the 57 respondents (grantees). The number of victim assistance programs vary widely from state to state. A grantee could be responsible for compiling subgrant data for as many of 186 programs (Texas) to as few as four (4) programs (Guam). Therefore, the estimated clerical hours can range from 1 to 70 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* the current estimated recordkeeping and reporting burden is 1,197 (20 hours per respondent (estimated median) + 1 hour per respondent for recordkeeping × 57 respondents for recordkeeping = 1,197 hours). There is no increase in the annual recordkeeping and reporting burden.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice

Management Division, Suite 850, Washington, DC 20530.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–8988 Filed 4–9–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center Located Off Walgreen Road in Jacksonville, FL

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center to be located off of Walgreen Road in Jacksonville, Florida.

SUMMARY: Pursuant to the Council on Environmental Quality Regulation (40 CFR Part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), and the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed plans for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by May 12, 1999.

ADDRESSES: Any comment(s) are to be submitted to Amy J. Knight, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4659, Washington, DC 20210, (202) 219–5468 ext. 103 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Melvin R. Collins, Regional Director, Region IV (Four), Office of Job Corps, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–2382 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The proposed development site is located approximately 2.9 miles northeast of the Jacksonville City Hall and is located off of Walgreen Road in Jacksonville, Duval County, Florida. The EA indicates that the site is located within an approximate 40-acre wooded and undeveloped parcel. The subject property has undeveloped parcels of land as well as land developed with commercial, industrial, and residential properties in the vicinity (one eighth mile).

The property is currently owned by JARU Inc., Mr. Lawrence and Linda DuBow, and Mr. Leonard Setzer. The site does not contain any structures, and historical aerial photographs indicate that the property has been wooded dating back to 1951, with the exception of a small residential structure that was historically found in the northeast corner of the subject property. The structure is no longer standing, but a portion of the foundation is still standing.

The proposed Jacksonville Job Corps Center will be a totally new facility utilizing a campus setting. The new Job Corps Center will replace the existing Job Corps facility currently located at 205 West Third Street in Jacksonville, Florida. The new facility will consist of multiple buildings which will support 272 Resident Students and 28 Non-resident Students. The new facility will consist of no fewer than eight buildings, including dormitories, vocational shops, maintenance and warehouse, cafeteria, physical fitness center, administration and support facilities, and classroom facilities. There will be one dormitory building for males and one dormitory building for females, with a capacity of 136 students each. Classroom space will be provided in an education building. There will also be a vocational education building, a cafeteria/culinary arts building, a recreation building, an administration and medical/dental building, and a maintenance/warehouse building. The gross area of the facility will be 151,500 square feet, not including proposed outdoor recreation areas. The proposed project will be constructed in accordance with local fire and building code requirements.

The construction of the Job Corps Center on this undeveloped parcel would be a positive asset to the area in terms of environmental and socioeconomic improvements, and long-term productivity. The construction of the proposed Job Corps Center will provide employment opportunities for Jacksonville, Florida area residents. The Job Corps program provides basic education, vocational skills training, work experience, counseling, health care and related support services for young adults; the program is designed to graduate students who are ready to participate in the local economy.

The proposed project will not have any significant adverse impact on any natural systems or resources. All construction or development activities that will possibly impact jurisdictional wetland areas will be conducted in compliance with federal and state requirements. There are no historically significant buildings on the site, and no areas of archaeological significance. No state or federal threatened or endangered species (proposed or listed) have been located on the subject property.

Air quality and noise levels should not be affected by the proposed development project in the light industrial area in Jacksonville, Florida. Due to the nature of the proposed project, it would not be a source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control requirements. The proposed Job Corps Center will not significantly increase the vehicle traffic in the vicinity.

The proposed project will not have any significant adverse impact on the surrounding water, sewer, and storm water management infrastructure. Water and sewage service for the new facility will be provided by the Jacksonville Electric Authority (JEA). These utility systems are readily accessible and have sufficient capacity to accommodate the new Job Corps Center. All wastewater from the center will be treated at JEA's Main Street wastewater treatment plant. All drinking water will be provided by the JEA's Buckman water treatment plant, which is the municipal water supply for the surrounding area. Drinking water for the Buckman plant is obtained from deep wells into the Florida Aquifer. Storm water runoff from parking lots, sidewalks, and other structures will be managed in accordance with the requirements of the St. Johns River Water Management District (SJRWMD), and storm water runoff is not anticipated to adversely impact area surface water quality.

The City of Jacksonville, Office of Solid Waste and Resource Management, operates its own landfill (Trail Ridge Landfill). Municipal solid waste is collected weekly by the city. The estimated life remaining at the landfill is 21 years, based on recent implementation of a recycling program. Waste disposal at the new Job Corps Center will be provided by either the Office of Solid Waste and Resource Management, or one of several waste disposal contractors currently servicing the community. The construction and

relocation of the existing Job Corps Center to this new site is not expected to increase demand for space at the Trail Ridge Landfill.

JEA provides electrical service to the project site. Natural gas is provided by Florida Gas Transmission Company, and telephone service is provided by BellSouth. All of these utilities have distribution lines in the vicinity which have sufficient capacity to handle the increased service demand created by the new Job Corps Center. The increased demand for utility services is not expected to have a significant adverse affect on the environment.

Walgreen Road leads directly to the proposed project site but not onto the subject property. Walgreen Road connects to Golfair Road, to the south, which leads to several other main thoroughfares within the City of Jacksonville and is part of the Jacksonville Transit Authority route. These services can be used to access all aspects of the greater Jacksonville area. Roadways will need to be constructed on the new Job Corps Center project site, but no significant adverse affects are expected.

No significant adverse affects should be felt by the local medical, emergency, fire and police facilities. There are several primary providers of medical services in the Jacksonville area. The primary medical provider located closest to the subject property is the Methodist Medical Center. There are also private medical facilities located in the Jacksonville area. The Job Corps Center will also have a small medical and dental facility on-site for use by the residents as necessary.

Security services at the Jacksonville Job Corps will be provided by the center's staff, with two personnel on the day shift, three on evening shift, and two on the night shift. It is not anticipated that the Job Corps Center will need additional security support from the community. Police services are provided by the Jacksonville Police Department, the Duval County Sheriff's Office, and the Florida State Police. The Jacksonville Police substation serving the proposed subject property is the Zone 1, Substation Norwood, which is located at the Gateway Shopping Plaza. No police services will be adversely impacted by proposed Job Corps Center.

The City of Jacksonville will provide fire and emergency response to the project site. The closest station to the project site is Station # 2 located at 4th and North Main Street, which is approximately four blocks from the project site. Backup assistance will be from the Station # 1 at 611 Liberty Street. The Jacksonville Fire Department is a paid, professional fire-fighting organization providing 24-hour service. In addition, the Jacksonville area utilizes the 911 emergency call system for all emergencies, including fire and police. All fire and emergency services in the area are adequate for the project.

The proposed project population will not have a significant adverse sociological effect on the City of Jacksonville community. This area is characterized by a fairly diverse ethnicity, and offers numerous educational and recreational opportunities. Similarly, the proposed project will not have a significant adverse affect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; (2) Construction at an Alternate Site; and (3) Continue Construction as Proposed. The ''No Action'' alternative was not selected. The current Jacksonville Job Corps Center is located in a run-down facility that is inadequate to meet the educational, residential, and recreational needs of the staff, faculty, and students at the Center. The ''Alternate Site'' alternative was not selected. The Department of Labor, Employment and Training Administration solicited proposals for relocation properties on February 8, 1998, and received proposals for five properties in Jacksonville, Florida. Of the five proposed sites evaluated by the Department of Labor, Employment and Training Administration, only the subject property on Walgreen Road was determined to be suitable for construction of a Job Corps Center.

Due to the inadequate facilities currently occupied by the Jacksonville Job Corps Center, the lack of alternative construction sites, and the absence of any identified adverse environmental impacts from locating a Job Corps Center at the subject property, the ''Continue Construction as Proposed'' alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The planned construction of a Job Corps Center on the undeveloped parcel located off of Walgreen Road in Jacksonville, Florida, will not create any significant adverse impacts on the environment.

Dated at Washington, DC, this 6th day of April, 1999.

Mary Silva,

Director of Job Corps.

[FR Doc. 99–9029 Filed 4–9–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Oregon State Standards; Notice of Approval

1. Background.

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

The state submitted by letter dated September 13, 1989, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1926, Safety and Health Regulations for Construction, as published in the **Federal Register** (36 FR 75) on April 17, 1971. The Oregon Safety and Health Regulations for Construction are contained in OAR Division 3. The regulations were re-adopted by reference, but included a large number of State-initiated rules adopted in addition or in lieu of specific rules in 1926. The new Construction

rules became effective July 7, 1989 under Oregon Administrative Order 8–1989. Included were State-initiated amendments concerning fall protection and traffic control (Administrative Order 2–1989). On April 26, 1989, the State mailed the proposed amendment of rules to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436–01–000 and to those on the Department's distribution list as their interest appeared. On June 15, 1994, the submittal was returned to the State for clarification of some issues and corrections of others. On October 29, 1996, the State submitted an explanation of the issues and its plan for making the necessary corrections. Since the corrections were minor and did not require an administrative order, they were made when the standards were reprinted. The final corrections were made in 1998.

On its own initiative, the State of Oregon has submitted by letter dated March 25, 1991, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, adoption of an Oregon-initiated rule, OAR 437–03–093, which makes the Motor Vehicle standard 1926.601 applicable to all construction job sites with no exceptions. The amendment was adopted March 18, 1991, effective April 15, 1991, under Administrative Order 5–1991.

On its own initiative, the State of Oregon has submitted by letter dated May 10, 1994, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, a repeal of OAR 437–050, 055 and 060 because they duplicate the requirements contained in 29 CFR 1926, Subpart X, Ladders. These standards originally received Federal Register approval (42 FR 62554) on December 13, 1977. At the same time Oregon also submitted a State-initiated amendment to its construction standards at OAR 437–03–020(1) to raise the minimum estimated cost of construction projects requiring flush toilet facilities from $500,000 to $1,000,000. The State standard amendments were adopted and effective April 27, 1994, under Administrative Order 1–1994.

In response to Federal standard changes, the State of Oregon has submitted by letter dated June 13, 1997, from Peter De Luca, Administrator, to Richard Terrill, Acting Regional Administrator, and incorporated as part of the plan, State standards comparable to 29 CFR 1926.57(f), (g), (h) and (i), 1926.103(d), (e), (f), (g), (h) and (i), 1926.416(a)(4), (f), (g) and 1926.417(d) contained in the incorporation of General Industry Safety and Health Standards Applicable to Construction Work and Technical Amendments, as published in the **Federal Register** (58 FR 35099) on June 30, 1993; and State standards comparable to the changes contained in the **Federal Register** (61 FR 9230) as published on March 7, 1996, Miscellaneous Minor and Technical Amendments, except minor and technical amendments to the following sections were not adopted: 29 CFR 1910.142(c)(4), 1910.142(i)(1), 1910.153, 1910.261(a)(3), 1910.261(a)(4), 1910.261(n), 1910.266(d)(3)(iv), 1910.266(e)(2)(i), 1910.266(f)(3)(ii), 1910.266(f)(3)(iii), 1910.266(f)(3)(iv), 1910.266(f)(4), 1910.266(f)(5)(i), 1910.268(f)(1), 1926.33(c)(13)(i), 1926.103(a)(2), 1926.1103, 13 Carcinogens and the associated deletions to 1926.1104 and .1106 through .1116, 1928.21(a)(6), 1928.51(b)(1), 1928.52, 1928,53, Appendix B to Subpart C and 1928.1027; and State standards comparable to the changes to 29 CFR 1910 and 1915, changes to Subpart C and D to 29 CFR 1926 and changes to the Cadmium standard contained in 1926.1127 as published in the **Federal Register** (61 FR 31427) on June 20, 1996, Consolidation of Repetitive Provisions; Technical Amendments. These changes were adopted and became effective on April 2, 1997, under Administrative Order 4–1997.

In response to Federal standard changes, the State has submitted by letter dated June 13, 1997, from Peter De Luca, Administrator, to Richard Terrill, Acting Regional Administrator, and incorporated as part of the plan, State standards identical to 29 CFR 1926.450 through .454, Safety Standards for Scaffolds Used in the Construction Industry as published in the **Federal Register** (61 FR 46051) on August 30, 1996, and corrections and partial stay published in the **Federal Register** (61 FR 59831) on November 25, 1996. In addition to adopting the federal standard, the state adopted three state initiated standards and added a note to clarify one standard. The state initiated standards require the employer to have the manufacturer's operating manual with manually propelled elevating aerial platforms, boom supported elevating work platforms and scissor lifts and that they follow all operating and maintenance instructions. The state rules were adopted and became effective on March 12, 1997, under Administrative Order 2–1997.

2. Decision

OSHA has determined that the State standards for Scaffolds in Construction, General Industry Standards Applicable to Construction Work and Technical Amendments, Miscellaneous Minor and Technical Amendments, and Consolidation of Repetitive Provisions (Technical Amendments) are at least as effective as the comparable Federal standards as required by Section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA has also determined that the State standards for Construction, Motor Vehicles, and repeal of duplicative Ladder standards are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The re-adopted Construction standards have been in effect since July 7, 1989, the Motor Vehicle standard has been in effect since April 15, 1991, and the repeal of the Ladder standards and amendment of construction standards regarding flush toilet facilities have been in effect since April 27, 1994. During this time OSHA has received no indication of significant objection to the State's different standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with the product clause requirements or Section 18(c)(2) of the Act. (A different state standard applicable to a product which is distributed or used in interstate commerce but be required by compelling local conditions and not unduly burden interstate commerce). OSHA approves all of the standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. The state standards were adopted pursuant to ORS 654.025(2), ORS 656.726(3) and ORS 183.335.

3. Location of Supplement for Inspection and Copying

A copy of the standards, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW,

Washington, D.C. 20210. An electronic copy of this **Federal Register** notice may be obtained from the OSHA home page, http://www.osha.gov. Click on **Federal Register** under the Regulation section.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the federal standards which were promulgated in accordance with federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective April 12, 1999.

(Sec. 18, Pub. L. 91–596, 84 Stat. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 16th day of October 1998.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 99–9048 Filed 4–9–99; 8:45 am]

BILLING CODE 4510–26–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 29, 1999 and Friday, April 30, 1999 at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC. The meeting is tentatively scheduled to begin at 9:45 a.m. on April 29, and at 9:00 a.m. on April 30.

The Commission will discuss managed care for the frail elderly, quality assurance in the traditional medicare program, care for beneficiaries with end-stage renal disease, care at the end of life, health care errors, consumer choice, access to care, access to home health services, payment for graduate medical education, payment for physician services, and beneficiary financial liability.

Agendas will be mailed on April 9, 1999. The final agenda will be available on the Commission's web site (www.MedPCA.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–8996 Filed 4–9–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATE: May 19, 1999, 12:00 noon–1:00 p.m. edt.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Lois T. Keck, Ph.D., Research Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 2004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), lkeck@ncd.gov (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

OPEN CONFERENCE CALLS: These advisory committee conference calls of the N ational Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference calls at the NCD office. Those interested in joining these conference calls should contact the appropriate staff member listed above.

Records will be kept of all International Watch conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 31, 1999.

Ethel D. Briggs,

Executive Director.

[FR Doc. 99–9053 Filed 4–9–99; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, April 15, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.

2. Final Rule: Amendment to Part 701, NCUA's Rules and Regulations, Charitable Donations.

3. Interim Final Rule: Amendments to Part 745, NCUA's Rules and Regulations, Share Insurance.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, April 15, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 107 of the Federal Credit Union Act and Part 701 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Administrative Action under Section 206 of the Federal Credit Union

Act. Closed pursuant to exemptions (4) (7) and (8).

3. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–9224 Filed 4–8–99; 3:37 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 81, Standard Specifications for Granting of Patent Licenses.

3. The form number if applicable: Not applicable.

4. How often the collection is required:

Application for licenses are submitted once. Other reports are submitted annually or as other events require.

5. Who will be required or asked to report:

Applicants for and holder of NRC licenses to NRC inventions.

6. An estimate of the number of responses: 0.

7. The estimated number of annual respondents: 0.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 35 hours; however, no applications are anticipated during the next three years.

9. An indication of whether section 3507(d), Pub. L. 104–13 applies:

Not applicable.

10. Abstract: 10 CFR part 81 establishes the standard specifications for the issuance of licenses to rights in inventions covered by patents or patent applications invested in the United States, as represented by or in the custody of the Commission and other patents in which the Commission has legal rights.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 12, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0121), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9040 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029–LA–R; ASLBP No. 99–754–01–LA–R]

Yankee Atomic Electric Company (Yankee Nuclear Power Station) License Termination Plan; Notice of Hearings

Atomic Safety and Licensing Board

Before Administrative Judges; Charles Bechhoefer, Chairman, Dr. Thomas S. Elleman, Thomas D. Murphy.

April 6, 1999

This proceeding concerns the application of Yankee Atomic Electric Company (YAEC) for approval of a License Termination Plan for the Yankee Nuclear Power Station, a nuclear facility located near the town of Rowe, Franklin County, Massachusetts. On October 23, 1998, the Nuclear Regulatory Commission ruled that two petitioners for intervention, the New England Coalition On Nuclear Pollution (NECNP) and the Citizens Awareness Network (CAN), had standing (CLI–98–21, 48 NRC 185), and it remanded the proceeding to the Atomic Safety and Licensing Board to determine whether the petitioners had any admissible contentions that would entitle them to a hearing. On October 26, 1998, the Atomic Safety and Licensing Board for this proceeding was reconstituted to rule upon the hearing requests and to preside over the proceeding in the event that a hearing was ordered. 63 FR 58432 (October 30, 1998).

After holding a prehearing conference in Greenfield, Massachusetts, the Atomic Safety and Licensing Board issued a Prehearing Conference Order (LBP–99–14) on March 17, 1999, granting NECNP's and CAN's requests for a hearing and petitions for leave to intervene. The Order also permitted the Franklin Regional Council of Governments to participate as an interested governmental entity pursuant to 10 CFR § 2.715(c).

Please take notice that a hearing will be conducted in this proceeding. The reconstituted Atomic Safety and Licensing Board designated to preside over the proceeding consists of Dr. Thomas S. Elleman, Thomas D. Murphy, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Board may hold one or more prehearing conferences pursuant to 10 CFR 2.752 and, if necessary, an evidentiary hearing. The public is invited to attend all these sessions.

Supplementing the opportunity afforded at the first prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person not a party to the proceeding will be permitted to make a limited appearance statement, either in writing or (depending on time availability) orally, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may assist the Board and/or parties in the definition of issues being considered. To the extent that oral statements are permitted, the number of persons making such statements and the time allotted for each may be limited depending upon the time available at various sessions. Written statements may be submitted at any time. Written statements, and requests to make oral limited appearance statements, should be submitted to the Office of the Secretary, U.S. Nuclear Regulatory

Commission, Washington DC 20555, Attn: Rulemakings and Adjudications Staff. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Documents relating to this proceeding are available for public inspection at the Commission's Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301, as well as at the Commission's Public Document Room, 2120 L St. NW, Washington DC 20555.

Rockville, MD, April 6, 1999.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 99–9037 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Company; Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to the Yankee Atomic Electric Company (YAEC or licensee) license for the Yankee Nuclear Power Station (YNPS or plant) approving the License Termination Plan (LTP). YAEC submitted the LTP by letter dated May 15, 1997, by two separate letters dated December 18, 1997, and a fourth letter dated January 23, 1998. The plant is located in Rowe Township, Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action is issuance of a license amendment approving the LTP. The LTP is required by regulations to include: (A) A site characterization; (B) identification of dismantlement activities not completed under the Post Shutdown Activities Report (PSDAR)/ Decommissioning Plan at the time of submitting the LTP; (C) plans for site remediation; (D) detailed plans for the final radiation survey; (E) a description of the end use of the site, if restricted [The YAEC application does not include restrictions; therefore, this item is not included in YAEC's LRP]; (F) an updated site-specific estimate of remaining decommissioning costs; and (G) a supplement to the environmental report describing any new information or significant environmental change associated with the licensee's proposed termination activities.

The Need for the Proposed Action

Issuance of an amendment approving the LTP will allow the licensee to implement its final radiation survey plan to allow for a determination as to whether the release criteria for unrestricted use of the site after the YAEC license is terminated have been met.

Environmental Impacts of the Proposed Action

Issuance of the amendment approving the LTP will not have any significant effect on accident risk and probability of any other environmental impact is extremely remote.

The staff's review of the four YAEC submittals of May 15, 1997, December 18, 1997 (2), and January 23, 1998, has concluded that the environmental and safety consequences of accidents that may potentially result in a radiological release are greatly decreased given the plant's permanently shutdown and defueled status and that the fuel has decayed for seven years since it was removed from the reactor.

The licensee does not propose any disposal or relocation of fuel by this action. The proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable occupational or public radiation exposure. Therefore, the proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other non-radiological environmental impact. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Because the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not evaluated in previous environmental reviews for the YNPS.

Agencies and Persons Consulted

On October 22, 1998, in accordance with its stated policy, the staff consulted with the Commonwealth of Massachusetts regarding the environmental impact of the proposed actions. The Commonwealth official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the four YAEC submittals, referenced above, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the local public document room at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, April 1, 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Acting Director, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9042 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Guidance on the Benchmark Dose Modeling for the Radiological Criteria for License Termination of Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments on draft guidance for the radium benchmark dose approach, associated with the final rule, ''Radiological Criteria for License

Termination of Uranium Recovery Facilities,'' that is in this publication. The guidance will be incorporated into the NRC final Standard Review Plan (SRP) for the Review of Reclamation Plans for Mill Tailings Sites and the SRP for In-Situ Leach Uranium Extraction License Applications. Public comments should be submitted within sixty (60) days of publication of this Notice.

SUPPLEMENTARY INFORMATION:

Background

In 10 CFR 40.4, uranium milling is defined as any activity resulting in byproduct material.[1] Therefore, Part 40, Appendix A, applies to in situ leach (ISL), heap leach, and ion-exchange facilities (i.e., uranium recovery (UR) facilities) that produce byproduct material, as well as to conventional uranium and thorium mills. The draft guidance only addresses UR facilities because there are no currently licensed or planned thorium mills.

Decommissioning of ISLs and mills are similar in that the type of soil and building contamination is the same, consisting mainly of residual radium (Ra-226) and uranium (U-nat). The applicable cleanup standards for soil radium in Criterion 6(6) address the main contaminant at uranium mills in the large areas (hundreds of acres) where windblown contamination from the tailings pile has occurred, and at ISLs in holding/settling ponds and process solution spills. In other mill and ISL site areas proximate to locations where radium contamination exists (e.g., under the mill or process building or in a yellowcake storage area), uranium would be the radionuclide of concern. Thorium (Th-230, the parent of Ra-226) would be the radionuclide of concern at some mill raffinate evaporation ponds.

Because Part 40, Appendix A, provides only decommissioning soil radium[2] and ground-water protection criteria, Criterion 6 (6) was amended to address criteria for residual radionuclides, other than radium in soil, for decommissioning of lands and structures at UR facilities. The final rule, ''Radiological Criteria for License Termination of Uranium Recovery Facilities,'' added a paragraph after the radium in soil criteria in Criterion 6(6), to read:

> Byproduct material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the above standard (benchmark dose), and must be at levels which are as low as is reasonably achievable.
>
> If more than one residual radionuclide is present in the same 100-square-meter area, the sum of the ratios for each radionuclide, of concentration present to the concentration limit, will not exceed ''1'' (unity). A calculation of the peak potential annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard (not including radon) on the site, must be submitted for approval. If the benchmark dose, before application of ALARA, exceeds 100 mrem/yr, the staff will consult the Commission before approving the decommissioning plan. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before the effective date of this rule.

The final rule, ''Radiological Criteria for License Termination of Uranium Recovery Facilities,'' requires the use of the soil radium standard to develop a site-specific dose benchmark for the cleanup of residual radionuclides, other than radium, at UR sites. The radium benchmark approach ensures that the dose limit across the UR site will be equal for all radionuclides (other than radon).

The NRC-licensed sites subject to the new rule currently include four uranium mills (one operating, others in stand-by status), seven in situ leach (ISL) facilities, and any new UR facility licensed by NRC after promulgation of the rule (two ISL license applications are under review at NRC, also in the Agreement States, several ISLs in Texas could be affected by the rule). These sites are located in semi-arid (7–15 inches (18–39 cm) of precipitation), high evapo-transpiration, sparsely populated (1–5 people per sq. mile (0.4–3 per sq. km)) areas of New Mexico, Utah, Wyoming, and Nebraska. The land use around these facilities is predominately mining and ranching, and the potable water aquifer is usually 100–200 feet deep. Also, many of the sites have natural (in situ) uranium and/or radium deposits or mine pits that create a wide range of radium, thorium and uranium background values. Because of these unique properties and the specific regulations in 10 CFR Part 40, Appendix A, the UR facilities are exempt from the decommissioning criteria in Part 20 Subpart E, as specified in Section 20.1401(a).

The benchmark dose applies to surface cleanup (buildings or the top 15 cm (6 inches) of soil) of radionuclides other than radium and it is the estimated dose resulting from cleanup of areas to 5 pCi/g (0.19 Bq/g) Ra-226 at that site. For the small areas requiring the use of the radium subsurface soil standard, the estimated dose resulting from 15 pCi/g (0.56 Bq/g) Ra-226 at that site and for those areas, would be used. The same concept of regulation (using a Ra-228 benchmark dose) would be applicable to thorium mills, if any are licensed in the future.

The draft guidance on dose modeling and implementation of the radium benchmark approach was developed in conjunction with the final rule and the SRPs under development for uranium mill site reclamation and ISL licensing. The draft SRPs have already been published for comment as NUREG–1569 (NRC, 1997) and NUREG–1620 (NRC, 1999). After review of the comments received on the draft guidance, the final benchmark dose guidance will be incorporated into the final SRPs for UR facilities.

Draft Guidance: Standard Review Plan—Chapter 6

6.0 Decommissioning Plan for Soil and Buildings—The Radium Benchmark Dose Approach

A mill reclamation plan, required for licensing or license renewal, generally focuses on the tailings disposal cell and contains only brief mention of anticipated decommissioning activities. The licensee submits a detailed mill or ISL decommissioning plan and a soil cleanup/verification plan for NRC approval at least six months before decommissioning is to begin. The general requirements for a decommissioning plan, and the remediation and verification of soil Ra-226 contamination cleanup are addressed in Chapter 5 of the Standard Review Plan (SRP). This chapter discusses the evaluation of the radium benchmark dose approach for the cleanup of thorium and uranium, specifically dose modeling and its application to site cleanup activities that should be addressed in the decommissioning plan.

This chapter applies to those uranium recovery (UR) facilities licensed by the NRC and subject to the new requirements for cleanup of contaminated soil and buildings under 10 CFR Part 40, Appendix A, Criterion 6(6) (as amended in 1999). The facilities that did not have an approved

[1] Byproduct material means the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

[2] The concentration of radium, as a result of byproduct material, averaged over areas of 100 square meters, should not exceed the background level by more than 5 pCi/g (0.19 Bq/g) in the first 15 cm (6 inches) of soil, and 15 pCi/g (0.56 Bq/g) for every subsequent 15 cm (6 inch) layer.

decommissioning plan at the time the rule became final are required to reduce residual radioactivity, i.e., byproduct material, as defined by Part 40, to levels based on the potential dose, excluding radon, resulting from the application of the radium (Ra-226) standard at the site. This is referred to as the radium benchmark dose approach.

This chapter would also apply to any future thorium processing facilities and uranium heap leach operations, because Part 40 defines uranium milling as any activity resulting in byproduct material. This chapter also applies to any revised decommissioning plan submitted for NRC review and approval, after the final rule is effective. However, if a subject licensee can demonstrate that no contaminated buildings will remain, and that soil thorium or total uranium levels are not discernable from background, radium benchmark dose modeling is not required. Other aspects of decommissioning are addressed in Chapter 5 of this SRP.

In order for NRC staff to evaluate the radium benchmark dose modeling and the implementation of the modeling results, as proposed in the building and soil decommissioning plan, an understanding of the site conditions and site operations is essential. The required site information should be provided by the licensee, or relevant portions of previously submitted documents (e.g., environmental assessments, license renewal, reclamation plan, and characterization report) should be summarized and referenced. The information should include: (1) processes used at the facility; (2) type and location of possible contamination; (3) geologic and climatic data; and (4) surrounding land use information (also see Section 3 of Inspection Procedure 87654).

6.1 Radium Benchmark Dose Modeling

6.1.1 Areas of Review

In implementing the radium benchmark approach, the licensee calculates the peak potential dose for the site resulting from the 5 pCi/g (0.19 Bq/g) concentration of radium in the surface (top 15 cm (6 inches)) soil. The dose from the 15 pCi/g (0.56 Bq/g) subsurface radium limit would be calculated for any area that may require subsurface cleanup. The dose modeling review involves examination of the computer code or other calculations employed for the dose estimates, the code or calculation input values and assumptions, and the modeling results (data presentation).

6.1.2 Review Procedures

The radium benchmark dose modeling review consists of ascertaining that an acceptable dose modeling computer code or other type of calculation has been used; that input parameter values appropriate (reasonable considering long-term conditions and representative of the application) for the site have been used in the modeling; that a realistic (overly conservative is not acceptable as it would result in higher allowable levels of uranium or thorium which would not be ALARA) dose estimate is provided; and that the data presentation is clear and complete.

6.1.3 Acceptance Criteria

The radium benchmark dose modeling results will be acceptable if the dose assessment (modeling) meets the following criteria:

(1) Dose Modeling Codes and Calculations

The assumptions are considered reasonable for the site analysis and the calculations employed are adequate. Reference to documentation concerning the code or calculations is provided (for example, the RESRAD Handbook and Manual (Argonne, 1993a and b)).

The RESRAD code developed by the U.S. Department of Energy (version 5.82, 1998) (see website www.ead.anl.gov/resrad/html), may be acceptable for dose calculations because, while the RESRAD ground-water calculations have limitations, this does not impact the UR sites that have deep aquifers (ground-water exposure pathway is insignificant). The DandD code developed by the NRC (version 1.0, August 1998, see website *ftp://nwerftp.nwer.sandia.gov/nrc/DandD/;* also see the website at http://techconf.llnl.gov/radcri/dose-top.html) provides conservative default values, but does not allow for modeling subsurface soil contamination, and does not allow calculation of source removal due to soil erosion. Neither the RESRAD nor the DandD code would be adequate to model the dose from off-site contamination, but codes such as GenII would be considered.

If the code or calculation's assumptions are not acceptable for site conditions, adjustments have been made in the input to adequately modify these assumptions.

The RESRAD code assumes a circular contaminated zone. The shape factor (external gamma, screen R017) must be adjusted for a non-circular-shaped area.

The code or calculation provides an annual dose (total effective dose equivalent (TEDE)) estimate (mrem/yr).

The DandD code provides the annual dose, but RESRAD calculates the highest instantaneous dose. However, RESRAD results are acceptable for long-lived radionuclides that do not move rapidly out of surface soils.

(2) Input Parameter Values

The code/calculation input data are appropriate for the site and represent current or long-term conditions, whichever is more applicable to the time of maximum dose. When code default values are used, they are justified as appropriate (representative) for the site. Excessive conservatism (i.e., upper bound value) is not used as this would result in a higher dose and thus higher levels of uranium and thorium would be allowed to remain on site.

Previously approved MILDOS code input parameter values may not be appropriate, because derived operational doses in the restricted area may be an order of magnitude higher than acceptable doses for areas to be released for unrestricted use.

Site-specific input values are demonstrated to be average values of an adequate sample size. Confidence limits are provided for important parameters so that the level of uncertainty can be estimated for that input value. Alteration of input values considers that some values are inter-related (see draft NUREG–1549, Appendix C) (NRC, 1998a) and relevant parameters are modified accordingly. The preponderance of important parameter values are based on site measurements and not conservative estimates. One or more models consider the annual average range of parameter values likely to occur within the next 200-year time period, for important parameters that can reasonably be estimated. Some other considerations for the input parameter values are as follows:

a. Exposure Pathways and Scenarios for the Critical Group

The scenario(s) chosen to model the potential dose to the average member of the critical group[3] from residual radionuclides at the site reflects reasonable probable future land use. The licensee has considered ranching, mining, home-based business, light industry, and residential farmer scenarios, and has justified the scenarios modeled.

Based on one or more of these projected (within 200 years is reasonably foreseeable) land uses to define the critical group(s), the licensee

[3] As defined in 10 CFR Part 20, ''the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.''

has determined and justified what exposure pathways are probable for potential exposure of the critical group to residual radionuclides at the site.

Dairies are not likely to be established in the area of former UR facilities, and even if some milk cows were to graze in contaminated areas, the milk would probably be sent for processing (thus diluted), and not be consumed at the site. Therefore, milk consumption is not a likely ingestion exposure pathway. Also, a pond in the contaminated area providing a significant quantity of fish in the resident's diet is not likely, so the aquatic exposure pathway may not have to be modeled. However, the external gamma, plant ingestion, and inhalation pathways are likely to be important.

The radon pathway is excluded from the benchmark dose calculation as defined in Criterion 6(6) of Appendix A, to 10 CFR Part 40. This also reflects the approach in the main decommissioning rule (radiological criteria for license termination, Part 20 subpart E).

b. Source Term

If the RESRAD code is used, the input includes Pb-210 at the same input value as for Ra-226. The other radium progeny are automatically included in the code calculations. The chemical form of the contamination in the environment is considered in determining input values related to transport, or inhalation class (solubility in the lung) for dose conversion factors.

c. Time Periods

The time periods for calculation of the dose from soil Ra-226 include the 1000-year time frame. The calculated maximum annual dose and the year of occurrence is provided in the results.

d. Cover and Contaminated Zone

A cover depth of zero is used in the surface contamination model and a depth of at least 15 cm (6 inches) for the subsurface model. The values for area and depth of contamination are derived from site characterization data. The erosion rate value for the contaminated zone is less than the RESRAD default value because in regions drier than normal, the erosion rate is less, as discussed in the RESRAD Data Collection Handbook (Argonne, 1993a), and the value is justified. The soil properties are based on site data (sandy loam or sandy silty loam are typical for UR sites) and other input parameters are based on this demonstration of site soil type (see RESRAD Handbook pages, 23, 29, 77, and 105).

The evapo-transpiration coefficient for the semi-arid UR sites is between 0.6 and 0.99. The precipitation value is based on annual values averaged over at least 20 years, obtained from the site or a nearby meteorological station.

The irrigation rate value may be zero, or less than a code's default value, if supported by data on county or regional irrigation practices (e.g., irrigation water is obtained from a river not a well). The runoff coefficient value is based on the site's soil type, expected land use, and morphology of the region.

e. Saturated Zone

The dry bulk density, porosity, ''b'' parameter, and hydraulic conductivity values are based on local soil properties. The hydraulic gradient for an unconfined aquifer is approximately the slope of the water table. For a confined aquifer, it represents the difference in potentiometric surfaces over a unit distance.

If the RESRAD code is used, the nondispersion model parameter is chosen for areas greater than 1000 sq. meters (screen R014), and the well pump rate is based on irrigation, stock, or drinking water well pump rates in the area.

f. Uncontaminated and Unsaturated Strata

The thickness value represents the typical distance from the soil contamination to the saturated zone. Since the upper aquifer at UR sites is often of poor quality and quantity, the depth of the most shallow well used for irrigation or stock water in the region is chosen for the unsaturated zone thickness. A value of 18 meters (60 feet) is typical for most sites and 15 meters (50 feet) for the Nebraska site, but regional data are provided for justification. The density, porosity, and ''b'' parameter values are similar to those for the saturated zone or any changes are justified.

g. Distribution Coefficients and Leach Rates

The distribution coefficient (Kd) is based on the site's soil physical and chemical characteristics. The leach rate value of zero in the RESRAD code is acceptable as it allows calculation of the value. If a value greater than zero is provided, justification for the value is also provided.

h. Inhalation

An average inhalation rate value of approximately 8,395 m_3/yr is used for the activity assumed for the rancher or farmer scenario (based on Draft Letter Report, Sandia, 1998a). The mass loading for inhalation (air dust loading factor) value is justified based on the average level of airborne dust in the local region for similar activities as assumed in the model.

i. External Gamma

The shielding factor for gamma is in the range of 0.33 to 0.55 (PG–8–08, NRC 1994; DandD code screening default value), based mainly on the type (foundation, materials) of the house likely to be built on the site.

The time fractions for indoor and outdoor occupancy are similar to default values in RESRAD and draft guidance developed for the main decommissioning rule (NUREG/CR–5512, Volume 3, NRC, 1996b). For example, the staff would consider fraction values approximating 0.7 indoors and 0.15 outdoors for a resident working at home, and 0.5 outdoors and 0.25 indoors for the farmer scenario.

The site specific wind speed value is based on adequate site data (the average annual wind speed for the UR sites varies from 7 to 13 mph (3.1 to 5.5 meters/sec)). The maximum and annual average wind speed are also considered when justifying/evaluating proposed erosion rates.

j. Ingestion

Average consumption values (g/yr) for the various types of foods are based on average values as discussed in NUREG 5512, Volume 3, or the Sandia Draft Letter Reports (1998a and b), or are otherwise justified. Livestock ingestion parameters are default values, or are otherwise justified.

For sites with over 25 acres of contamination, the fraction of diet from the contaminated area is assumed to be 0.25 for the farmer scenario (Sandia 1998a), or is otherwise justified based on current or anticipated regional consumption practices for home-grown food. Because of the low level of precipitation in the UR facilities regions, extensive gardens or dense animal grazing are not likely, so the percentage of the diet from contaminated areas is likely to be lower than the code default value.

Note that the default plant mass loading factor in the DandD code can reasonably be reduced to 1 percent (Sandia, Draft Report, 1998c). The depth of roots is an important parameter for UR licensees using the RESRAD code. The value is justified based on the type of crops likely to be grown on the site in the future. For vegetable gardens, a value of 0.3 is more appropriate than the RESRAD default value of 0.9 meters that is reasonable for alfalfa or a similar deep-rooted plant.

(3) Presentation of Modeling Results

The radium benchmark dose modeling section of the decommissioning plan includes the code or calculation results as the maximum annual dose (TEDE) in mrem/yr, the year that this dose would occur, and the major exposure pathways by percentage of total dose. The modeling section also includes discussion of the likelihood of the various land use scenarios (reflecting the probable critical groups) modeled, and provides the variations in dose (dose distribution) created by changing key parameter values to reflect the range of dose values that are likely to occur on the site. The section also contains the results of a sensitivity analysis (RESRAD code can provide a sensitivity analysis via the graphics function) to identify the important parameters for each scenario.

Note: As indicated in Criterion 6(6), if a licensee submits a radium benchmark dose result that is 100 mrem/yr or higher, the staff will consult with the Commission before approving the decommissioning plan based on this value.

6.1.4 Evaluation Findings

If the staff review, as described in this section, results in the acceptance of the radium benchmark dose modeling, the following conclusions may be presented in the technical evaluation report (TER).

The staff has completed its review of the site benchmark dose modeling for the _____ uranium recovery facility. This review included an evaluation using the review procedures in the Title II SRP (NRC, 1999), Section 6.1.2, and the acceptance criteria outlined in SRP Section 6.1.3.

The applicant has provided an acceptable radium benchmark dose model and staff evaluation determines that: (1) the computer code or set of calculations used to model the benchmark dose is appropriate for the site; (2) input parameter values used in each model are site-specific or reasonably estimates; (3) the dose modeling information includes adequate estimates of dose uncertainty.

6.2 Implementation of the Benchmark Dose

6.2.1 Areas of Review

The results of the radium benchmark dose calculations are used to establish a surface and subsurface soil dose limit for residual radionuclides other than radium, as well as a limit for surface activity on structures that will remain after decommissioning. The staff reviews the licensee's conversion of the benchmark dose limit to soil concentration (pCi/g) or surface activity levels (dpm/100 cm^2) as a first step to provide cleanup levels. Alternatively, the licensee can derive the estimated dose from the uranium or thorium contamination (as discussed in Section 6.1.3) and compare this to the radium benchmark dose.

The cleanup levels adequately consider the ALARA principle and the unity rule to demonstrate that the Part 40.42 (k) requirements (the premises are suitable for release and reasonable effort has been made to eliminate residual radioactive contamination) can be met.

6.2.2 Review Procedures

The decommissioning plan section on cleanup criteria will be evaluated for appropriate conversion of the radium standard benchmark dose to cleanup limits for soil uranium and thorium and/or surface activity concentration. The plan will also be examined to ensure reasonable application of the ALARA principle to the cleanup guideline values.

6.2.3 Acceptance Criteria

(1) The soil concentration limit is derived from the site radium dose estimate. The modeling performed to estimate mrem/year per pCi/g of Th–230 and/or U-nat follows the criteria listed in Section 6.1.3. In addition, the U-nat source term is represented as percent activity by 49.14% U–238, 49.14% U–234, and 0.71% U–235, or is based on analyses of the ore processed. For a soil uranium criterion, the chemical toxicity is considered in deriving a soil concentration limit if soluble forms of uranium are present.

Detailed justification for the inhalation pathway parameters is provided, such as the determination of the chemical form in the environment, to support the inhalation class.

The derived Th–230 soil limit will not cause any 100 square meter (m^2) area to exceed the Ra–226 limit at 1000 years (i.e., current concentrations of 14 pCi/g Th–230 surface and 43 pCi/g subsurface, if Ra–226 is at approximately background levels).

(2) In conjunction with the activity limit, the ALARA principle is considered in setting cleanup levels (derived concentration guideline levels). The ALARA guidance in draft Regulatory Guide 4006 is considered.

In recent practice at mill sites, ALARA is implemented by removing at least two more inches (5 cm) of soil than is estimated to achieve the radium standard. (reduce any possible excess or borderline contamination). At mills, it is generally cheaper to remove more soil than to do sampling and testing that may indicate failure and require additional soil removal plus additional testing.

(3) The unity rule is applied to the cleanup if more than one residual radionuclide is present in a soil verification grid (100 m^2). This means that the sum of the ratios for each radionuclide of the concentration present/concentration limit may not exceed ''1'' (i.e., unity).

(4) The subsurface soil standard, if it is to be used, is applied to small areas of deep excavation where at least 15 cm (6 inches) of compacted clean fill is to be placed on the surface.

(5) The surface activity limit for remaining structures is appropriately derived using an approved code or calculation.

If the DandD code is used, data is provided to support that 10% or less of the activity is removable; otherwise the resuspension factor is scaled to reflect the site-specific removable fraction. Note that this code assumes that the contamination is only on the floor, which can be overly conservative. If the RESRAD–Build code is used, the modeled distribution of contamination on walls vs. floor is justified.

6.2.4 Evaluation Findings

If the staff review, as described in this section, results in the acceptance of the application of the radium benchmark dose modeling to the site cleanup criteria, the following conclusions may be presented in the technical evaluation report.

The staff has completed its review of the proposed implementation of the benchmark dose modeling results for the _____ uranium recovery facility. This review included an evaluation using the review procedures in the Title II SRP, Section 6.2.2, and the acceptance criteria outlined in SRP Section 6.2.3.

The licensee has provided an acceptable implementation of the benchmark dose modeling results to the proposed site cleanup activities and staff evaluation determines that: (1) The cleanup criteria will allow the licensee to meet Part 40.42(k) and Part 40, Appendix A, criterion 6(6) requirements; (2) the soil and structures of the decommissioned site will permit termination of the license because public health and the environment will not be adversely affected by any residual radionuclides.

6.3 References

Argonne National Laboratory (for the U.S. Department of Energy), ''Data Collection Handbook to Support Modeling the Impacts of Radioactive Material in Soil,'' ANL/EAIS–8, April 1993a.

Argonne National Laboratory (for the U.S. Department of Energy), ''Manual for Implementing Residual Radioactive Material Guidelines Using RESRAD, Version 5.0,'' ANL/EAD/LD–2, September 1993b.
Sandia National Laboratories, ''Review of Parameter Data for the NUREG–5512 Residential Farmer Scenario and Probability Distributions for the DandD Parameter Analysis,'' Draft Letter Report, January 30, 1998a.
Sandia National Laboratories, ''Review of Parameter Data for the NUREG–5512 Building Occupancy Scenario and Probability Distributions for the DandD Parameter Analysis,'' Draft Letter Report, January 30, 1998b.
Sandia National Laboratories, ''Comparison of the Models and Assumptions Used in the DandD 1.0, RESRAD 5.61, and RESRAD–Build Computer Codes with Respect to the Residential Farmer and Industrial Occupant Scenarios Provided in NUREG/CR5512.'' Draft Report, October 15, 1998c.
U. S. Nuclear Regulatory Commission, ''Residual Radioactive Contamination from Decommissioning,'' NUREG/CR–5512, PNL–7994, Vol. 1, 1992.
U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Division of Waste Management, Policy and Guidance Directive PG–8–08, ''Scenarios for Assessing Potential Doses Associated with Residual Radioactivity,'' May 1994.
U. S. Nuclear Regulatory Commission, ''Residual Radioactive Contamination from Decommissioning—User's Manual,'' NUREG/CR–5512, Vol. 2, October 1996a.
U. S. Nuclear Regulatory Commission, ''Residual Radioactive Contamination from Decommissioning—Parameter Analysis,'' (DRAFT FOR REVIEW), NUREG/CR–5512, Vol. 3, April 1996b.
U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, ''Draft Standard Review Plan for In Situ Leach Uranium Extraction License Applications,'' NUREG–1569, October 1997.
U.S. Nuclear Regulatory Commission, ''Decision Methods for Dose Assessment to Comply With Radiological Criteria for License Termination,'' Draft NUREG–1549, July 1998a.
U.S. Nuclear Regulatory Commission, Draft Regulatory Guide–4006, ''Demonstrating Compliance With the Radiological Criteria for License Termination,'' August 1998b.
U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, ''Draft Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act,'' NUREG–1620, January 1999.

Notice of Opportunity To Provide Comments

The Commission hereby provides notice of opportunity for public comment on the draft guidance addressing the radium benchmark approach for decommissioning UR facilities. Written comments should be sent, within sixty (60) days from the date of publication of this **Federal Register** Notice (FRN), to the Chief, Rule and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be provided electronically on the NRC Uranium Recovery Branch website and the final rule FRN may also be viewed (http://www.nrc.gov/NRC/NMSS/URANIUM/guidance.htm).

FOR FURTHER INFORMATION CONTACT: Ms. Elaine S. Brummett, Uranium Recovery and Low-Level Waste Branch, Mail Stop T7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone 301/415–6606.

Dated at Rockville, Maryland, this 1st day of April 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–9036 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Notice of Consideration of Amendment Request for Decommissioning the Fansteel Facility in Muskogee, OK, and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of Amendment Request for Decommissioning the Fansteel Facility in Muskogee, Oklahoma and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission (the NRC) is considering issuance of an amendment to Source Material License No. SMB–911, issued to Fansteel, Inc. (the licensee), for the decommissioning of its facility in Muskogee, Oklahoma. The licensee requested the amendment in a letter dated July 6, 1998, and supplemented by a letter dated December 4, 1998.

The Fansteel site contains large amounts of soil contaminated with uranium and thorium. The licensee has indicated in its proposed Decommissioning Plan that, pursuant to 10 CFR 20.1401(b)(3), portions of the site will be remediated in accordance with Option 1 of the NRC's Branch Technical Position (BTP), ''Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations.'' The Decommissioning Plan also references an in-situ disposal area that would be built on a separate portion of the site. The NRC is not considering this proposal as part of the proposal for remediation of portions of the site under Option 1 of the BTP. The in-situ disposal area is considered as a separate plan and is not accepted at this time for lack of information in accordance with Subpart E of the license termination rule (10 CFR Part 20, Subpart E).

Radioactive contamination at Fansteel site is the result of previous operations. Previous operations at the Fansteel facility involved acid digestion of feed materials and have resulted in large volumes of soil and residues contaminated with natural uranium and thorium. Fansteel is currently authorized to reprocess these residues, as well as residues from site wastewater treatment operations, to further extract tantalum, niobium, and scandium to produce industrial products. Reprocessing will enable Fansteel to reduce the volume of radioactive waste requiring off-site disposal. The licensee's plan is to decommission the entire site after approximately 10 to 12 years of residue reprocessing.

Prior to the issuance of the proposed amendment, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. Approval of the decommissioning plan will be documented in an amendment to SMB–911.

The NRC hereby provides that this is a preceding on an application for amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** notice.

The request for a hearing must be filed with the Office of Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docket and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How the interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with Section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Fansteel, Inc., Number Ten Tantalum Place, Muskogee, OK, 74403–9296; Attention: Mr. John J. Hunter; and

2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Questions with respect to this action should be referred to NRC's project manager for Fansteel, Inc., Michael Adjodha, at (301) 415–8147 or by electronic mail at mea1@nrc.gov.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, MD, this 6th day of April 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–9039 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Use of Alternative Dispute Resolution

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Statement of policy.

SUMMARY: The Pension Benefit Guaranty Corporation is announcing its policy to use alternative dispute resolution for resolving appropriate disputes in a timely and cost-efficient manner in accordance with the Administrative Dispute Resolution Act of 1996 and the Presidential Memorandum of May 1, 1998, implementing that act.

EFFECTIVE DATE: April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Israel Goldowitz, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4020. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION:

On October 8, 1991 (56 FR 50740), the Pension Benefit Guaranty Corporation requested comments to help it develop a policy on use of alternative dispute resolution in accordance with statutory requirements. The PBGC did not receive any comments.

The PBGC recognizes that, in appropriate circumstances, there may be more effective methods to resolve issues that would otherwise be resolved through adversarial administrative or judicial processes. Although there is never an entitlement to alternative dispute resolution, the voluntary use of alternative dispute resolution, such as mediation, fact-finding, neutral evaluation, and arbitration, often can provide faster, less expensive, and more effective resolution of disputes that arise with employees, contractors, the regulated community and others with whom the agency does business. In recognition of this, it is the PBGC's policy to ensure that its staff: (1) Will be knowledgeable about alternative means of dispute resolution, (2) will examine the suitability of using alternative means of dispute resolution to resolve issues that would otherwise be resolved through adversarial administrative or judicial processes, and (3) in appropriate disputes, will use alternative means of dispute resolution in a good faith effort to achieve consensual resolution of issues in controversy involving the agency.

Issued in Washington, DC, this 6th day of April, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–8955 Filed 4–9–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Bestfoods, Common Stock, Par Value $.25) File No. 1–4199

April 5, 1999.

Bestfoods (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security is currently listed for trading on the PCX, the Chicago Stock Exchange, and the New York Stock Exchange (''NYSE''). The Company has considered all the direct and indirect costs arising from maintaining these multiple listings and has determined to withdraw the Security from listing on the PCX and maintain its listing on the NYSE.

The Company has complied with the rules of the PCX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Security from listing on the PCX as well as correspondence setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

This application relates solely to the withdrawal of the Security by the Company from listing on the PCX and shall have no effect upon the continued listing of such Security on the NYSE. By reason of section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before April 26, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on

the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9012 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23770; 812–11472]

Eaton Vance Management, et al.; Notice of Application

April 6, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order pursuant to section 17(d) of the Investment Company Act of 1940 (''Act'') and rule 17d–1 under the Act.

Summary of the Application: Applicants request an order to permit certain registered closed-end management investment companies to impose asset-based distribution fees.

Applicants: Eaton Vance Distributors, Inc. (''Distributors'') and Eaton Vance Management (collectively, ''Eaton Vance''); Boston Management and Research (''BMR''); Senior Debt Portfolio (''Portfolio''); Eaton Vance Prime Rate Reserves (''Prime Rate'') and EV Classic Senior Floating-Rate Fund (''EV Classic'') (each a ''Fund'' and, collectively, the ''Funds'').

Filing Dates: The application was filed on January 13, 1999. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1999, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Eaton Vance Management, Attn: Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds and the Portfolio are business trusts organized under Massachusetts and New York law, respectively, and are registered under the Act as closed-end management investment companies. The Funds invest their assets in the Portfolio pursuant to a master-feeder structure. Eaton Vance serves as principal underwriter and administrator for the Funds. BMR, a wholly-owned subsidiary of Eaton Vance Management, serves as investment adviser to the Portfolio and is registered under the Investment Advisers Act of 1940.

2. The Funds continuously offer their shares to the public at net asset value (''NAV''). The Funds do not redeem shares daily and there presently is no secondary market for their shares. Shareholders who wish to sell their shares depend on quarterly repurchase offers in which the Funds offer to repurchase shares at NAV (less any applicable early withdrawal charges). These repurchase offers are made pursuant to rule 23c–3 under the Act and an exemptive order.[1]

3. The Funds' shares currently are sold without a sales charge but are subject to maximum early withdrawal charges of 3% for Prime Rate shares and 1% for EV Classic shares.[2] EV Classic shares also are subject to an annual service fee of .15% of net assets, which is designed to meet the requirements of NASD Conduct Rule 2830(d) as if EV Classic was an open-end investment company.

4. Each Fund seeks to impose an annual distribution fee of .70% of net assets. Applicants represent that each Fund's distribution fee will comply with the requirements of NASD Conduct Rule 2830(d) as if each Fund was an open-end investment company.

5. While the Funds are paying distribution fees, BMR will waive .45% of its annual advisory fee from the Portfolio, and Eaton Vance Management will waive its annual administration fee of .25%. Applicants state that, as a result, the imposition of distribution fees will not increase the Funds' total operating expenses.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act, in relevant part, prohibit a principal underwriter for a registered investment company, acting as principal, from participating in any joint enterprise or arrangement in which the investment company is a participant, unless the SEC has issued an order authorizing the arrangement. In determining whether to grant such an order, the SEC considers whether the participation of the investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of any other participant in the arrangement.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to the extent necessary to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1.

3. Applicants request an order under section 17(d) and rule 17d–1 to permit Prime Rate and EV Classic to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if Prime Rate and EV Classic were open-end investment companies. Applicants accordingly submit that the Funds' participation in the proposed distribution plans will satisfy the standards set forth in rule 17d–1.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with rules 12b–1 and 17d–3 under the Act and with NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

[1] *See Eaton Vance Management*, Investment Company Act Rel. Nos. 22670 (May 19, 1997) (notice) and 22709 (June 16, 1997) (order).

[2] *Id.*

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9008 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26997]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

April 2, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 27, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 27, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc., et al. (70–7926)

GPU, Inc. (''GPU''), 300 Madison Avenue, Morristown, New Jersey 07962, a registered holding company, and its electric public utility subsidiaries, Jersey Central Power & Light Company, Metropolitan Edison Company (''Met-Ed''), and Pennsylvania Electric Company (''Penelec'') (collectively, ''GPU Subsidiaries'' or together with GPU, ''Applicants''), each of 2800 Pottsville Pike, Reading, Pennsylvania 19640 have filed a post-effective amendment under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 under the Act.

By orders dated July 17, 1996 (HCAR No. 26544) and December 22, 1997 (HCAR No. 26801) (''December Order'') (collectively ''Orders''), the Commission, among other things, authorized the GPU Subsidiaries, from time to time through December 31, 2000, to issue, sell and renew unsecured promissory notes in amounts up to the limitations on short-term indebtedness contained in the GPU Subsidiaries' respective charters. GPU was authorized to issue, sell and renew unsecured short-term notes in amounts up to $250 million.

The December Order limited the amount of short-term indebtedness which Met-Ed and Penelec could have outstanding to the maximum amounts permitted by their respective charters. At the time the Orders were issued, the Met-Ed and Penelec charters, among other things, restricted the amount of unsecured debt that they could have outstanding without the consent of a majority of the preferred shareholders so long as preferred shares were outstanding. On February 19, 1999, Met-Ed and Penelec redeemed all of their remaining shares of cumulative preferred stock outstanding ($11.95 million and $16.55 million aggregate stated value, respectively). The Applicants state that as the preferred stock has been redeemed and is no longer outstanding, the associated limitations contained in the GPU Subsidiaries' charters on the issuance of unsecured debt are no longer applicable to Met-Ed and Penelec.

Applicants now seek authorization, through December 31, 2000, to: permit Met-Ed and Penelec to each issue and sell up to $150 million in short-term indebtedness from time to time. Applicants also propose, through December 31, 2003, to: (1) extend the period during which the GPU Subsidiaries may issue unsecured promissory notes under credit agreements or in the form of short-term indebtedness; (2) permit GPU to issue and sell commercial paper in amounts up to $100 million; and (3) extend GUP's authority to issue and sell short-term notes in amounts up to $250 million, under the terms and conditions of the Orders.

Cinergy Corp., et al. (70–9449)

Cinergy Corp., a registered holding company (''Cinergy''),[1] 139 East Fourth Street, Cincinnati, Ohio 45202, has filed a declaration under sections 12(b) and 13(b) of the Act and rules 45, 54, 80, 81, 86, 87, 89, 90, and 91 under the Act.

Cinergy requests authorization for its domestic nonutility subsidiaries to enter into service agreements with Cinergy's utility subsidiaries under which the nonutility subsidiaries may provide a range of services to the utility affiliates, and vice versa,[2] priced at ''cost'' as determined under rule 91 of the Act. Cinergy requests authorization for each of its domestic nonutility subsidiaries, including those formed after the date of the requested authorization, but excluding ''foreign utility companies'' [3] and ''exempt telecommunications companies'' [4] (each, a ''Nonutility Company'') to enter into a separate but substantially similar contract (''Service Agreement'') with each of Cinergy's utility subsidiaries.

CG&E, an Ohio electric and gas utility company, and PSI, an Indiana electric and gas utility company, are Cinergy's two principal utility subsidiaries. CG&E is subject to state utility regulation by the Public Utilities Commission of Ohio (''Ohio Commission'') and PSI is subject to state utility regulation by the Indiana Utility Regulatory Commission (''Indiana Commission''). Under provisions regarding affiliate contracts contained in settlement agreements dating from Cinergy's acquisition of CG&E and PSI in 1994,[5] CG&E and PSI submitted identical proposed forms of Service Agreements to the Ohio Commission and the Indiana Commission staff in August 1998 for their review prior to review by the

[1] Cinergy has two direct, wholly owned domestic retail public utility companies—The Cincinnati Gas & Electric Company (''CG&E'') and PSI Energy, Inc. (''PSI''). CG&E has four direct, wholly owned domestic retail public utility companies—The Union Light, Heat and Power Company (''ULH&P''), Lawrenceburg Gas Company (''Lawrenceburg''), The West Harrison Gas and Electric Company (''West Harrison'') and Miami Power Corporation (''Miami Power''). Through these subsidiaries, Cinergy provides retail electric service in north central, central and southern Indiana and retail electric and gas service in the southwestern portion of Ohio and adjacent areas of Indiana and Kentucky.

[2] Services rendered under the proposed service agreements by the utility subsidiaries to the nonutility affiliates are exempt from prior Commission approval by virtue of rule 87(b)(1) under the Act. Accordingly, Cinergy does not seek Commission authorization for those service transactions, which are an integral aspect of the proposed contracts.

[3] Foreign utility company (''FUCO'') is defined in section 33 of the Act.

[4] Exempt telecommunications company (''ETC'') is defined in section 34 of the Act.

[5] These merger-related settlement agreements with the Ohio Commission and the Indiana Commission (and other interested parties), as well as conditions agreed to by Cinergy in connection with related merger proceedings before the Kentucky Public Service Commission, were noted by the Commission in its order approving the acquisition of CG&E and PSI by Cinergy and related transactions. *See* HCAR No. 26146 (October 21, 1994).

Commission. In late January 1999 the Ohio Commission and the Indiana Commission staff completed their review and, based upon certain modifications made to the CG&E Service Agreement and assurances regarding certain costs that may arise under the PSI Service Agreement, cleared the CG&E and PSI Service Agreements for filing with the Commission.[6]

Cinergy states that the proposed Service Agreements with the utility subsidiaries of CG&E—ULH&P, Lawrenceburg, West Harrison and Miami Power (collectively with CG&E and PSI, the ''Operating Companies'')—do not require prior state commission review. According to Cinergy, except in regard to prior state commission review of amendments, the proposed Service Agreement for CG&E utility subsidiary conforms in all material respects to the CG&E Service Agreement, including the additional protections incorporated as a result of the Ohio Commission's review.

Cinergy Investments, Inc., a direct, wholly owned Nonutility Subsidiary of Cinergy (''Cinergy Investments''), holds interests in all of the Nonutility Companies, except for certain minor interests held by CG&E and PSI.[7] At December 31, 1998, Cinergy Investments had 11 direct wholly owned subsidiaries: Cinergy-Cadence, Inc., an ''energy-related company'' within the meaning of Rule 58 under the Act (''Rule 58 Company'') which has a one-third ownership interest in a Rule 58 Company, Cadence Network LLC, which markets various energy management services to multi-site retail establishments; Cinergy Capital & Trading, Inc., a Rule 58 Company engaged in energy marketing and trading that has eight subsidiaries, each engaged in energy marketing or ownership or operation of exempt wholesale generators,[8] Cinergy Communications, Inc., an ETC; Cinergy Engineering, Inc., a Rule 58 Company engaged in utility-related engineering and other technical services; Cinergy-Centrus, Inc., an ETC; Cinergy-Centrus Communications, Inc., an ETC that holds a one-third ownership interest in Centrus LLP, also an ETC; Cinergy Resources, Inc., a Rule 58 Company engaged in energy marketing and trading; Cinergy Solutions, Inc.,[9] which, together with its 12 partly and wholly owned subsidiaries, primarily markets energy management services and engages in development, ownership and operation of district cooling and heating systems and qualifying facilities under the Public Utility Regulatory Policies Act of 1978, principally through a joint venture with a non-affiliate, Trigen Energy Corporation; Cinergy Supply Network, Inc., a Rule 58 Company, which engages in utility materials brokering services and, through its one-third-owned Rule 58 Company, Reliant Services, LLC, proposes to engage in underground utility facilities location and construction services; Cinergy Technology, Inc., which is engaged in commercialization of utility technologies and related investments;[10] and Enertech Associates, Inc., an inactive Rule 58 Company.

In general, the Service Agreements authorize the provision of services, including loans of employees, from the Operating Companies to the Nonutility Companies, and from the Nonutility Companies to the Operating Companies, priced at ''cost.'' More specifically, upon receipt by a party to the Service Agreement of a written request for specified services, including, if applicable, the use of any related equipment, facilities, properties or other resources (''Services''), the receiving party would provide the requested Services if in its sole discretion it can do so without impairing its normal business operations. Services may include, but are not limited to, engineering and construction; operations and maintenance; equipment testing; information services; monitoring, surveying, inspecting, constructing, locating and marking of overhead and underground utility facilities; meter reading; materials management; vegetation management; and marketing and customer relations. In addition to the exclusion of transactions involving affiliated ETCs and FUCOs, affiliate transactions involving sales, leases, or other transfers of assets, goods, energy commodities (including electricity, gas, coal and other combustible fuels) or thermal energy products are outside the scope of the Service Agreements.

Any loans of employees by the company providing Services also would be at the service provider's sole discretion. While performing work on behalf of the client company, any loaned employees would be under its supervision and control, and the client company would be responsible for their actions.

All service requests would be in writing consistent with the form of service request appended to the Service Agreement. Each service request must identify the client company and proposed service provider, be authorized by an appropriate individual at both the client company and the service provider, include a detailed description of the proposed services and estimated costs, and specify the scheduled start date and completion date. In addition, all Services would be assigned to applicable activities, projects, programs or on other appropriate bases to enable specific work to be properly assigned. The client company may amend service requests from time to time, subject to certain conditions.

All Services would be rendered at the full cost, as computed in accordance with applicable rules, regulations and accounting standards, including rules 90 and 91 under the Act. As soon as practicable after the close of each month, any company providing Services would provide to each client company a statement reflecting the billing information necessary to identify the costs charged for that month. The client company is required to pay all amounts billed within 30 days of receipt of the billing statement.

The sole and exclusive responsibility of a company providing Services for any asserted deficiency would be to correct or repair the deficiency or re-perform the Services, at no additional cost to the client company. The service provider disclaims any additional warranties or remedies, and each client company agrees to accept Services on that basis. In addition, any company receiving Services agrees to indemnify the company providing those Services (including each of its officers, directors, employees and agents) from any losses, liabilities or claims arising from or in connection with the provision of the

[6] Cinergy states that, concurrently with the filing of this application with the Commission, PSI is submitting the proposed PSI Service Agreement to the Indiana Commission. According to Cinergy, that submission was not to initiate any proceeding before the Indiana Commission and did not seek any approval or other action by the Indiana Commission (beyond the clearance previously issued by its staff).

[7] CG&E has two nonutility subsidiaries—Tri-State Improvement Company, which acquires and holds property in support of the businesses of CG&E and its utility subsidiaries, and KO Transmission Company, a gas pipeline company. CG&E also holds limited partnership interests in several local venture capital and community development funds. PSI has one nonutility subsidiary, South Construction Company, which holds title to real estate not used and useful in PSI's business. PSI also holds limited partnership interests in several local venture capital and community development funds. Cinergy has pending a request in Commission File No. 70–8427 for an order releasing Commission jurisdiction over Cinergy's continued retention, through CG&E and PSI, of these nonutility businesses and interests.

[8] Exempt wholesale generator is defined in section 32 of the Act.

[9] Cinergy Solutions, Inc. was formed under Commission order dated February 7, 1997 (HCAR No. 26662).

[10] Cinergy has pending a request in Commission File No. 70–8427 for an order releasing Commission jurisdiction over Cinergy's continued retention of this entity.

Services. The indemnity applies regardless of negligence, willful misconduct, or breach of warranty by the company that provided the Services or any of its officers, directors, employees or agents.

Any amendment to a Service Agreement must be in writing executed by all of the parties. In addition, the CG&E and PSI Service Agreements (but not the form of Service Agreement for CG&E's utility subsidiaries) provide that any amendment to either of those Service Agreements, before being submitted to the Commission for its review, must first be submitted to the Ohio Commission and the Indiana Commission staff for their review (and submitted to certain other interested parties for informational purposes). As a result, the Ohio Commission and Indiana Commission staffs have effective veto power over any proposed amendment. Cinergy is precluded from seeking Commission approval of the contract or amendment, or must withdraw it, and may not put it into effect with respect to CG&E or PSI, if the Ohio Commission or Indiana Commission staff Disapprove it or find it unreasonable.

Additional Nonutility Companies may become parties to the Service Agreement after the original execution by executing appropriate signature pages. In the absence of any changes to the terms of the Service Agreement, merely adding new Nonutility Companies as signatories would not be considered an amendment, including for purposes of any prior state review.

The provision of Services would in all cases, be subject to any limitations or restrictions contained in any applicable current or future orders or authorizations, statutory provisions, rules or regulations, tariffs, or agreements of regulatory or governmental agencies having jurisdiction over the parties to the Service Agreement, including the Commission, the applicable state commission and the Federal Energy Regulatory Commission. To the extent, if any, that at any time any provision of the Service Agreement conflicts with any limitation or restriction of any regulatory agency, the limitation of restriction would control.

Northeast Utilities, et al. (70–9463)

Northeast Utilities (''NU''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, and its service company subsidiary, Northeast Utilities Service Company (''NUSCO''), have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 54 under the Act.

NU proposes to adopt a stockholder rights plan (''Plan'') and to enter into a related Rights Agreement (''Agreement'') with NUSCO, acting as transfer agent, to implement the Plan. Under the Plan, NU's Board of Trustees (''Board'') proposes to declare a dividend of one right (''Right'') for each outstanding share of NU common stock, $5.00 par value (''Common Stock''). The dividend will be payable to stockholders of record on the fifth business day after the Commission has issued an order requested in this filing (''Record Date''). Each Right would entitle the holder to purchase one share of Common Stock at a price of $65.00 per share, subject to adjustment (''Purchase Price'').

Initially, the Rights may only be traded together with the Common Stock certificates that are outstanding on the Record Date. The Rights may not be exercised until the Distribution Date, which is defined in the Agreement as the earlier of two dates. The first is ten days after the first public announcement that any person or group has acquired beneficial ownership of fifteen percent or more of Common Stock (''Acquiring Person''), without Board approval (''Acquisition Event''). The second is ten business days (unless extended by the Board) after any person or group has commenced, or announced an intent to make, a tender or exchange offer which would, upon its consummation, result in the person or group becoming an Acquiring Person (this event, together with an Acquisition Event, ''Triggering Events''). On the occurrence of either Triggering Event, each Right will be evidenced by a Right Certificate, which may then be traded independently of the Common Stock.

In the event that a person becomes an Acquiring Person, Right holders will have the right to receive Common Stock (or, in certain circumstances, cash, property, other NU securities or a reduction in the Purchase Price) having a value equal to two times the effective Purchase Price (''Discount Purchase Price''). If, after the Distribution Date, NU is acquired by another person, the Common Stock is changed into shares of another person, or fifty percent of NU's consolidated assets or earning power are sold or transferred to another person (in each case, a ''Surviving Person''), each Right holder may exercise a Right and receive for each Right the common stock of the Surviving Person at the Discount Purchase Price. If a Triggering Event occurs, all Rights that are, were or subsequently become beneficially owned by an Acquiring Person, and certain other related persons, become null and void.

NU may redeem the Rights, as a whole, at an adjustable price of $.001 per Right, at any time prior to the close of business on the tenth day after the date that any person has become an Acquiring Person. At any time after any person or group becomes an Acquiring Person and before any person or group, other than NU and certain related entities, becomes the beneficial owner of fifty percent or more of the outstanding shares of Common Stock, the Board may direct the exchange of shares of Common Stock for all or any part of the Rights. The exchange would be at a rate of one Right per share of Common Stock or the equivalent in other NU securities or assets.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–8968 Filed 4–9–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41246; File No. 4–208]

Intermarket Trading System; Notice of Filing and Temporary Summary Effectiveness of Proposed Fourteenth Amendment to the ITS Plan To Link the PCX Application of the OptiMark System to the Intermarket Trading System (''ITS'')

April 2, 1999.

I. Introduction

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''), notice is hereby given that on March 29, 1999, the Intermarket Trading System Operating Committee (''ITSOC'') submitted to the Securities and Exchange Commission (''Commission'') an amendment (''Fourteenth Amendment'') to the restated ITS Plan.[1] The purpose of the amendment is to link the Pacific Exchange, Inc.'s (''PCX'') Application of the OptiMark System (''PCX Application'') to ITS. The Commission is publishing this notice to solicit comment on the amendment from interested persons. While comment is being solicited on the proposed amendment, the Commission

[1] The ITS is a National Market System plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. *See* Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

has determined to make the proposed amendment summarily effective upon publication of notice on a temporary basis.[2]

ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter market operated by the National Association of Securities Dealers, Inc. (''NASD''). ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

Participants in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc., the PCX, and the Philadelphia Stock Exchange, Inc.

II. Background to the Amendment

On January 27, 1999, the Commission granted temporary exemptive relief to the ITS participants to exempt them from the ITS Plan provision requiring a Plan amendment to reflect the PCX Application interface with ITS.[3] The Commission granted this exemption to the participants, in part, because the PCX Application was scheduled to begin operating on January 29, and there was insufficient time to obtain authorization from each of the authorizing bodies of the participants before this date.[4] The PCX Application began operating pursuant to the exemption on January 29, 1999. The exemption expires on April 2, 1999.[5]

III. Description

The purpose of the Fourteenth Amendment is to link the PCX Application to ITS.[6] The PCX Application is a facility of the PCX that receives orders generated by the OptiMark System, an electronic matching system that, on a periodic ''call'' basis, processes certain qualifying expressions of trading interest (called ''profiles''). Profiles may be created from the published quotations disseminated by the other participants at the commencement of the OptiMark System call reflecting the best bid and offer prices and associated sizes ''CQS profiles'').[7] The orders received by the PCX Application will be processed by the PCX to permit: (a) in the case of those orders reflecting a match between non-CQS profiles, appropriate execution on the PCX and reporting thereafter in accordance with the applicable PCX rules; and (b) in the case of those orders reflecting a match between a non-CQS profile and a CQS profile: (i) processing pursuant to Section 6(a)(ii)(A) or (ii) transmission to ITS pursuant to Section 6(a)(ii)(B), whichever is applicable.

The proposed amendment adds subsections (33A) and (33B) to Section 1 of the ITS Plan to define and include the terms ''PCX Application'' and ''PCX Application Module.'' The proposed amendment also amends existing definitions set forth in subsections (11), (23), (34A), and (34B) to recognize the use of the PCX Application and the PCX Application Module.

The proposed amendment adds to Section 6(a)(ii) a description of the operation of the PCX Application and how PCX will access other participants' markets through ITS. The amendment also authorizes PCX to computer-generates ITS commitments.

In addition, the proposed amendment adds Section 8(h), which sets forth the parameters for the PCX Application's automated linkage to ITS. This section establishes the ''PCX Application Formula'' (''Formula'') for calculating the ''Percentage of PCX Application ITS Volume'' (''PCX Application Percentage'') and a ''PCX Application Ceiling'' (''Ceiling''). The Formula establishes a ceiling on the volume of trade-at commitments generated by the PCX Application, relative to the total volume of transactions resulting from the PCX Application. Specifically, the Formula has as its numerator the number of shares computer-generated by the PCX Application Module as ITS ''trade-at'' commitments that are executed in other ITS participant markets,[8] and as its denominator the same shares as in the numerator plus all shares executed on the PCX received from the PCX Application and reported to the Consolidated Tape Association by the PCX. The Formula results in the PCX Application Percentage. Section (h) provides that PCX may computer-generates ''trade-at'' commitments if the PCX Application Percentage does not exceed the agreed upon Ceiling as calculated over Rolling Calendar Quarters.[9] The Ceiling starts at 15% and will be reduced to 10% when the NYSE and PCX jointly request that the percentage be reduced. Section (h) provides that if the PCX Application Percentage exceeds the Ceiling then PCX must cease computer-generating ''trade-at'' commitments for a three-month period. However, during the first 24 calendar months following implementation of the PCX Application, the PCX retains the right to notify the ITSOC in writing, as specified in new Section (h)(iv), that it will undertake, or cause to be undertaken, system adjustments to the operation of the PCX Application in an effort to ensure future compliance with the PCX Application Ceiling. In the event of such notification, the PCX shall have, at a minimum, nine calendar months from the date of such notice (or such longer period as may be approved by all members of the ITSOC upon a showing of reasonable cause), to implement its

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[2] Exchange Act Rule 11Aa3–2(c)(4) empowers the Commission to summarily put into effect on a temporary basis a Plan amendment ''If the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.''

[3] The Commission has authority under Exchange Act Rule 11Aa3–2(f) to exempt participants in a national market system plan from the requirements of that plan. Exchange Act Rule 11Aa3–2(f) provides: ''The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.''

The Division of Market Regulation has delegated authority to grant an exemption in this instance pursuant to 17 CFR 200.30–3(a)(29). *See* Letter from Richard R. Lindsey, Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Committee Chairman, ITSOC, dated January 27, 1999.

[4] In general, to amend the ITS Plan, the ITS participants vote on a particular amendment and, assuming unanimous approval, each participant goes back to its respective authorizing body, such as its Board of Directors or Executive Committee. Following ratification by each of the participants' authorizing bodies, the ITSOC submits a proposed amendment to the Commission, which publishes it for comment. An amendment to the ITS Plan is generally not effective until approved by the Commission. On January 21, 1999, the ITSOC unanimously voted to recommend to the participants' authorizing bodies an amendment to the Plan that would allow the PCX Application to link with ITS.

[5] The Commission extended the exemption until publication of this notice. *See* Letter from Belinda Blaine, Associate Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Chairman, ITSOC, dated April 1, 1999.

[6] The Fourteenth Amendment is identical to the amendment approved by the ITSOC on January 21, 1999.

[7] For further discussion of the PCX Application, *see* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (order approving the PCX Application).

[8] ''Trade-at'' commitments are those commitments sent from the PCX Application when there is no match of non-CQS profiles, or a partial execution of a non-CQS profile, with the balance filled by another participant.

[9] ''*Rolling Calendar Quarter*'' means any three consecutive calendar months, with the first Rolling Calendar Quarter ending on the last business day of the first three full calendar months following the month in which the PCX Application commences operation, *i.e.*, April 30, 1999.

proposed system adjustments. During this 9-month period, the restrictions shall not apply. Notwithstanding other provisions, if, for any Rolling Calendar Quarter, the PCX Application Percentage exceeds 30%, the PCX must cease computer-generating ''trade-at'' commitments for three calendar months beginning the first business day of the second month following the end of such Rolling Calendar Quarter.

Finally, Section 8(h)(vi) provides that, each month, the PCX shall furnish the ITSOC with a report showing the number of shares for each component of the PCX Application Formula, as well as the number of executed shares resulting from ''trade-through'' commitments.[10]

IV. Discussion

The Commission has made a preliminary determination that the proposed amendment is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system. While comment is being solicited on the proposed amendment, the Commission therefore will make the amendment summarily effective on a temporary basis upon publication of notice of the amendment.[11]

The Commission believes that the linkage of the PCX Application to ITS will further the purposes of Section 11A of the exchange Act[12] and the development of the national market system by promoting economically efficient securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer. The Commission notes that the PCX Application has been linked to ITS since January 29, 1999, under the same terms now being proposed. These terms were agreed upon by the ITS participants after extensive discussions.[13] The Commission believes that linking the PCX Application to ITS has provided, and potentially will continue to provide, a new and more efficient way to match and execute trading interest.[14] The Commission therefore believes it is appropriate to make the proposed amendment summarily effective on a temporary basis upon publication of notice of such amendment in order to allow the PCX Application to continue to be linked to ITS without interruption following termination of the ITS participants' exemptive relief.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed amendment, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment change that are filed with the Commission, and all written communications relating to the proposed Plan amendment 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 Plan amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4–208 and should be submitted by May 3, 1999.

VI. Conclusion

The Plan amendment is hereby made summarily effective on a temporary basis not to exceed August 10, 1999 pursuant to Exchange Act Rule 11Aa3–2(c)(4).[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9011 Filed 4–9–99; 8:45 am]

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[10] A trade-through occurs when a transaction is effected at a price below the best prevailing bid, or above the best prevailing offer. The ITS Plan requires price continuity among the various markets by ensuring that the best national bids and offers are provided opportunities to trade with other markets effecting trades outside the best national quote.

[11] *See* Exchange Act Rule 11Aa3–2(c)(4).

[12] Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D).

[13] The participants agreed upon these amendments after the Commission published a proposal to amend the ITS Plan. *See* Exchange Act Release No. 40204 (July 15, 1998), 63 FR 39306 (July 22, 1998) (''Proposing Release''). The Commission received 30 comment letters on the Proposing Release, generally favoring linking the PCX Application to ITS.

[14] *See Id.*

[15] 17 CFR 240.11Aa3–2(c)(4).

[16] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41252; File No. SR–CBOE–99–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To List index Options for an Additional Expiration Month

April 5, 1999.

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 March 15, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' 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.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Rule 24.9, *Terms of Index Option Contracts,* to allow the Exchange to list up to seven expiration months, instead of the currently permitted six, for certain index options up until the expiration of those options in January 2000. The text of the proposed rule change is available at the Office of the Secretary, CBOE, 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 exchange 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the Exchange spoke with staff in the Division of Market Regulation (''Division'') at the Commission to give notice of its intent to file the proposed rule change, the Exchange did not provide the Commission with written notice and the text of the proposed rule change at least five business days prior to the date of filing the proposed rule change. Rule 19b–4(f)(6)(iii). However, the Commission has decided to waive the pre-filing requirement. On March 18, 1999, CBOE made technical amendments to the proposal. Telephone conversations between Timothy H. Thompson, Director, Regulatory Affairs, CBOE, and Kenneth Rosen and Joseph Morra, Attorneys, Division, Commission.

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to amend paragraph (a)(2) of CBOE Rule 24.9 to allow, for a limited time, the Exchange to list up to seven expiration months in certain index options. When options are listed for seven expiration months, one of those expiration months would be January 2000. Currently, CBOE Rule 24.9(a)(2) permits the Exchange to list only six expiration months in any index options at any one time.

Under the current application of the Rule, the Exchange generally will list three consecutive near term months and three months on a quarterly expiration cycle. For example, the Exchange currently lists options on the Standard & Poor's 500 Index (''SPX options'') for the following expiration months: March 1999, April 1999, May 1999, June 1999, September 1999, and December 1999. After the March 1999 options expire, the exchange intends to list SPX options with an expiration month of March 2000. The Exchange believes it is necessary to list the March 2000 SPX options because a number of institutional customers commonly engage in a strategy where they purchase a new option with the same expiration month but for the next year when the options with the same expiration month in the current year expire. When the Exchange lists the March 2000 SPX options, it will have used its current allotment of six expiration months under CBOE Rule 24.9(a)(2).

The Exchange, however, has been approached by a number of institutional customers who are interested in trading SPX options and other index options with an expiration of January 2000. These customers have explained to the Exchange that they believe that index options expiring in January 2000 will provide a useful tool to hedge positions in stocks overlying particular index options or to hedge market exposure to the equity markets generally against the uncertainty presented by potential Year 2000 computer problems. By listing index options with a January 2000 expiration at this point, the Exchange will provide these customers with the opportunity to hedge their positions in an orderly fashion well in advance of the beginning of the Year 2000.

The Exchange recognizes that this request to expand the allowable expiration months for index options is a unique situation presented by the unusual risks presented by potential Year 2000 problems, and so the Exchange only intends to seek the ability to list seven expiration months until the January 2000 options expire.

The Exchange believes that it has the system capacity to more than adequately handle the series that would be permitted to be added by this proposal. In addition, the Exchange has received a letter from the Options Price Reporting Authority (''OPRA'') stating that OPRA has the necessary capacity to handle the additional series that could be added through this proposal.

Because the temporary increase in the number of expiration months for index options would satisfy significant customer demand to address a unique hedging need and because the series could be added without presenting capacity problems, the Exchange believes this rule change is consistent with, and furthers the objectives of, section 6(b)(5) of the Act [4] in that it would remove impediments to the perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection on competition; and

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective [5] pursuant to section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and argument concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 CBOE. All submissions should refer to File No. SR–CBOE–99–09, and should be submitted by May 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9010 Filed 4–9–99; 8:45 am]

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[4] 15 U.S.C. 78f(b)(5).

[5] The Commission has waived the 5-day pre-filing requirement. *See supra* note 3.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41249; File No. SR–EMCC–99–03]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Testing

April 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 26, 1999, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, EMCC will require that all EMCC members participate in Year 2000 testing with EMCC no later than August 31, 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

EMCC's Rule 13 provides that, ''The Corporation shall establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership.'' In connection with this standard, EMCC has determined that members that utilize its services must validate their Year 2000 readiness through participation in Year 2000 testing with EMCC. Members will be required to submit scripted data containing various dates to EMCC for processing and will be required to verify that they have received back the scripted results.

Members that fail to participate in Year 2000 testing with EMCC will be subject to appropriate disciplinary action in accordance with EMCC's rules. Such disciplinary action permits EMCC to limit or restrict a member's access to EMCC.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[3] which requires that the rules of a clearing agency be designated to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

EMCC will advise its members of the Year 2000 member testing requirement by Important Notice. No written comments have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency has designed to promote the prompt and accurate clearance and settlement and securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the required Year 2000 testing should allow EMCC to address potential problems associated with its members' Year 2000 readiness. As a result, EMCC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

EMCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause to approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow EMCC to implement its mandatory Year 2000 testing program in a timely manner.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–99–03 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–EMCC–99–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9014 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41247; File No. SR–EMCC–99–2]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Allowing EMCC To Conduct Trade Data Comparisons

April 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 8, 1999, as amended on March 18, 1999, and March 26, 1999, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow EMCC (1) to accept trade data directly from either members or service bureaus and (2) to compare trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change to conduct trade data comparisons.[2] The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, EMCC members submit transaction data for trades that will settle at EMCC to a ''locked-in trade source.'' The locked-in trade source (currently Match-Em or Trax) compares the trade data and sends a locked-in trade to EMCC. The proposed rule change eliminates the procedures for submitting locked-in trades. Instead, EMCC will accept trade data directly from members or ''service bureaus'' and will compare the trades.[4] Members will be required to notify EMCC whether they will be submitting trade data directly or through a service bureau. EMCC will accept trade data only from the member's designated source.

The following paragraphs describe the changes to EMCC's Rules to allow trade data to be accepted directly from members or service bureaus and to allow EMCC to provide trade data comparisons.[5]

Rule 1—Definitions

The proposed rule change adds the terms ''comparison operation.'' ''conditional matching field,'' and ''service bureau'' to Rule 1.[6] The terms ''locked-in trade'' and ''locked-in trade source'' will be deleted because they will no longer be relevant.

The proposed rule change modifies the definition of ''compared trade'' to reflect that trade data will not be transmitted to EMCC by a locked-in trade source and that EMCC will compare the trade data. The definitions of Match-EM and Trax is modified to reflect that they will no longer be locked-in trade sources but ''service bureaus.''

Rule 4—Clearing Fund, Margin and Loss Allocation

The proposed rule change amends footnote 2 in Rule 4 to reflect that EMCC will no longer be accepting trade data from a locked-in trade source.

Rule 5—General Provisions and Rule 6—Receipt of Data

The proposed rule change deletes the portions of Rule 6 pertaining to the receipt of trade data from a locked-in trade source and moves Sections 2 and 3 of old Rule 6 to Sections 4 and 5 of Rule 5.

Rule 6—Comparison Operation

New Rule 6 governs EMCC's comparison operation. Rule 6 authorizes members to submit trade data concerning an EMCC eligible instrument transaction with another member to EMCC. EMCC members can submit trade data directly to EMCC or through a service bureau. If a member submits trade data to EMCC using a service bureau, the trade will be reported when EMCC accepts the trade data and not when the service bureau accepts the data.

Rule 6, Section 3 provides that trade data submitted to EMCC must (i) be in such formats, (ii) be submitted by such times, (iii) include such identifying details, and (iv) meet such operational parameters as established by EMCC or a qualified securities depository.[7] Once trade data is accepted by EMCC, EMCC will compare the trade data and will match it based on established criteria. The actual times, formats, and other details are set forth in EMCC's functional specifications. If trade data does not satisfy the EMCC's requirements, then EMCC will reject such trade data and notify the member. This section also states that if the trade data submitted by a member contains a field which has been identified as a conditional matching field and the trade data submitted by the counterparty also contains such conditional matching field, EMCC will not match the trade unless the conditional matching fields match.

Rule 6, Section 3 also contains three footnotes. Footnote 1 indicates that the formats for submission of trade data may vary depending upon whether a member submits trade data to EMCC directly or through a service bureau. Footnote 2 indicates that trade data that EMCC does not accept because of an ineligible ISIN, counterparty member, or interdealer broker field will not be reflected in any report. Footnote 3 indicates that, for the purposes of comparing a trade, a difference in net consideration amounts submitted by the counterparties to a transcript of less

[1] 15 U.S.C. 78s(b)(1).

[2] The complete text of the proposed rule change is attached as Exhibit A to EMCC's filing, which is available for inspection and copying at the Commission's public reference room and through EMCC.

[3] The Commission has modified the text of the summaries prepared by EMCC.

[4] The term service bureau is defined in EMCC's Rules as an entity designated by EMCC to submit trade data to EMCC on behalf of EMCC's members. At this time Match-Em and Trax are the two entities EMCC has designated as service bureaus.

[5] References to EMCC's rule numbers in this filing reflect numbering changes proposed in File No. SR–EMCC–99–10, Securities Exchange Act Release No. 40810, International Series Release No. 1174 (December 18, 1998), 63 FR 71532.

[6] The term comparison operation is defined in EMCC rules as the operations having to do with EMCC eligible instruments to which EMCC's Rules apply. The term conditional matching field is defined as a trade data field designated by EMCC as such. For the definition of service bureau, refer to footnote 4.

[7] The term qualified securities depository is defined in EMCC's Rules as a securities depository which has entered into an agreement with EMCC to effect book-entry transfers of EMCC eligible instruments to and by EMCC.

than or equal to $25 will be considered a match. In addition, prices submitted by the counterparties to a transaction will be considered to match if the difference between the two price amounts is less than or equal to either price multiplied by .0001.

Rule 6, Section 4 governs the reporting of the results of the comparison operation.[8] Under the proposed rule change, trade data will be categorized as compared, uncompared, alleged, or rejected. These terms are defined as follows:

(1) Compared trades will be those trades for which a comparison has been effected;

(2) Uncompared will be those items which a member submitted but no corresponding data was received from a counterparty;

(3) Alleged will be those trades submitted by another member against the member and for which the member either did not submit any trade data or did not submit trade data which matched in all required respects;

(4) Rejected will be those items which did not meet the required operational parameters.

In addition to the reports described above, EMCC will continue producing ''accepting trade reports'' with respect to compared trades. The accepted trade reports will continue to indicate whether a trade is a ''netting trade'' or is to be settled on a trade-for-trade basis.[9] Footnote 4 of Section 4 provides that compared trades which are matched after the established cut-off time on SD–2 will settle on a trade-for-trade basis.

Pursuant to the proposed rule change, members will be able to modify a previously submitted uncompared trade by submitting new trade data so long as the new trade data includes the reference number previously assigned by the member to the uncompared trade. Members will not be able to modify the ISIN, trade date, or settlement date of an uncompared trade, and EMCC will reject any such modification. Modifications will be required to be submitted to EMCC in such form and by such time as EMCC establishes from time to time.

EMCC will continue to process alleged trades until the earlier of (1) the submission of matching trade data by the member against whom the trade is alleged or (2) the cut-off time for inclusion of compared trades on the SD–1 accepted trade report.

Each uncompared trade, including modified uncompared trades, will be included in the comparison operation until the earlier of (1) its designation as a compared trade and the reflection as such on an accepted trade report or (2) the cut-off time for inclusion of compared trades on the SD–1 accepted trade report. All trades remaining uncompared after such time will be processed in accordance with the provisions of Rule 8.

Proposed Rule 6, Section 6 will govern the submission of cancellation instructions. According to the proposal, EMCC will prohibit partial cancellations and will not cancel a compared trade unless it receives matching instructions from the counterparty. The accepted trade report will indicate whether a cancellation of a compared trade has been processed by EMCC.

Rule 7—Novation and Guaranty of Obligations and Receive, Deliver and Settlement Obligations

The proposed rule change amends Rule 7, Section 2 to explicitly state that transactions reported as canceled on an accepted trade report will result in the extinguishing of the related receive and deliver obligations previously created by EMCC.

Rule 8—Settlement Instructions Only Report

The production of the ''settlement instructions only report'' by EMCC and the effect of such reports will remain the same. The proposed changes to Rule 8 reflects the elimination of the locked-in trade source and the offering of comparison processing by EMCC.

Rule 15—Ceasing To Act for a Member; Rule 17—Insolvency of a Member; and Addendum B—Statement of Policy With Respect to Interdealer Broker Required Fund Deposits

The language referring to a locked-in trade source is being eliminated, and where appropriate, a reference to service bureau is being inserted.

Addendum A—Statement of Policy Pertaining to Inter-Dealer brokers Who Do Not Qualify Under the Provisions of Rule 2

Addendum A has expired and therefore is being eliminated.

In addition, the proposed rule change amends footnote 6 of Rule 4, Section 10 to provide that the limited use of clearing fund deposits as collateral for intraday financing proposes, as described in Section 10(2)(B), will expire on the date on which all members are netting members. There will no longer be a reference to expiration on EMCC's first anniversary as a registered clearing agency.

EMCC believes that the proposed rule change is consistent with the requirements Section 17A of the Act[10] and the rules and regulations thereunder because the ability to accept trade data directly from members and to offer comparison services will facilitate the prompt and accurate clearance and settlement of emerging market securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that allowing EMCC to accept trade data directly from members should promote the prompt and accurate clearance and settlement of securities transactions by providing EMCC members with a choice of how they can best provide EMCC with trade data. Also, by allowing EMCC to conduct the comparison of trade data EMCC will be better able to make sure that the comparison of trades is conducted timely and accurately.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow EMCC and its members to realize the benefits of having EMCC provide the additional services as soon as possible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[8] Appendix B sets forth the information that will be contained in EMCC's reports indicating the results of its comparison operation. The categories of information contained in the reports will vary depending on the method by which a member submits data to EMCC.

[9] Rule 7 will continue to govern, receive, deliver, and settlement obligations relating to compared trades.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

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. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–2 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–EMCC–99–2) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9016 Filed 4–9–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41248; File No. SR–NASD–99–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc.; Relating to the Filing Fees Under the Corporate Financing Rule

April 2, 1999.

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 January 11, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. On March 18, 1999, and March 23, 1999, NASD Regulation submitted to the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Section 6 of Schedule A to the NASD By-Laws and NASD Conduct Rule 2710 to simplify the fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1–Section 5

No change.

Section 6—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) [The] *There shall be a fee imposed for the filing of* initial documents relating to any offering filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by a filing fee] equal to $500 plus .01% of the [gross dollar amount of the offering,] *proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall* not [to] exceed [a fee of] $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) [Amendments] *There shall be an additional fee imposed for the filing of any amendment or other change* to the [initially filed documents which increase the number of securities being offered] *documents initially filed with the NASD pursuant to the Corporate Financing Rule* [shall be accompanied by an additional amount of filing fee] equal to .01% of the [per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered,] *net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related SEC Rule 462(b) registration statement, or reflected on any SEC Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall* not [to] exceed $30,500 [when aggregated with all fees previously paid].

[(c) the provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.]

Section 7–Section 15

No change.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

[(1) Gross Dollar Amount of the Offering]

[Public offering price of all securities offered to the public and securities included in any overallotment option, the registration price of securities to be paid to the underwriter and related persons, and the registration price of any securities underlying other securities;]

(2)–(6) renumbered (1)–(5)

(b) Filing Requirements

(1)–(9)

No change.

[(10) Filing Fees]

[(A) The initial documents relating to any offering filed with the Association pursuant to this Rule shall be accompanied by a filing fee equal to $500 plus .01% of the gross dollar amount of the offering, not to exceed a fee of $30,500. The amount of filing fee may be rounded to the nearest dollar.]

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[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed Amendment No. 1 which superseded the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 17, 1999; Amendment No. 2 also superseded Amendment No. 1 and the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 22, 1999.

[(B) Amendments to the initially filed documents which increase the number of securities being offered shall be accompanied by an additional amount of filing fee equal to .01% of the per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered, not to exceed $30,500 when aggregated with all fees previously paid.]

[(C) The provisions of SEC Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Rule, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with subparagraph (A), (B) or (C) above.]

(11)–(13) renumbered (10–(12)

(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in Sections A, B, 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

NASD Conduct Rule 2710 (the ''Corporate Financing rule'') requires that NASD members file most proposed public offerings with the Corporate Financing Department (''Department'') of NASD Regulation. The Department reviews these filings in order to determine whether the underwriting terms and arrangements are fair and reasonable pursuant to standards set forth in NASD Conduct Rules 2710, 2720, and 2810 prior to the commencement of the offering.

Certain aspects of the existing process by which Corporate Financing filing fees (as defined below) are calculated create unnecessary inefficiencies in the handling of such fees by NASD Regulation. NASD Regulation is proposing to amend its rules, as discussed below, to address these problems with respect to the Corporate Financing filing fees.

Elimination of Duplicate Provision—Section 6 of Schedule A to the NASD By-Laws (''Section 6 of Schedule A'') and Paragraph (b)(10) of Conduct Rule 2710 include identical provisions that impose a fee on each filing, in the amount of $500 plus .01% of the value of securities, with a maximum filing fee limit of $30,500 (the ''Corporate Financing filing fee''). NASD Regulation now proposes to eliminate paragraph (b)(10) of Conduct Rule 2710 in its entirety because it duplicates Section 6 of Schedule A. NASD Regulation further believes that Schedule A is the more appropriate location for provisions that impose fees on NASD members.

Method for Submission of Filing Fees—The language of Sections 6(a) and 6(b) of Schedule A currently specify that a filing fee will accompany an initial filing and amendments, in certain cases. NASD Regulation is proposing to eliminate this language so that it can have greater flexibility with respect to the manner in which filing fees are paid.[4]

Application of Fee to All Securities on Offering Document—Currently, offerings filed with the Department are charged a fee equal to $500, plus .01% of the gross dollar amount of the offering, not to exceed $30,500. The definition of the term ''gross dollar amount of the offering'' in Paragraph (a)(1) of Conduct Rule 2710 only allows NASD Regulation to collect a fee on ''all securities offered to the public.'' This language is often interpreted by NASD members to impose a fee only with respect to those specific securities currently offered by the NASD member filing a proposed offering, even when the issuer has included other securities on the same offering document for later public sale by the same or another member. Further in the case of securities registered with the SEC pursuant to Rule 415, NASD members have argued that the Department should recalculate the filing fee each time a shelf takedown is made so that the NASD member is only responsible for the Corporate Financing filing fee that relates to the NASD member's specific shelf takedown. Such a piecemeal calculation of filing fees would be time-consuming and cause accounting difficulties.

NASD Regulation proposes to amend Section 6(a) to Schedule A to clarify that the Corporate Financing filing fee will be calculated on the proposed maximum aggregate offering price (or other applicable value) of all securities included on an SEC registration statement or any other type of offering document—regardless of whether the securities are to be currently ''offered to the public.'' The term ''proposed maximum aggregate offering price'' is the same term used in the fourth column of the fee table on the cover of SEC registration statement forms to identify the total of the proposed public offering price of all securities to be registered on that registration statement. The inclusion of the words ''other applicable value'' is intended to cover debt securities or a situation in which the company only registers a dollar amount of securities without specifying the type of security. This is the same value that would also be included under the fourth column of the fee table titled ''proposed maximum aggregate offering price'' on the cover of SEC registration forms in the case where a debt issue or a dollar amount of securities is being registered with the SEC.

The NASD believes that this clarification will facilitate the calculation of Corporate Financing filing fees and remove issues of dispute that currently occur over whether securities included on an offering document are being currently ''offered to the public.'' Since the calculation of the Corporate Financing filing fee will no longer be based on the ''gross dollar amount of the offering,'' this definition is proposed to be eliminated in Paragraph (a)(1) of NASD Conduct Rule 2710.

Calculation of Fee on Amendments—Section 6(b) of Schedule A currently requires that NASD Regulation collects an additional filing fee when an amendment to the offering document decreases the number of securities being registered, regardless of whether there is any increase in the aggregate value of the securities that were included on the original offering document. This additional fee is calculated by multiplying the number of additional securities times their new offering price, and charging a fee of .01% of this product (with a limitation of $30,500 in total fees with respect to any offering filed). When such an amendment decreases the maximum aggregate offering price for the whole offering (as well as increasing the number of securities offered), the collection of an additional fee by the Department is not always warranted. Conversely, the Department is currently prohibited from collecting an additional fee when the

[4] NASD Regulation recently deleted Subsection (6)(c) of Schedule A to the NASD By-Laws and Subparagraph (b)(10)(C) of Conduct Rule 2710, which had mandated that Corporate Financing filing fees be paid in the form of a check or money order. *See* Securities Exchange Act Release No. 40706 (November 24, 1998), 63 FR 66618 (December 2, 1998).

amendment increases the maximum aggregate offering price of the securities offered, but does not increase the number of securities.

NASD Regulation is proposing to amend Section 6(b) of Schedule A to impose an additional fee for amendments only when there is an increase in the maximum aggregate offering price or other applicable value of all securities included on the offering document. Thus, an additional filing fee would be imposed in the amount of .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document, with a maximum of $30,500 charged for any offering. However, no refund will be made as a result of a net decrease in the maximum aggregate offering price or other applicable value.

The proposed change to Section 6(b) of Schedule A clarifies that NASD Regulation recognizes that there can be a net increase in the maximum aggregate offering price or other applicable value of an offering registered with the SEC through an amendment to the registration statement or through ''any other change.'' The language also treats as an amendment a net increase in the maximum aggregate offering price or other applicable value that is reflected on an SEC Rule 430A prospectus [5] or filed in a related registration statement pursuant to SEC Rule 462(b).[6]

SEC Rule 457—Section 6(c) of Schedule A requires that Corporate Financing filing fees be computed according to SEC Rule 457, to the extent that SEC Rule 457 is not inconsistent with Section 6 of Schedule A. Originally, the Corporate Financing filing fee rule referenced SEC Rule 457 in order to calculate the Corporate Financing file fees in certain situations. The amendments proposed herein to the Corporate Financing filing fee rule would incorporate all necessary concepts for the calculation of such filing fees. Therefore, NASD Regulation proposes to eliminate Section 6(c), as the reference to SEC Rule 457 is no longer necessary.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) [7] of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fee, and other charges among members. NASD Regulation believes that the proposed rule change provides for the equitable allocation of the fees paid by members in connection with the submission of proposed public offerings to the Department for review

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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. Socilitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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–99–01 and should be submitted by May 3, 1999.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9009 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

[5] SEC Rule 430A permits a registrant to omit certain information from a prospectus that is filed as part of a registration statement declared effective by the SEC if the omitted information is contained in a prospectus filed with the SEC pursuant to SEC Rule 424(b) or SEC Rule 497(h) within 15 business days after effectiveness. If the omitted information is not contained in a prospectus filed with the SEC within fifteen business days after effectiveness, it must be contained in an effective post-effective amendment to the registration statement. SEC Rule 430A permits a registrant to reflect in the prospectus filed pursuant to SEC Rule 424(b) or SEC Rule 497(h) or in a post-effective amendment to the registration statement a change in the volume of securities offered (if the total value of securities offered would not exceed that which was registered) or a change in the bona fide estimate of the maximum offering price range if the changes, in the aggregate, represent no more than a 20 percent change in the maximum aggregate offering price set forth in the fee table in the effective registration statement.

[6] SEC Rule 462(b) permits a registrant to file a registration statement that is effective upon filing if, among other things, the registration statement registers ''additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective with the Commission.''

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41242; File No. SR–OCC–98–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Concerning Required Clearing Fund Contributions

April 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 13, 1998, The Options Clearing corporation (''OCCC'') filed with the Securities and Exchange Commission (''Commission'') and on March 22, 1999, amended the proposed rule change (File No. SR–OCC–98–04) as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will revise clearing members' required clearing fund contributions so that each clearing member will not be required to contribute a proportionate share of an amount equal to 5 percent of the average daily aggregate margin requirement of all clearing members with a sliding scale calculation of up to 7 percent if the amount of the clearing fund falls below $1 billion.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of OCC's risk reduction system, the clearing fund is designed to provide a third line of defense in the event of a clearing member default to enhance OCC's capacity to perform its guarantee function. OCC's first two lines of defense are (1) the credit worthiness of each clearing member and (2) each clearing member's margin deposits. If a clearing member becomes insolvent and its margin deposits are inadequate or are not immediately available, the clearing fund provides OCC with a pool of highly liquid assets that are immediately available.

The clearing fund mutualizes among all of OCC's clearing members the risk of default of an individual clearing member. OCC's total clearing fund is comprised of two fund pools, the equity clearing fund and the non-equity clearing fund. Currently, each clearing member's required contribution to the clearing fund is its proportionate share of an amount equal to 7 percent of the average daily aggregate margin requirement for equity options and for non-equity options.[3] Each clearing member is subject to a minimum contribution of $75,000 for the equity clearing fund if it is approved to clear equity options and $75,000 for the non-equity clearing fund if it is approved to clear non-equity options. Should these pools of assets ever be depleted, each clearing member is obligated to provide a second contribution equal to its original contribution prior to being able to withdraw from OCC membership.

Under Article VIII of its by-laws, OCC may use the clearing fund to cover various contingencies which include compensation for losses suffered by OCC as a result of the failure of a clearing member or a bank to perform its obligations to OCC. OCC's clearing fund currently contains over $1 billion. OCC has studied the adequacy of its clearing fund and believes that the size of its clearing fund is excessive with respect to its potential exposure. Among other things, OCC's analysis of the clearing fund's adequacy included an assessment of the clearing fun's ability to cover OCC's exposure resulting from (1) the default of a clearing member during volatile market conditions and (2) a delay or failure of a letter of credit bank to meet its obligation to OCC in connection with the default of a clearing member.

After careful and deliberate discussions, OCC and its Board of Directors have determined that a more prudent level of the clearing fund may be achieved by reducing the overall fund size calculation from the current 7 percent of average aggregate daily margin requirement to 5 percent of average aggregate daily margin requirement. However, OCC will apply a sliding scale calculation if the 5 percent contributions level produces a clearing fund of less than $1 billion.

Specifically, the proposed rule change will amend Interpretation .01 to OCC Rule 1001 to provide that each clearing member's contribution to the clearing fund will be not less than 5 percent and not greater than 7 percent of its average daily aggregate margin requirement.[4] Interpretation .01 will also provide that if the 5 percent contribution level produces a clearing fund of less than $1 billion that contribution level will be increased until either (a) The clearing fund reaches $1 billion or (b) the contribution level reaches 7 percent.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it reduces clearing members' required clearing fund contributions to a more efficient and prudent level while not adversely affecting OCC's ability to effectively manage its risks.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because while it reduces the size of OCC's clearing fund by allowing OCC to lower its clearing members' required contributions, it still requires OCC to maintain a clearing fund which should be sufficient to cover OCC's exposure to a defaulting clearing member or to a defaulting bank that has issued a letter of credit to a defaulting clearing member.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will permit OCC to use the new clearing fund contribution requirements for its April calculation.

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.

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[2] The Commission has modified the text of the summaries prepared by OCC.

[3] A clearing member's proportionate share is the percentage based on the clearing member's average daily open long and short positions during the month compared to the average daily open long and short positions held by all clearing members during the same month.

[4] OCC Rule 1001, which is not being amended, states that each clearing member's contribution shall be the greater of (1) $75,000 or (2) the clearing member's proportionate share of 5 percent, or such greater percentage as OCC's board may prescribe, of the average daily aggregate margin requirement.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–98–04 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–98–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9013 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41251; File No. SR–SCCP–98–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Certain Trade Recording Fees

April 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 31, 1998, the Stock Clearing Corporation of Philadelphia (''SCCP'') 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes permanent implementation of a reduction in SCCP's fee schedule for trade recording fees for trades that match with PACE orders.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP proposes permanent implementation of its program that reduced SCCP's trade recording fees for trades that match with PACE orders. SCCP began providing reduced recording fees for trades that match with PACE for trades settling January 2, 1998, through April 30, 1998.[4] Subsequently, the pilot program has been extended through December 31, 1999.[5]

Prior to the implementation of the pilot program, SCCP charged a trade recording fee of $.47 per side for regular trades. SCCP is not bifurcating the category of trade recording fees for regular trades into trades not matching with PACE orders and trades matching with PACE orders. The trade recording fees for trades not matching with PACE orders remains $.47 per side. SCCP's trade recording fees for trades matching with PACE orders are now (i) $.27 per side for the first 2,500 trades per month and (ii) $.10 per side for trades in excess of 2,500 per month.

SCCP believes that the trade recording fee reduction is equitable and reasonable. SCCP states that the PACE System provides participants and their customers with automated order entry, execution, and processing. One of the benefits of small order entry systems, such as PACE, is that customers pay lower fees for the use of PACE as opposed to manual order entry. SCCP further states that another benefit of PACE is the increased efficiency associated with automated order processing. In fact, lower fees generally recognize the reduction of participant and exchange personnel involved in PACE transactions. Therefore, reducing the total cost of exchange trading, in an equitable fashion, should encourage additional PACE business, which in turn, extends the many benefits of PACE to additional customers.

SCCP notes that trades matching with PACE trades require that SCCP expend fewer technological and manual resources to accept and record than if the trades arrived at SCCP from a source other than PACE. SCCP receives information on trades from many different sources and then processes this trade information for its participants. These trades take place on a number of different platforms. For example, SCCP clears trades executed on the PACE system, the Intermarket Trading System (''ITS''), and from the Securities Industry Automation Corporation (''SIAC'') over-the-counter system. In all, SCCP receives and records trades from approximately twelve different sources. All of these sources, except trades executed over PACE, require SCCP to expend additional technological and manual resources to process these trades.

Trades executed over PACE are received by SCCP from the PHLX. PACE trades received from the PHLX are already in a format that SCCP systems can read and process without further technological and manual manipulation. Trades executed and received from another source require SCCP to create and interface, create additional programming to transform the data received into a source that SCCP systems can process, and potentially require SCCP personnel to enter trades manually from hand written tickets. In other words, SCCP states that it must expend additionally resources to transform the data it receives from non-PACE sources in a format comparable to PACE data received from PHLX. Therefore, SCCP believes that a reduction in fees for trades that match with PACE orders recognizes the reduced resources needed by SCCP to process and record these trades.

For these reasons, SCCP believes that the proposed rule change is consistent

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] PACE, an acronym for the Philadelphia Stock Exchange Automated Communication and Execution System, is a real time order routing and execution system.

[3] The Commission has modified parts of these statements.

[4] Securities Exchange Act Release No. 39630 (February 9, 1998), 63 FR 7848.

[5] Securities Exchange Act Release Nos. 39948 (May 4, 1998), 63 FR 25538, 40274 (July 22, 1998), 63 FR 40578 and 40885 (January 5, 1999), 64 FR 1851.

with Section 17A(b)(3)(D) of the Act,[6] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–98–06 and should be submitted by May 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9015 Filed 4–9–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–138]

WTO Dispute Settlement Proceeding Regarding U.S. Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO''), by the European Communities (''EC'') to examine the imposition by the United States of countervailing duties on hot-rolled lead and bismuth carbon steel products (''leaded bar'') from the United Kingdom. In this dispute, the EC alleges that such imposition of countervailing duties is inconsistent with obligations of the United States under the WTO Agreement of Subsidies and Countervailing measures (''SMC Agreement''). The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by May 21, 1999, to be assured of timely consideration by the USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Leaded Bar Dispute, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Office of the General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on January 14, 1999, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine the imposition by the United States of countervailing duties on leaded bar originating in the United Kingdom. On January 22, 1999, the EC submitted a revision of its request. The WTO Dispute Settlement Body established a panel for this purpose on February 17.

Major Issues Raised and Legal Basis of Complaint

In its request for the establishment of a panel, as revised, the EC alleges the following:

> The US refuses to take account of the privatisation or change of ownership of the body receiving a subsidy, even, if at a full market price, and to consider whether the subsidy still provides a benefit when assessing or reassessing, the countervailable subsidy. Instead the US considers that the subsidy ''travels with'' the assets when they are transferred. The US allocates the amount of the subsidy to the new owners of the assets according to a methodology which has no rational basis and has never been explained or justified in the determinations.
>
> In particular, no attempt has ever been made in the final determinations to justify or rationlise what benefits continue to result from subsidies following privatisation or sale of assets at fair market prices. The US methodology relied entirely on the presumption (based mostly on pre-WTO legislation and practice) that benefits from prior subsidies pass-through without the need to show that a benefit continues to be conferred as mandated by the [SCM Agreement].

The EC alleges that the imposition of countervailing duties in the circumstances described above constitutes a violation of Articles 1.1(b), 10, 14, and 19.4 of the SCM Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL''

in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–138) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–9067 Filed 4–9–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending April 2, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5457
Date Filed: March 29, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS-AFR 0061 dated 25 February 1999 (Mail Vote 992)
Mid Atlantic-Africa Resolution r1-r11
PTC12 NMS-AFR 0063 dated 23 March 1999 adopting (Mail Vote 992)
PTC12 NMS-AFR 0060 dated 16 February 1999
South Atlantic-Africa Resolutions r1-r16
Minutes—PTC12 NMS-AFR 0062 dated 16 February 1999 filed with Docket OST–99–5192
Tables—PTC12 NMS-AFR FARES 0042 dated 26 February 1999
PTC12 NMS-AFR FARES 0043 dated 9 March 1999—Technical Correction
PTC12 NMS-AFR FARES 0044 dated 23 March 1999
Intended Effective Date: 1 May 1999.

Docket Number: OST–99–5478
Date Filed: April 1, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR-SASC 0045 dated March 19, 1999
Europe-South Asian Subcontinent Resolution r1-r18
Minutes—PTC23 EUR-SASC 0046 dated March 23, 1999
Tables—PTC23 EUR-SASC Fares 0015 dated 23 March 1999
Intended effective date: July 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–9068 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a meeting of the Council. The Council seeks comments from state transportation officials and rail freight operators concerning the current and future operation of intercity rail services over the Northeast Corridor (Washington, D.C.—Boston, MA). Opportunity for public comment will be provided. The Council will also take up such additional matters as the Council or its members deem appropriate.

DATES: The meeting is scheduled from 9:30 a.m. to 4:30 p.m., on Monday, April 26, 1999.

ADDRESSES: The meeting will be held in the Hancock Room of the Holiday Inn, Independence Plaza, 4th & Arch Streets, Philadelphia, PA (215–923–8660). The meeting is open to the public on a first-come, first-serve basis. Portions of the meeting may be closed to the public at the discretion of the Council, if proprietary information is to be discussed. Persons wishing to appear before the Council must advise the Executive Director by COB, April 21, 1999, by contacting the person listed below. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, S.W., Washington, D.C. 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance, and make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC begin to make findings on whether Amtrak can meet certain financial goals and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a five year term.

Issued in Washington, D.C., on April 7, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–9045 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5510]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; change of location.

SUMMARY: The location of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) meeting, on Wednesday, April 14, 1999, from 8:30 a.m. to 4:30 p.m., and Thursday, April 15, 1999, from 8:30 a.m. to 4:30 p.m., has been changed. The meeting has been moved from the Coast Guard National Pollution Funds Center, 4200 Wilson Blvd., Suite 1000, Arlington, VA to Coast Guard Headquarters, 2100 2nd Street, SW, Room 2415, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contract Commander Mark A. Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202–267–1181, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Dated: April 6, 1999.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–9070 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5479]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings are open to the public.

DATES: TSAC will meet on Thursday, April 29, 1999, from 8 a.m. to 12:30 p.m. TSAC working groups will meet on Wednesday, April 28, 1999, from 8 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 19, 1999. Requests to have a copy of your material distributed to each member of the committee or working group should reach the Coast Guard on or before April 12, 1999.

ADDRESSES: TSAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Working group meetings will be held in the same room. Send written material and requests to make oral presentations to Lieutenant Lionel Mew, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Lionel Mew, Assistant Executive Director of TSAC, telephone 202–267–0218, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Towing Safety Advisory Committee (TSAC) and working group meetings. The agendas tentatively include the following:

(1) Introduction of the new Chairman.

(2) Report of the Voyage Planning Working Group.

(3) Progress report from the Electronic Charting Working Group.

(4) Progress report from the Tug Assistance and Remote Anchor Retrieval Working Group.

(5) Report of the Communications Working Group.

(6) Progress Report from the Casualty Analysis Working Group.

(7) Discussion of the Final Rule on Licensing and Manning for Officers of Uninspected Towing Vessels.

(8) Status update on the National Marine Safety Incident Reporting System.

(9) Presentation by working groups of their accomplishments and further plans.

Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than April 19, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than April 19, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Assistant Executive Director no later than April 12, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: April 5, 1999.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–9071 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–15–M

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. NHTSA–99–5465]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 11, 1999.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Jennifer Higley, NHTSA, 400 Seventh Street, SW, Room 5238, NSC–01,Washington, DC 20590. Ms. Higley's telephone number is (202) 366–0743. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed

collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) Title: 23 CFR Parts 1210 for Certification Requirements for State Laws Concerning Intoxicated Minor Age Drivers.

OMB Control Number: 2127–0582.

Affected Public: State Government.

Abstract: The National Highway System Designation (NHS) Act of 1995, Pub. L. 104–59, was signed into law on November 28, 1995. Section 320 of the Act established a new section 161 of Title 23, United States Code (Section 161), which requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce ''zero tolerance'' laws. States must certify that they comply with section 161 which provides that these ''zero tolerance'' laws must consider an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State, to be driving while intoxicated or driving under the influence of alcohol.

The requirements in the final rule (issued October 25, 1996), that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The annual burden in FY 1999 and beyond is expected to be very low (probably zero hours) since the one-time reporting and recordkeeping requirements associated with this rule were already met by all States prior to the October 1, 1998, deadline for withholding funds. However, in the future, a State must meet these reporting requirements again if the State's zero tolerance law changes. Therefore, the Agency is now requesting comments on an extension of these reporting and recordkeeping requirements in order to keep them in effect beyond September 30, 1999, the current expiration date.

Estimated Annual Burden: 0 hours (if no State law changes) to 52 hours (maximum burden if all State laws change).

Number of Respondents: 52.

Adele Derby,

Associate Administrator for State and Community Services.

[FR Doc. 99–9069 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5476; Notice 1]

Electric Vehicles International; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

We are asking comments from the public on the application by Electric Vehicles International LLC (''EVI'') of Anderson, Indiana, to be exempted from portions of Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The statutory basis for this request is that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 U.S.C. 30113.

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This action does not represent any judgment by us about the merits of the application.

The discussion below is based on information that EVI provided in its application.

Why EVI Needs an Exemption

EVI is requesting an exemption for three years. In August 1997, EVI was organized as a corporation, acquiring some of the assets of Specialty Vehicle Mfg. Corp. of California, a manufacturer of buses and trolleys for use in transit and shuttle service. EVI's goal is to turn the operation into ''a first class bus company.'' It estimated its projected start-up costs at $4,000,000, and has raised $3,000,000 through a private placement offering.

Effective with vehicles manufactured on or after March 1, 1998, S5.1.6.1(a) of Standard No. 121 requires each single unit vehicle including buses to be equipped with an antilock brake system. EVI's product line consists of battery-powered and hybrid electric buses and trolleys, primarily used by transit agencies. Presently, it produces Generation III buses and trolleys. These vehicles are rated at 18,000 to 22,000 GVW, ''so they do not fall in either the light vehicle or heavy vehicle class.'' It knows ''from experience working with axle suppliers that it would take a minimum of 18–24 months to receive a prototype axle with antilock brakes.'' After receiving the prototype system, it would have to review for further design changes necessary to install on future vehicles.

Why Compliance Would Cause EVI Substantial Economic Hardship

To design, develop, and test an antilock brake system for a production rate of 50 to 300 vehicles per year would create a substantial increase in the price of the buses and trolleys that EVI intends to manufacture. If EVI is unable to obtain an exemption, it would have to ''cease production and close the company.'' Its net loss for the 5 months it was in existence in 1997 was $437,900, increasing to $1,632,800 for the 12 months of 1998. The company had manufactured two vehicles as of the end of January 1998.

How EVI Has Tried in Good Faith to Comply With Standard No. 121

EVI's buses use an air-over-hydraulic brake system. The company has searched the industry to find an antilock brake system for vehicles defined as ''medium duty vehicles.'' To date, it has been unable to find any manufacturer that has a system available to meet its braking requirements. Attachment 3 to EVI's application lists 19 manufacturers and suppliers that it contacted in its attempt to comply with the antilock brake system requirements in Standard No. 121.

Why an Exemption for EVI Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

The City of Anderson is assisting EVI financially with additional capital with the stipulation that EVI hire ''at least

51% low and moderate income persons by creating jobs.'' EVI will offer prospective assembly positions extensive training in conjunction with the County's job training and partnership administration.

EVI enclosed data purporting to show that the total service and emergency brake stopping distance of its bus already comply with the maximum stopping distances specified in Table II of Standard No. 121, and will be unaffected by an exemption.

How To Comment on EVI's Application

We invite written comments on EVI's application. Please send them in two copies, referring to the docket and notice number, to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. We shall consider all comments received before the close of business on the comment closing date below. Comments will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we will also consider comments filed after the closing date. When the Administrator has made a decision, we shall publish it in the **Federal Register**.

Comment closing date: May 12, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: April 6, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–9005 Filed 4–9–99; 8:45 am]

BILLING CODE 4910–59–P

Corrections

Federal Register

Vol. 64, No. 69

Monday, April 12, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 990122027-9027-01]

RIN 0692-ZA02

Announcement of Availability of Funding for Competitions—Experimental Program to Stimulate Competitive Technology (EPSCoT)

Correction

In notice document 99–6719, beginning on page 13543, in the issue of Friday, March 19, 1999, make the following correction:

On page 13546, in the third column, in the heading *(3) Engagement With the Small High-Tech Business Community*, ''*(202 points)*'' should read '' *(20 points)*''.

[FR Doc. C9–6719 Filed 4–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty Computation of Phosphate Production on Western Public Lands

Correction

In notice document 99–7394, beginning on page 14751, in the issue of Friday, March 26, 1999, make the following correction:

On page 14753, in Table 1, in the third column, the entry ''–214'' should read ''–2.14''.

[FR Doc. C9–7394 Filed 4–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASW-08]

Proposed Revocation of Class D Airspace; Dallas NAS, Dallas, TX

Correction

In proposed rule document 99–8022 beginning on page 15708 in the issue of Thursday, April 1, 1999, the docket number is corrected to read as set forth above.

[FR Doc. C9–8022 Filed 4–9–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday
April 12, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 260, et al.

Temporary Assistance for Needy Families Program (TANF); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 260, 261, 262, 263, 264, and 265

RIN 0970–AB77

Temporary Assistance for Needy Families Program (TANF)

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Administration for Children and Families (ACF) issues regulations governing key provisions of the new welfare block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program. It replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program.

These rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. They also reflect the Administration's commitment to regulatory reform.

EFFECTIVE DATES: These regulations are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mack Storrs, Director, Division of Self-Sufficiency Programs, Office of Family Assistance, Administration for Children and Families (ACF), at 202–401–9289, or Ann Burek, Family Assistance Program Specialist, at 202–401–4528.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: On November 20, 1997, the Administration for Children and Families published a Notice of Proposed Rulemaking that covered key provisions of the new welfare block grant program, known as Temporary Assistance for Needy Families, or TANF. We provided an extended 90-day comment period, which ended on February 18, 1998. We offered commenters the opportunity to submit comments by mail or electronically via our Web site. A number of commenters took advantage of the electronic access, but a significant portion of the comments we received electronically duplicated comments we received in the mail.

Eight major national organizations (three associations representing State groups, three advocacy groups, and two labor organizations) and one Congressman requested the opportunity to present their comments to us orally. We granted their requests, holding four meetings in Washington in June, July, and August 1998. The national organizations focused largely on those issues that they had identified as priority concerns in their written statements. In a few instances, they modified their suggestions, endorsed comments that had been offered by other commenters, or provided clarifying information. The Congressman expressed his interest in: (1) Providing States more flexibility in operating their programs; (2) collecting data that would be adequate for the effective enforcement and oversight of TANF; and (3) placing sufficient emphasis on ensuring that States met their maintenance-of-effort (MOE) requirements and did not supplant existing State spending.

The discussions did not introduce any new policy concerns or proposals. They are part of the public record, and individuals interested in reviewing notes on these meetings have the same access to that information as they do to other comments that were submitted in written form.

Before discussing the comments in more detail, we want to point out that we changed the part and section references for this TANF rule. One commenter noted that our use of parts 270 through 275 for the TANF rules would likely cause confusion because the major Food Stamp rules used similar section numbers. In response to that comment, we have shifted all our part and section numbers down by ten; thus, for example, the provisions that appeared in part 270 of the NPRM appear in part 260 of this final rule.

To help you make your way through these changes, we include both NPRM and final-rule section references in this preamble discussion.

Comment Overview

After accounting for the duplications, we received nearly 270 comments on the NPRM. The largest number of comments came from State welfare agencies and social services departments, followed by advocacy groups and other State-level organizations. We also heard from a significant number of Governors, national associations, local government offices, Federal legislators, community-based organizations, State legislators, and the general public. We received a lesser number of comments from other Federal agencies and members of the educational, business, child care, research, Tribal, and organized labor communities.

The only policy area that generated a significant number of ''single-issue'' comments was domestic violence. We received about 25 comments from women's, legal, and other groups that focused exclusively on the domestic violence provisions in the NPRM. We also received a handful of comments, mostly from the general public, that focused exclusively on the role of education in promoting self-sufficiency.

A substantial majority of the comments that addressed our regulatory framework were positive. Commenters generally seemed to agree that it was helpful for our rules to provide specific guidance on how we intended to implement the penalty process and make penalty determinations. In fact, based on the detailed questions and comments we received, one could conclude that some commenters were looking for an expansion on the amount of detail contained in the rule.

On the positive side, in addition to support of particular policies, commenters indicated that the rules provided some helpful clarifications of the statute, expressed appreciation for our regulatory development process, noted ''positive steps'' we had taken, and noted numerous places where our proposed rules appropriately reflected the statute.

In general, however, many commenters had mixed views on the policy proposals on the NPRM, supporting some, but opposing others. For example, with respect to the domestic violence policies, most commenters supported the general approach and commended our encouragement of State implementation of the Family Violence Option. However, most also expressed a number of concerns about specific provisions in the proposed rules.

Likewise, many of the States, advocates, and national organizations supported the proposed rule in a number of areas (such as the flexibility afforded States to define work activities and the reduction in penalty liability for States that failed only the two-parent participation rate), but expressed objections to our approach on other major issues.

The policy issues that generated the most consistent negative reactions were separate State programs, child-only cases, and continuation of waivers. Commenters expressed major concerns that: the proposed rules would stifle

innovation; they were overly prescriptive and burdensome; they undermined the partnership between State and Federal governments and contravened Congressional intent; we presumed State guilt without evidence; and these policies could ultimately harm recipients.

We also received numerous negative comments from States and State representatives on the proposed data collection and reporting requirements. However, these same requirements generated a largely favorable reaction from other types of commenters.

In the preamble to the proposed rule, we discussed our general approach on the major cross-cutting issues up front, prior to the section-by-section analysis. Many of the commenters organized their comments in the same way, addressing the issues thematically instead of following the specific structure of the rule. This preamble follows that same basic format, presenting a separate discussion of our policies on the major cross-cutting issues (separate State programs, child-only cases, waiver continuations, and domestic violence) before proceeding to the section-by-section analysis.

We present most of the discussion of data collection and reporting issues in two places—the preamble for part 265 and the preamble discussion entitled the ''Paperwork Reduction Act'' in the ''Regulatory Impact Analyses'' section of the preamble.

We believe that structuring the preamble this way enables us to provide a clearer framework for the specific regulatory provisions and to represent the commenters' concerns most accurately.

For several reasons, we decided not to attempt precise numerical counts of the comments received. Based on the nature of the comments, we did not believe that the number of comments was a particularly meaningful statistic. First, because several of the comments had multiple signatories and some commenters provided general endorsements of the comments of other parties, we would have had to create somewhat arbitrary rules for developing counts. Also, commenters presented their views of the many overlapping and cross-cutting issues in many different ways; for example, some spoke generically about the major provisions of the rule, while others provided very specific suggestions about individual words and phrases. This diversity in the approach of commenters also hampered our ability to create meaningful counts. Nevertheless, we are confident that this preamble accurately conveys the scope and nature of the comments received.

We appreciate the time and attention that commenters gave to reviewing the NPRM and preparing their comments. As a result of their efforts, we have been able to resolve certain technical problems, incorporate numerous regulatory clarifications, and consider some alternative regulatory approaches.

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I. Overview: The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed ''The Personal Responsibility and Work Opportunity Reconciliation Act of 1996''—or PRWORA—into law. This bipartisan welfare plan built upon previous Administration and State efforts to reform welfare. Even before PRWORA was enacted, many States were well on their way to changing their welfare programs into jobs programs. By granting Federal waivers, the Administration allowed 43 States—more than all previous Administrations combined—to require work, time-limit assistance, make work pay, improve child support enforcement, and encourage parental responsibility. The vast majority of States have chosen to continue or build upon these welfare demonstration projects.

PRWORA is dramatically changing the nation's welfare system into one that requires work in exchange for time-limited assistance. The law contains strong work requirements, performance bonuses to reward States for moving welfare recipients into jobs and reducing out-of-wedlock births, State maintenance-of-effort requirements, comprehensive child support enforcement, and supports for moving families from welfare to work—including increased funding for child care. It provides opportunities for State and local governments, working in partnership with communities groups and other agencies, to serve families in new, more creative, and more effective ways.

With the help of the strong economy, and new Federal and State policies, the percentage of welfare recipients working has tripled since 1992 and an estimated 1.5 million people who were on welfare in 1997 were working in 1998. All States met the first overall work participation rates required under TANF, and welfare caseloads have fallen to the lowest levels in 30 years.

The first title of this new law (Pub. L. 104–193) created a program called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limiting assistance. It repealed the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repealed the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date.

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from absent parents.

- Because many factors contribute to poverty and dependency, solutions to these problems should not be ''one size fits all.'' The system should allow States, Indian tribes, and localities to develop diverse and creative responses to their own problems.
- The Federal government should focus less attention on eligibility determinations and place more emphasis on program results.
- States should continue to make substantial investments of State funds in addressing the needs of low-income families.

This landmark welfare reform legislation has dramatically affected not only needy families, but also intergovernmental relationships. It challenges Federal, State, Tribal and local agencies to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes. It also challenges them to develop strong interagency collaborations and improve their partnerships with legislators, advocates, businesses, labor, community groups, and other parties that share their interest in helping needy families successfully transition into the mainstream economy.

The new law provides an unparalleled opportunity to achieve true welfare reform. It also presents very significant challenges for families and State and Tribal entities in light of the changing program structure, loss of Federal entitlements, creation of time-limited assistance, and new penalty and bonus provisions.

Most of the resources in the AFDC program went to support mothers raising their children alone. In the early years, the expectation was that these mothers would stay home and care for their children; in fact, in a number of ways, program rules discouraged work. Over time, as social and economic conditions changed, and more women entered the work force, the expectations changed. In 1988, Congress enacted the new JOBS program to provide education, training and employment that would help needy families avoid long-term welfare dependence. By 1994, 20 percent of the nonexempt adult AFDC recipients nationwide were participating in the JOBS program.

In spite of these changes, national sentiment supported more drastic change. Policy-makers, agency officials, and the public expressed frustration about the slow progress being made in moving welfare recipients into work and the continuing decline in family stability. States lobbied for more flexibility to reform their programs. While the Clinton Administration had supported individual reform efforts in almost every State, approving 80 waivers in its first five years, the waiver process was not an ideal way to achieve systemic change. It required separate Federal approval of each individual reform plan, limited the types of reforms that could be implemented, and enabled reforms to take place only one State at a time. Governors joined Congress and the President in declaring that the welfare system was ''broken.''

After more than two years of discussion and negotiation, PRWORA emerged as a bipartisan vehicle for comprehensive welfare reform. As President Clinton stated in his remarks as he signed the bill, ''. . . this legislation provides an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family.''

The law gives States, and federally recognized Indian tribes, the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program. It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. It also enables States to implement their new programs without getting the ''approval'' of the Federal government. In short, it offers States and Tribes an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

PRWORA redefines the Federal role in administration of the nation's welfare system. It limits Federal regulatory and enforcement authority, but gives the Federal government new responsibilities for tracking State performance. In a select number of areas, it calls for penalties when States fail to comply with program requirements, and it provides bonuses for States that perform well in meeting new program goals.

Under the new statute, program funding and assistance for families both come with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves before their time-limited assistance runs out. States and Tribes are expected to assist recipients making the transition to employment. They are also expected to meet work participation rates and other critical program requirements in order to maintain their Federal funding and avoid penalties.

Some important indicators of the change in expectations are: time limits; higher participation rates; the elimination of numerous exemptions from participation requirements; and the statutory option for States to require individual responsibility plans. Taken together, these provisions signal an expectation that we must broaden participation beyond the ''job-ready.''

In meeting these expectations, States need to examine their caseloads, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers. In some cases, States may need to provide intervention services for families in crisis or may need to adapt program models to accommodate individuals with disabilities or other special needs. TANF gives States the flexibility they need to respond to such individual family needs. However, in return, it expects States to move towards a strategy that provides appropriate services for all needy families.

II. Regulatory Framework

A. Pre-NPRM Process

In the spirit of both regulatory reform and PRWORA, we implemented a broad and far-reaching consultation strategy prior to the drafting of the Notice of Proposed Rulemaking (NPRM). In Washington, we set up numerous meetings with outside parties to gain information on the major issues underlying the work, penalty, and data collection provisions of the new law. In our ten regional offices, we used a variety of mechanisms—including meetings, conference calls, and written solicitations—to garner views from ''beyond the Beltway.''

The purpose of these discussions was to gain a variety of informational perspectives about the potential benefits and pitfalls of alternative regulatory approaches. We spoke with a number of different audiences, including: representatives of State, Tribal, and local governments; nonprofit and community organizations; business and labor groups; and experts from the academic, foundation, and advocacy communities. We solicited both written and oral comments, and we worked to ensure that information and concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

These consultations were very useful in helping us identify key issues and evaluate policy options, and several commenters commended ACF on this process.

B. Related Regulations Under Development

This rule addresses the work, accountability, and data collection and reporting provisions of the new TANF program. We have also issued NPRM's and program guidance on several related provisions of the new law including: high performance bonuses (TANF–ACF–PI–98–1 and TANF–ACF–PI–98–05); illegitimacy reduction bonuses (63 FR 10263, March 2, 1998); and the Tribal TANF and Native Employment Works (i.e., ''NEW'') programs (63 FR 39365, July 22, 1998).

With a couple of minor exceptions, this rule does not address the provisions of the Welfare-to-Work (WtW) program at section 403(a)(5) of the Act, as created by section 5001(a)(1) of Pub. L. 105–33. The Secretary of Labor issued interim rules on these provisions and the provisions at section 5001(c), regarding WtW grants for Tribes, on November 18, 1997. A copy of the interim rules and other information about this program are available on the Web at http://wtw.doleta.gov.

The WtW provisions in this rule include the amendments to the TANF provisions at sections 5001(d) and 5001(g)(1) of Pub. L. 105–33. Section 5001(d) allows a State to provide WtW assistance to a family that has received 60 months of federally funded TANF assistance and specifies that ''noncash'' assistance under the WtW program is not treated as TANF ''assistance'' for purposes of the TANF time limit. Section 5001(g)(1) provides a new penalty that takes away WtW funds when a State fails to meet the basic MOE requirements.

Also, this rule does not include the provision at section 5001(g)(2), which requires repayment of WtW funds to the Secretary of Labor following a finding by the Secretary of Labor of misuse of funds. Since the Department of Labor is responsible for administering this penalty and receives any repaid funds, it would not be appropriate for us to issue rules on this provision.

Under section 5001(e) of Pub. L. 105–33, we have responsibility for regulating the WtW data reporting requirements, under section 411(a) of the Act, as amended. On October 29, 1998, we issued an interim-final rule that addresses these requirements, following consultation with the Department of Labor, State agencies, Private Industry Councils, and other affected parties (63 FR 57919).

As we pointed out in the NPRM preamble, there is an important relationship between this rulemaking and the rulemaking on Tribal programs. Under section 412 of the Social Security Act, federally recognized Tribes may elect to operate their own TANF programs, and Tribes that operated their own JOBS programs may continue to receive those funds to operate Tribal work programs. We published the NPRM for Tribal TANF programs on July 22, 1998 (see 63 FR 39365).

Tribal decisions on whether to elect the TANF option will depend on a number of factors, including the nature of services and benefits that will be available to Tribal members under the State program. Thus, Tribes have a direct interest in the regulations governing State programs.

Tribes also have an interest in these regulations because some of the rules we develop for State programs could eventually apply to the Tribal programs. In particular, we urge Tribes to note the data collection and reporting requirements at part 265. While the statute allows Tribes to negotiate certain program requirements, such as work participation rates and time limits, it subjects Tribal programs to the same data collection and reporting requirements as States.

We would also like to direct the Tribes to the maintenance-of-effort (MOE) policies discussed at § 263.1. In that section, we provide that State contributions to a Tribal program could count toward a State's MOE. Tribes should be aware of the important implications of this provision for both the funding of Tribal programs and State-Tribal relations.

In order for welfare reform to succeed in Indian country, it is important for State and Tribal governments to work together on a number of key issues, including data exchange and coordination of services. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in providing the information necessary for Tribes to do so.

Likewise, Tribes should cooperate with States in identifying Tribal members and tracking receipt of assistance.

On December, 5, 1997, we issued a final rule to repeal the obsolete regulations for the EA, JOBS, and the IV–A child care programs and a few provisions covering administrative requirements of the AFDC program (see 62 FR 64301, December 5, 1997). This action resulted in the elimination of about 82 pages from the Code of Federal Regulations.

We have yet to issue a more detailed conforming rule that deletes or replaces obsolete AFDC and title IV–A references throughout chapter II. This second rulemaking will take additional time because the AFDC provisions are intertwined with provisions for other programs that are not repealed. Also, it is not clear that we should repeal all the AFDC provisions because Medicaid, foster care, and other programs have linkages to the AFDC rules. Because of these complexities and the nonurgent nature of the conforming changes, this latter rule is not an immediate agency priority.

PRWORA also changed other major programs administered by ACF, the Department, and other Federal agencies that may significantly affect a State's success in implementing welfare reform. For example, title VI of PRWORA repealed the child care programs that were previously authorized under title IV–A of the Social Security Act. In their place, it provided two new sources of child care funding (which we refer to collectively as the Child Care Development Fund). These funds go to the Lead Agency that administers the Child Care and Development Block Grant program. A major purpose of the increases in child care funding provided under PRWORA is to assist low-income families in their efforts to be self-sufficient. We issued final rules covering the Child Care and Development Fund on July 24, 1998 (see 63 FR 39935).

We encourage you to look in the **Federal Register** for actions on these related rules, take the opportunity to comment, and work to understand the important relationships among these programs in developing a comprehensive strategy that can provide support to all families that are working to maintain their family structure and become self-sufficient.

C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and amended by Pub. L. 104–327, Pub. L. 105–33, Pub. L. 105–89, Pub. L. 105–178, and Pub. L. 105–200.

As we indicated in the NPRM preamble, the changes made by Pub. L. 104–327 are fairly limited in scope; we discuss them in the preamble on Contingency Fund MOE requirements at §§ 264.71, 264.72, and 264.77.

Pub. L. 105–33 (also known as The Balanced Budget Act of 1997) created the new Welfare-to Work (WtW) program, made a few substantive changes to the TANF program, and made numerous technical corrections to the TANF statute. We attempted to incorporate those amendments that were in our purview in the NPRM. However, commenters identified a couple of places where we did not fully

or correctly incorporate these amendments. We found a few more. We note these in the preamble discussion that follows and have made appropriate changes in the regulatory text.

We want to note a couple of additional legislative developments since the drafting of the NPRM that might affect a State's liability for penalties and the use of Federal TANF funds. We have made a couple of conforming changes in the rules to reflect these developments.

Under Pub. L. 105–89, known as the Adoption and Safe Families Act of 1997, Congress decreased the amount of money available to States through the ''Contingency Fund'' and increased the amount that States receiving contingency funds must remit, using a proportionate reduction. We discuss this provision in more detail in the preamble for subpart B of part 264, and we have changed the regulatory text to reflect this change.

Under Pub. L. 105–178, known as The Transportation Equity Act for the 21st Century, Congress: (1) (Effective in fiscal year 2001) reduced the cap on the amount that a State could transfer to the Social Services Block Grant from 10 percent to 4.25 percent; (2) created the ''Job Access'' competitive grant program to help communities develop transportation services that will help current and former welfare recipients and other low-income individuals access employment; and (3) specified that States could use their Federal TANF funds as part of the nongovernmental cost-sharing required under a Job Access program. None of these provisions directly affect the TANF rules, but they do change what would be an allowable use of Federal TANF funds. It is important that States understand these provisions if they wish to avoid a penalty for misuse of Federal TANF funds.

Under section 403 of The Child Support Performance and Incentives Act of 1998, Pub. L. 105–200, Congress amended section 404 of the Social Security Act to address the use of Federal TANF funds within the Job Access and Reverse Commute program. It imposed: (1) restrictions on the use of Federal TANF funds for this purpose, including ''new spending'' and ''nonsupplantation'' requirements; (2) a requirement that the preponderance of funds go to TANF recipients, former TANF recipients, certain noncustodial parents, and low-income individuals at risk of qualifying for the TANF program; and (3) a requirement that the services provided support participation in TANF work activities. It also imposed a cap on the total amount of Federal TANF funds that a State could use for this purpose, computed as the difference between 30 percent of the State Family Assistance Grant (SFAG) amount and the amount that a State was transferring that year to the Child Care and Development Block Grant or the Social Services Block Grant.

Consistent with treatment of the other restrictions on the grant at section 404, we have not directly incorporated these restrictions into the TANF rule. However, we note that we would consider expenditures in violation of these new provisions a misuse of funds.

We also point out that these provisions do not conflict with the restrictions at section 409(a)(7)(B)(iv) of the Act or § 263.6(a) and (c) of these rules. The TANF rules deal with the converse situation—the circumstances under which other State expenditures do not qualify under TANF's basic maintenance-of-effort provisions. The new provisions address the circumstances under which Federal TANF funds may count as nongovernmental expenditures under a separate program. They do not give States the authority to use Job Access funds for basic MOE purposes.

Further, the use of Federal TANF funds to support Job Access activities does not constitute a transfer of Federal TANF funds within the meaning of section 404(d)(1). Thus, they do not affect the ''adjusted SFAG'' amount that we use in determining the administrative cost cap and penalty amounts.

The Child Support Performance and Incentives Act also added a ''rule of interpretation'' to section 404(k)(3) of the Social Security Act, which indicates that the provision of transportation benefits to an individual who is not otherwise receiving TANF assistance would not be considered assistance. We have made a conforming change to our definition of assistance at § 260.31 to reflect this policy.

D. Regulatory Reform

In its latest *Document Drafting Handbooks,* the Office of the Federal Register has supported the efforts of the National Partnership for Reinventing Government and encouraged Federal agencies to produce more reader-friendly regulations. In drafting the proposed and final rule, we paid close attention to this guidance and worked to produce a more readable rule. We also provided electronic access to the document and gave readers the option to submit their comments electronically. We received a number of positive comments about how the NPRM was written and the electronic access.

Based in part on the positive reaction to the proposed rule, and in the spirit of facilitating understanding, we decided to retain much of the NPRM preamble discussion. We believe it will be useful for some readers in providing the overall context for the final regulations. However, where we are changing our policy in the final rule, or the context has changed since we issued the NPRM, we have made appropriate changes to the preamble. We also exercised some editorial discretion to make the discussion more succinct or clearer in places. Wherever we made significant changes in policy, the preamble notes and explains those changes.

In the proposed rule, we decided to incorporate a few statutory provisions as a frame of reference even though we did not intend to regulate or enforce State behavior in those areas. We thought the inclusion of this additional preamble discussion and regulatory text would help establish the broader context for other parts of the rulemaking document. These additions were primarily explanatory in nature or restatements of the statutory requirements. We indicated that readers could probably identify these additional provisions based on the language used and the surrounding preamble discussion and noted that subparts A and G of part 271 (which addressed the work provisions other than participation rates and penalties) and § 270.20 (which included the statutory goals of the program) as specific examples.

Commenters identified an additional item that would be helpful to include as a frame of reference—the nondiscrimination provisions found at section 408(d) of the Act. We decided to accept the suggestion and include these provisions in the final rule since commenters had not generally objected to including such material in the regulatory text of the NPRM, the inclusion will have informational value, and the change does not materially alter the scope of the rule. (See the discussion on ''Recipient and Workplace Protections'' for additional information.)

Likewise, based on comments we received on the domestic violence provisions in the proposed rule, we incorporated the statutory provisions on the Family Violence Option at a new § 260.52.

In the spirit of providing access to information, we included draft data collection and reporting forms as appendices to the proposed rules even though we did not intend to publish the forms as part of the final rule. We thought that the inclusion of the draft

forms would expand public access to this information and make it easier to comment on our data collection and reporting plans.

We believe that we succeeded in accomplishing these goals. Commenters responded in large numbers and specific detail to both the Paperwork Reduction Notice and the Proposed Rule. The changes to the final rule and to the companion appendices reflect our consolidated response to both sets of comments.

E. Scope of This Rulemaking

The NPRM and final rule reflect our decision to incorporate the work, data collection, and penalty provisions in a single regulatory package. While this decision resulted in a large rule, we think it enabled us to develop a more coherent regulatory framework and provided readers an opportunity to look at, and comment on, the many interconnected pieces at one time.

One downside of this decision was that the concentration of all these accountability provisions in one rule could have contributed to the perception among some commenters that the tone was punitive and the rule too penalty-focused. It is important to keep our broader regulatory and program agenda in mind as you assess the impact and meaning of this package. The total agenda includes rewards, as well as penalties, and tracks State performance along a variety of different measures, including job entries, success in the workplace, reductions in out-of-wedlock childbearing, and child poverty rates. It also includes annual reports to Congress on State program characteristics, recipient characteristics, and performance.

Our agenda also includes extensive research, evaluation, and technical assistance efforts. Throughout this preamble, you will find examples of how our efforts in these areas respond, in a nonregulatory fashion, to commenter concerns. It would be impractical and inappropriate to use this rulemaking as the vehicle for informing the public about the full agenda, but the ''Promising Practices National Conferences'' held in September 1998 and in Fiscal Year 1999 provide a good example. These meetings, which have the financial support of the Department of Health and Human Services (including both the Administration for Children and Families and the Substance Abuse and Mental Health Services Administration) and the Department of Labor, will provide State and local staff and other practitioners with practical ideas on a range of topics, such as preparing for the difficult task of moving clients with multiple barriers into work, creating jobs in isolated and high-risk communities, increasing support from noncustodial parents, promoting collaboration and achieving seamless delivery of services, changing welfare offices to job centers, promoting success in the workplace, and maintaining the investments in needy families.

F. Applicability of the Rules

As we indicated in policy guidance to the States and the NPRM, a State could operate its program under a reasonable interpretation of the statute prior to our issuance of final rules. Thus, in determining whether a State is subject to a penalty, we would not apply regulatory interpretations retroactively. We retained this basic policy, but modified it to clarify that the ''reasonable interpretation'' standard applies until the effective date of these final rules. You can find additional discussion of this policy at § 260.40 of the preamble.

III. Principles Governing Regulatory Development

A. Restrictions on Our Regulatory Authority

Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the principle of State flexibility and the general State and congressional interest in shifting more responsibility for program policy and procedures to the States.

We interpreted this provision to allow us to regulate in two different kinds of situations: (1) Where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged the Department of Health and Human Services (HHS) with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

In the preamble to the proposed rule, we indicated that we endeavored to regulate in a manner that did not impinge on a State's ability to design an effective and responsive program. A large number of commenters felt that our regulations would in fact have such a negative effect. In the subsequent discussion, you will note that we have revised provisions in key program areas that respond to these concerns.

At the same time, however, we remain committed to ensuring that States remain accountable for meeting TANF requirements. Thus, we will continue to monitor program developments so that we can make appropriate adjustments if programs fail to remain focused on TANF's statutory objectives.

B. State Flexibility

In the Conference Report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation creates a broad block grant for each State to reform welfare in ways that work best. It gives States the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

Under the law and the proposed rules, we indicated that States could implement innovative and creative strategies for supporting the critical goals of work and responsibility. For example, they could choose to expend funds on refundable earned income tax credits or transportation assistance that would help low-wage workers keep their jobs. They could also extend employment services to noncustodial parents, by including them within the definition of ''eligible families.''

To ensure that our rules supported the legislative goals of PRWORA, we indicated our commitment to gather information on how States were responding to the new opportunities available to them. We said that we reserved the right to revisit some issues, either through legislative or regulatory proposals, if we identified situations where State actions were not furthering the objectives of the Act.

A large number of commenters felt we had unduly limited State flexibility to design their programs, particularly with respect to expending funds in separate State programs, providing assistance to child-only cases, and continuing waivers, but also in areas like the definition of administrative costs, restrictions on domestic violence waivers that affected reasonable cause, and the definition of assistance.

We included some restrictions on State flexibility in the NPRM to protect against possible State policies that might undermine TANF goals or divert the Federal share of child support collections. However, in response to

these concerns and in recognition of the positive steps States have been taking to implement welfare reform, we have decided to remove some of the direct and perceived restrictions on State flexibility. We have also provided some important preamble language that helps clarify State flexibility to define needy families and spend both Federal TANF and State MOE funds in ways that support a wide range of families in diverse ways. We provide additional discussion of these changes and clarifications in subsequent sections of the preamble.

C. Accountability for Meeting Program Requirements and Goals

In the NPRM we recognized that States have enormous flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, TANF reflects a bipartisan commitment to ensuring that State programs support the goals of welfare reform. To this end, the statutory provisions on data collection, bonuses, and penalties are crucial because they allow us to track what is happening to needy families and children under the new law, measure program outcomes, and promote key program objectives.

Work

As we indicated in the NPRM, we believe the central goal of the new law is to move welfare recipients into work. The law reflects this important goal in a number of ways:

- Work receives prominent mention in the statutory goals at section 401 and the plan provisions in section 402;
- Section 407 establishes specific work participation rates each State must achieve;
- Section 409 provides significant financial penalties against any State that fails to achieve the required participation rates;
- Section 411 provides specific authority for the Secretary to establish data reporting requirements to capture necessary data on work participation rates; and
- Section 413 calls for ranking of States based on the effectiveness of their work programs.

The proposed and final rules reflect a similar, special focus on promoting the work objectives of the Act and ensuring that States meet the statutory requirements at sections 407, 409, and 411 of the Act. You should look at the rules in part 261, and the related preamble discussion, for specific details.

This Administration has repeatedly shown its commitment to promoting the work objectives of this new law. Before and since the legislation was passed, the President and the Administration have worked very hard to ensure that Congress passed strong work provisions and provided adequate child care funding and other program supports to help families making the transition from welfare to work.

These include the new Welfare to Work program (WtW), the Welfare-to-Work Tax Credit enacted in the Balanced Budget Act, Welfare-to-Work housing vouchers included in the Fiscal Year 1999 budget for the Department of Housing and Urban Development, and Job Access transportation grants.

WtW provides grants to States, localities, Indian Tribes, and other grantees to help them move long-term welfare recipients and certain noncustodial parents into lasting, unsubsidized jobs.

The Welfare to Work Tax Credit provides a credit equal to 35 percent of the first $10,000 in wages in the first year of employment, and 50 percent of the first $10,000 in wages in the second year, to encourage the hiring and retention of long-term recipients. (It complements the Work Opportunity Tax Credit, which provides a credit of up to $2,400 for the first year of wages to employers who hire long-term welfare recipients.)

Welfare-to-Work Housing vouchers will help current and former welfare recipients who need housing assistance to get or keep a job. Most of the housing vouchers (50,000 in FY 1999) will go to communities on a competitive grant basis.

The Transportation Equity Act for the 21st Century (TEA–21) authorizes $750 million over five years for competitive grants to communities to develop innovative transportation activities to help welfare recipients and other low-income workers (i.e., those with income up to 150 percent of poverty) get to work. (You can find more information about the Administration's initiatives at http://www.whitehouse/gov/wh/welfare.)

The President has also challenged America's businesses, its large nonprofit sector, and the executive branch of the Federal government to help welfare recipients go to work and succeed in the workplace.

In May 1997, the President helped to launch a new private-sector initiative to promote the hiring of welfare recipients by private-sector employers. The Welfare-to-Work Partnership, which started with 105 participating businesses, now includes over 10,000 businesses that have hired 410,000 welfare recipients. This partnership has produced a variety of materials to support businesses in these efforts, including the ''Blueprint for Business'' hiring manual and ''The Road to Retention,'' a report of companies that have achieved higher retention rates for former welfare recipients. You can find information about the Welfare to Work Partnership at http://www.welfaretowork.org.

The Small Business Administration (SBA) is addressing the unique and vital role of small businesses, which account for over one-half of all private-sector employment. It is helping small businesses make connections to job training organizations and job-ready welfare recipients. It is also providing training and assistance to welfare recipients who wish to start their own businesses. Businesses can receive assistance through SBA's 1–800–U–ASK–SBA and through its network of centers, shops, and district offices. Information on SBA's Welfare to Work initiative (W2W) and other activities are available through the SBA home page at http://www.sba.gov.

In addition, the Vice President has developed a coalition of national civic, service, and faith-based groups committed to helping former welfare recipients succeed in the workforce—by providing mentoring, job training, child care, and other supports.

On March 8, 1997, the President directed all Federal agencies to submit plans describing the efforts they would make to respond to this challenge. Under the Vice President's leadership, Federal agencies committed to hiring at least 10,000 welfare recipients over the next four years. Agencies have already fulfilled this commitment—nearly two years ahead of schedule. (You can find additional information on this effort at http://www.welfaretowork.fed.gov.)

Meeting the Needs of Low-Income Families and Children

In a number of different ways, the new law works to ensure that the needs of low-income children and families are met. First, it provides a guaranteed base level of Federal funding for the TANF programs. Then, in times of special financial need, it makes nearly $2 billion in additional funding available through a Contingency Fund and up to $1.7 billion available for loans to States. It also authorizes several studies to monitor changes in the situations of needy children and families that occur after enactment. For example, it requires us to report on how certain children are affected by the provisions of the new law. It also requires us to track whether a State's child poverty rate increases as the result of the State's TANF program and requires States to initiate corrective actions when such increases occur.

These regulations work to further the objectives of these statutory provisions.

Most importantly, they work to ensure that the use of Federal and State funds is consistent with the provisions and purposes of TANF, that States maintain their investments on needy families, that recipients and other workers have the protections available to them that are intended under Federal law, and that we collect data from States that are necessary to assess program performance.

IV. Discussion of Cross-Cutting Issues

Overview of Comments

As we indicated earlier in the preamble, commenters expressed a number of major concerns with respect to our policies on separate State programs, child-only cases, and waiver continuations. In particular, they said: (1) In part because of the uncertainty they created, the proposed rules would stifle innovation and undermine the States' ability to meet the needs of their families; (2) the proposed rules were overly prescriptive and burdensome, too concerned about accountability and the taking of penalties, and not focused on outcomes; (3) they undermined the partnership between the State and Federal governments, fostered an adversarial relationship, violated the compact between the States and Washington in creating TANF, or contravened Congressional intent (if not the law) in regulating State behavior in these areas; (4) we presumed State guilt when there was no evidence that States were taking advantage of loopholes to evade the TANF provisions; and (5) our strict penalty policies, promotion of ''work first'' strategies, and inattention to recipient protections could ultimately harm recipients (e.g., prevent them from attaining jobs that paid a living wage or accessing appropriate treatment).

We disagree with commenters that claimed that we exceeded our regulatory and statutory authority in the NPRM. However, because of the evidence we have seen about States' commitment to develop programs that are consistent with the goals of TANF, these final rules reflect some significant changes in our policies on these three issues. You will find additional details in the following discussion.

A. Separate State Programs

Background

Section 409(a)(7) of the Social Security Act permits States to assist eligible families by expending maintenance-of-effort funds (MOE) under ''all State programs.'' Thus, we recognize expenditures under the State's TANF program and/or separate State program(s). However, eligible families assisted through a separate State program are not generally subject to TANF requirements, including work participation requirements, child support collection requirements, the time limit on receipt of assistance, and data collection and reporting requirements. In other words, by definition, States operating separate programs avoid TANF requirements; they have more flexibility to use the funds available in these programs to help eligible families.

In the NPRM preamble, in a section entitled ''Maintenance-of-Effort (MOE),'' we stated that one of the most important provisions in the new law designed to protect needy families and children is the basic maintenance-of-effort (basic MOE) requirement in the TANF statute. This provision requires States to maintain a certain level of spending on welfare, based on historic (i.e., fiscal year (FY) 1994) expenditure levels. Because this provision is critical to the successful implementation of the law, Congress gave us the authority to enforce State compliance in meeting this requirement, and it received significant attention in the proposed rule.

We also directed readers to the data collection, work, and penalty provisions of the proposed rule, at parts 271–275, for provisions designed to: (1) ensure that States continue to make the required investments in meeting the needs of low-income children and families; (2) prevent States from either supplanting funds or using their MOE funds to meet extraneous program or fiscal needs; (3) give us adequate information to meet our statutory responsibility to determine what is happening in State programs; and (4) take a broad view of work effort, caseload reduction, and program performance.

We recognized that States have more flexibility in spending their State MOE funds than their Federal TANF funds, especially when they expend their MOE funds in separate State programs. However, at the same time, we reiterated concerns that we had first expressed in our policy guidance of January 1997, TANF–ACF–PA–97–1, that States could design their programs to avoid the work requirements of the new law or to avoid returning a share of their child support collections to the Federal government. Therefore, we proposed four measures to mitigate these potential negative consequences.

First, if we detected a significant pattern of diversion of families to a separate State program that achieves the effect of avoiding either the work participation rates or returning the Federal share of child support collections, we proposed to deny reasonable cause for certain penalties. For avoiding the work participation rates, reasonable cause relief would not be available with respect to penalties for failure to: meet minimum participation rates, implement time limits, maintain assistance to a custodial parent who cannot obtain child care for a child under age 6, and reduce assistance for recipients refusing without good cause to work. For diverting the Federal share of child support collections, reasonable cause would not be available with respect to the penalties for failure to: meet minimum participation rates, implement time limits, reduce assistance for recipients refusing without good cause to work, and cooperate with paternity establishment and child support enforcement requirements.

Second, for the same two diversion situations and penalties that we just discussed, we proposed that a State would not be eligible for a penalty reduction on the basis of making substantial progress during corrective compliance unless it corrected the diversion.

Third, we proposed to deny a State access to two possible reductions in the penalty for failing to meet work participation rates unless it ''demonstrates that it has not diverted cases to a separate State program for the purpose of avoiding the work participation requirements.''

Finally, we proposed to require that a State collect case-record data on participants in separate State programs if it wished to receive a high performance bonus; qualify for work participation caseload reduction credit; or be considered for a reduction in the penalty for failing to meet the work participation requirements.

In making these proposals, we noted that the Secretary has considerable discretion in determining whether to reduce penalties or grant a good cause exception. We argued that work was the most critical component in achieving the purposes of TANF and these limits on the relief on the work penalty were appropriate to prevent circumvention of this purpose.

We went on to say that implementation of the child support provisions was the other key component to achieving self-sufficiency. We spoke about the major Federal role in child support enforcement (particularly with regard to the operation of the New Hire Directory and the Federal Parent Locator Service), the continuing Federal interest in the effectiveness of these programs, and the continued Federal financial

commitment, under TANF, for needy families whose children have been deprived of parental support and care.

We expressed concern not just about the unintended, negative consequences of diverting cases to separate State programs for the Federal budget and the Federal government's ability to ensure an effective child support program, but also about reduced State accountability for ensuring that needy families take appropriate steps towards achieving self-sufficiency. We indicated that, in the interest of protecting the key goals of TANF, it was appropriate for the Secretary to use the discretion available to her to forgive penalties and set penalty amounts so as to ensure that States do not divert cases inappropriately.

We announced plans to monitor States' actions to determine if they constituted a significant pattern of diversion. For example, if, based on an examination of statistical or other evidence, we came to the conclusion that a State was assigning people to a separate State program in order to divert the Federal share of child support collections, or in order to evade the work requirements, we would conclude that this is a significant pattern of diversion and would deny the State the specified types of penalty relief.

We said a State would have opportunity to prove that this pattern was actually the result of State policies and objectives that were entirely unrelated to the goal of diversion, but we would make the final judgment as to what constitutes a significant pattern of diversion.

We placed the specific regulatory provisions associated with these policies in §§ 271.51(a), 271.52(b), 272.5(c) and (d), and 272.6(i)(2) of the proposed rule.

We also indicated our intent to propose that States seeking to receive high performance bonuses would be required to report on families served by separate State programs in the coming NPRM on high performance bonuses.

Comment Overview

We received dozens of comments on these proposals related to implementation of separate State programs. The commenters universally opposed the proposals and presented a variety of objections. Most wanted the provisions deleted entirely, but some suggested specific changes that we could make to the regulatory provisions if we did not delete them.

In summarizing these extensive comments, we first address those directed at deleting the provisions. Then we address the comments about possible refinements that we could make.

Commenters objected to both the negative tone of these rules and their effect in undermining State and local flexibility to serve needy families, including those with multiple barriers to employment. They noted that several States have created or were considering separate State programs to serve their most vulnerable families, such as legal noncitizens with poor language and literacy skills; single parents taking care of a disabled child; citizens not disabled enough to qualify for SSI, but unable to work 20 to 30 hours a week; refugees; and victims of domestic violence. They expressed fears that the proposed rules, if not modified, could have a significant chilling effect on the development of innovative approaches to serve working families and the most vulnerable populations. That is, States would be conservative in extending assistance to hard-to-serve or working families out of fear of incurring more and larger penalties. In fact, some commenters argued that, since TANF was not an entitlement program, some States might choose not to give such individuals assistance due to concerns about the penalty consequences.

Some argued that the proposals were contrary to the statute and Congressional intent. Their comments encompassed the following general points: (1) There is no statutory basis for the links between penalty relief and the operation of separate State programs. In deciding penalty relief, we should be looking only at the TANF program. (2) The statute clearly authorizes States to spend their basic MOE funds in separate State programs that are not subject to TANF requirements. Our proposals would punish States that elected to use this authority and preempt State and local authority over their own programs. (3) Our proposals would deny penalty relief where the statute requires such relief. (For example, the statute says that the Secretary ''shall'' reduce work participation penalties based on degree of noncompliance; thus, this reduction is not discretionary. The statute also provides that the Secretary could impose lesser penalties on a State that fails to correct a violation fully under corrective compliance.) Categorically denying penalty relief because of a State's legal and allowable actions on separate State programs is not appropriate.

In lieu of the proposed policies, many commenters recommended that we monitor State actions to determine if a State is pursuing legitimate policy objectives or avoiding TANF-related requirements. They noted the lack of evidence so far that States were abusing the flexibility available under the law; their view was that States have been using separate programs for constructive and appropriate purposes. One noted, if a few States try to take advantage of the flexibility in the law, Congress and the Department can work together to figure out an effective way to stop them.

Commenters also argued that the penalty consequences for operating separate State programs exceeded the magnitude of the purported offense. As a case example, a State could be operating a separate State program that represented only a small percent of its MOE expenditures, it barely missed its participation rate, and it had suffered a catastrophic natural disaster during the course of the year. The argument is that the State should get reasonable cause or penalty reduction because the State's failure could be attributed entirely to the natural disaster, the separate State program was an incidental matter, and, by any objective measure, the State's degree of noncompliance was minimal. Absolute loss of penalty relief in such a case would be arbitrary, at a minimum.

A related comment was that we should limit denial of penalty relief to situations where there is a direct relationship between the penalty at issue and the conduct of the State. Commenters argued that we should not deny penalty relief on four penalties when the State actions at issue were probably only directly connected to one penalty.

One suggestion for making the consequences more proportionate to the ''offense'' would be to not totally preclude eligibility for penalty relief, but to consider State policies on separate State programs as one of several factors affecting how difficult the penalty standard was for a State to achieve.

Others noted that we had not used clear or consistent language when articulating how a separate State program might affect the availability of penalty relief. The lack of clarity would make it difficult for States to predict the effect of these provisions and could produce unfair, arbitrary, and inconsistent outcomes. It could also mean that we unduly deter States from assisting needy families.

Commenters raised the following questions about the meaning of our proposals: (1) What is meant by ''purpose'' and ''effect''? (2) Are the terms meant to define different concepts? (3) Does ''purpose'' refer to ''sole purpose'' or ''one of the purposes''? (4) How would we determine, or a State prove, whether a

separate State program has the specified ''purpose'' or ''effect''? (5) What is meant by a ''significant'' pattern of diversion? and (6) What criteria would we use to judge whether a State adequately demonstrated that it had not diverted cases to avoid penalties or divert child support? Relatedly, they objected to the fact that our proposed rules shifted the burden of proof about intent onto the States and to the difficulties attendant in proving a negative proposition.

Among the suggestions offered for addressing these concerns were: (1) Clarify the circumstances when a State will not face loss of penalty relief (e.g., identify reasonable and legitimate policy bases for separate State programs, using examples); (2) allow an up-front assessment of the acceptability of separate State programs that States could rely upon in deciding what options to pursue under separate State programs; (3) create clear, objective criteria for determining when a separate State program would trigger adverse consequences; and (4) err on the side of flexibility if we cannot make highly accurate determinations that programs are deliberately designed to avoid Federal rules.

Overall Response

When we were developing the proposed rules, obviously we were very concerned that States would use the flexibility available through separate State programs to avoid work participation requirements, divert the Federal share of child support collections, and otherwise undermine the goals or provisions of TANF. Within the authority that we have to make decisions on State penalties and bonuses, we proposed specific regulatory policies with respect to penalties, bonuses, and reporting in response to that concern.

However, as we have seen these programs evolve, our concerns about possible abuses have diminished. As commenters pointed out, States are generally using separate State programs to serve a variety of policy purposes consistent with the goals and provisions of PRWORA. For example: (1) They are supporting work and self-support—through State earned income credits, transportation, child care, or other work-related assistance; (2) they are helping families with special needs who are unable to engage in work activities for the requisite number of hours—e.g., families dealing with substance abuse, incapacity (or caring for a disabled child), literacy or ESL needs; (3) they are working to increase the economic viability of families—by providing financial aid for post-secondary education and support for other education or training activities, including activities for noncustodial parents; and (4) they are assisting individuals ineligible for the TANF program (e.g., using State funds to provide ''Food Stamp'' benefits for legal aliens who lost eligibility for assistance under PRWORA).

In the few cases where separate State programs are serving families that we would normally expect to see in the TANF program, we often see the same or similar level of work activity required under TANF; e.g., Florida's two-parent program and Maine's Parents-as-Scholars program are part of separate State programs, but expect parents to participate at the TANF level of hours, or more.

As commenters pointed out, if we developed policy to force States to provide services to families within the confines of the TANF statute, we would not necessarily achieve that end. An equally possible outcome could be that States would elect not to serve families, especially those hard-to-serve families that would be the most difficult to accommodate under the standard TANF rules.

We considered ways to redraft the NPRM policy so that we would not have the ''chilling'' effect on State innovation that commenters feared. A variety of options were available to us, ranging from wording changes, to clarifications of key terms, to setting up a process for pre-clearance of State proposals, to reducing the potential negative consequences to States if we found inappropriate diversion.

However, we were concerned that: (1) None of these options totally eliminated the potential ''chilling'' effects on State innovation; and (2) existing evidence did not indicate that there was a problem sufficient to justify such a strong policy response.

Thus, the final rules eliminate the proposed link between a State's decisions on implementing a separate State program and its eligibility for penalty relief. In particular, we removed the provisions related to separate State programs that were in the proposed rules at §§ 271.51(a), 271.52(b), 272.5 (c) and (d), and 272.6(i)(2).

However, we remain concerned about the possibility that States could use separate State programs to avoid the TANF work requirements (particularly for two-parent families) and to divert the Federal share of child support collections. Thus, at §§ 261.41(e) and 265.3(d)(1), we retained the NPRM provisions (which were at §§ 271.41(e) and 275.3(d)(1)) that, as a condition for receiving caseload reduction credits or a high performance bonus, States must report data on separate State programs and the recipients in them, through the SSP–MOE Data Report. However, we deleted the language that was in § 275.3(d)(1)(iii) indicating that States needed to submit the SSP–MOE Data Report if they wanted to be considered for a reduction in the penalty for failing to meet the work participation requirements. Also, as we discuss in the next section of the preamble, by changing the definition of assistance, we have limited the types of programs covered by this reporting. We have also reduced the types of data elements that must be reported.

This data collection is part of a broad strategy to monitor the scope and nature of separate State programs. This strategy starts with four data sources: (1) The quarterly TANF Financial Report (Appendix D); (2) the MOE section of the annual report (at § 265.9(c) and Appendix I); (3) the quarterly SSP–MOE Data Report; and (4) quarterly reports on child support collections. We would review data from these sources to identify States that might be using separate State programs either for the purpose of avoiding work or diverting the Federal share of child support collections. We would then make a preliminary assessment whether these States were operating separate State programs that were consistent with TANF goals. If we needed additional information for this assessment, we could supplement the official information with information gathered in single State audits or special studies (such as studies conducted by the Department's Office of the Inspector General).

The data collection on separate State programs will help enable us to: (1) Monitor the nature of these programs; (2) determine the extent to which cases are being shifted to separate State programs; (3) determine whether such shifts are having an adverse effect on the two work participation rates or the Federal share of child support collections; (4) develop a sound policy response in the event of adverse effects; (5) better assess a State's claim for a caseload reduction credit or high performance bonus; and (6) decide if a State's policies with respect to separate State programs should affect its ranking under section 413(d) of the Act.

In the proposed rule, we did not mention that the creation of separate State programs might affect the annual rankings of States based on the success of their work efforts. However, we have concluded that there could be circumstances under which we would

want to alter a State's ranking on this basis. For example, suppose the State with the highest percentage of placements in long-term jobs for its TANF cases achieved its placement rate and ranking by shifting all of its hard-to-serve cases from TANF to separate State programs. Obviously, this State would not merit a ranking as one of the five most successful States. We will consider if a State's separate State program had the effect of avoiding work requirements as one factor in determining the annual ranking of successful State programs.

We will incorporate a full analysis of the information that we have gathered on what has been happening with separate State programs in our annual report to Congress. For example, we intend to address issues such as: (1) What is the basic nature of these programs; (2) have there been changes in their size or scope; (3) who do these programs serve; (4) how do they differ from TANF recipients; (5) what types of benefits do they provide; (6) to what extent do work participation rates apply; (7) what participation rates are being achieved; and (8) is there any evidence of the diversion of Federal child support collections. By looking at this range of issues, we will be better able to assess whether States have diverted individuals from TANF with the apparent purpose of avoiding TANF program requirements.

In the High Performance Bonus guidance that we issued on March 17, 1998 (TANF–ACF–PI–98–01), we noted that a State's success in meeting TANF performance goals could be affected by its decision to fund a separate State program with its maintenance-of-effort (MOE) dollars and that such actions might advantage one State over another. For example, if a State had a separate State program similar to TANF in which it put recipients who were more difficult to employ, its TANF performance results could be unfairly inflated. In such cases, we would need to consider including outcomes for the caseload in separate State programs in the performance measures. We said we would analyze separate State program data, as well as other information we receive on the characteristics of the caseload and the nature of benefits provided in separate State programs, in assessing how and whether to adjust a State's TANF performance data.

On the issue of child support collections more specifically, while States have new flexibility in the way that they administer their TANF programs, they must continue to share a portion of child support collections with the Federal government. The need to share TANF-related collections could serve as a possible disincentive for States to pass through the full amount of child support to families and could create an incentive for States to serve needy families through separate State programs. State spending in these separate State programs continues to count under the basic MOE requirements, but States do not need to share the child support collected on behalf of families served by these programs.

At this point, we have no evidence that States are diverting child support collections. For example, we are not seeing dramatic decreases in the Federal share of collections or changes in the average collection per case. In the meantime, the Administration is engaged in a dialogue with stakeholders on child support program financing issues to look at ways to address these and other related concerns. We will work with these stakeholders and with Congress to develop any necessary legislation.

As a number of commenters suggested, under these final rules, we have adopted a strategy that includes gathering information, monitoring developments, and keeping our options open regarding future actions. Through our data collection, we will obtain substantial information on the characteristics of separate State programs, the families they serve, and the benefits they provide. This information will help us assess their potential impact on the achievement of TANF goals. We will consider proposing appropriate legislative or regulatory remedies, consistent with our legal authority, if we find that States are using the flexibility available under these rules to avoid work requirements, divert child support collections, or otherwise undermine the goals of TANF. However, we will not put any significant policy change into effect without appropriate prior consultation with States, Congress, and other interested parties.

Separate State Program Reporting

Comment: Commenters also argued that the stringent reporting requirements and the potential loss of caseload reduction credits, eligibility for high performance bonuses, and certain penalty relief for States that failed to comply with the reporting requirements also discouraged States from implementing innovative separate State programs.

Response: As we discuss in the preamble for § 260.31, we have made significant changes to the proposed definition of assistance. These changes have a significant effect on the scope of the disaggregated and aggregate reporting for both TANF and separate State programs. Like the TANF Data Report, the SSP–MOE Data Report only captures information on families receiving ''assistance.'' Therefore, States do not have to provide detailed program and family characteristics data for families receiving other kinds of benefits and work supports. Thus, the data collection in the final rules responds to the commenters' concerns about the problems that would be inherent in requiring detailed reporting of case-record information from programs that bore little or no relationship, in substance or administration, to those providing traditional welfare benefits.

However, information on separate State programs is still very important under the final rule. Thus, we still expect States to submit SSP–MOE Data Reports containing data on separate State programs that are similar to the TANF program data as a condition of receiving caseload reduction credits or high performance bonuses. Also, we have strengthened the information we will collect on SSP–MOE spending by expanding reporting under the TANF Financial Report and expanding information on all MOE programs in the annual report (as discussed in § 265.9 and presented in Appendix I). Taken in combination, these data will help us ensure that each State has met its basic MOE requirement, properly evaluate State reports on caseload reduction credits, assess overall State performance, and report on program characteristics to the public, to the Department, and to Congress. We could also use the information to identify areas in which regulatory or legislative changes may be necessary.

Under the final rule, we do not require that States submit the SSP–MOE Data Report in order to qualify for penalty relief because the information in the report is not germane to the determination of its penalty amount.

The information in the SSP–MOE Data Report is germane to determining if States have achieved creditable caseload reductions and to assessing a State's overall performance under TANF. Thus, as stated previously, the final rule does require that a State submit an SSP–MOE Data Report if it wants to receive either a High Performance Bonus or a caseload reduction credit (though with reduced data elements).

Failure of a State to submit the MOE information required in either the TANF Financial Report or the annual report could affect a State's liability for a

reporting penalty or an MOE penalty, depending upon the nature of the failure.

You should review the preamble discussion at § 265.9 and Appendix I for information on annual aggregate reporting for MOE programs and the regulation at § 265.3(b) and (d) and appendices E, F, and G for more detailed information on the data collection for separate State programs in the SSP–MOE Data Report.

Finally, in the policy announcement and proposed rule, we advised States to think carefully about the risks to the long-term viability of their TANF programs if they relied too extensively on separate State programs to meet their MOE requirements. States cannot receive contingency funds unless their expenditures within the TANF program are at 100 percent of historic State expenditures. Thus, excessive State reliance on expenditures outside the TANF program to meet MOE requirements could make access to contingency funds difficult during economic downturns.

This restriction on Contingency Fund MOE raised some concerns on the part of commenters. However, it represents a clear reading of the statutory language. Thus, we have made no change in this final rule.

B. Waivers

Background

We have no direct interest in regulating section 415 of the Act; however, the continuation of waivers by a State might affect our application of certain of the penalty provisions within a State, specifically those regarding work and time-limit requirements. Thus, in order to administer the penalty provisions, we are providing notice concerning the rules that we will use in applying the penalties.

To improve access to, and understanding of, the regulations on waivers, we have moved all the waiver provisions to a new subpart C of part 260 of the final regulation and consolidated our preamble discussion in this section of the preamble. First, we summarize the NPRM provisions that appeared in various places in the NPRM and provide an overall summary of the comments. Then we discuss each provision in the final regulation, section by section, as well as the related comments.

Summary of NPRM Waiver Provisions

Under section 415, States that received approval for welfare reform waivers under section 1115 before enactment of PRWORA (August 22, 1996) have the option to operate their TANF programs under some or all of these waivers. For States electing this option, provisions of TANF that are inconsistent with the waivers do not take effect until applicable waivers expire.

Section 415 also provides for delaying the effect of provisions of TANF related to waivers approved after enactment, but prior to July 1, 1997. However, we do not address this specific provision in these rules because we approved no section 1115 waivers after enactment.

The meaning of the term ''waiver'' is important because it governs the scope of section 415. The NPRM defined waiver as consisting of both the specific technical provisions in the approved waiver list and the AFDC and JOBS requirements under prior law that did not need to be waived, but were integral and necessary to achieve the policy objective of the waived provision. Thus, the proposed definition of waiver depended on determining a State's intent.

The meaning of the term ''inconsistent'' is important because it governs the extent to which a State may delay the implementation of certain TANF requirements under section 415. The NPRM defined inconsistent to mean that complying with a TANF requirement would require a State to change a policy reflected in an approved waiver.

The proposed rule applied these definitions to determine when a State's waivers were inconsistent with the TANF work and time-limited assistance requirements under sections 407 and 408(a)(7) of the Act, respectively. To the extent that we determined inconsistencies existed, we would have based the work participation rates and time-limit exceptions on the waiver provisions rather than the requirements of sections 407 and 408(a)(7).

In particular, the NPRM allowed inconsistencies in two areas covered by section 407 (i.e., related to work). The first related to the types of activities that could count as work activities. Under the proposed definition, in addition to the expanded or revised activities specifically included in the technical waiver list (such as increased hours of job search), a waiver would have included the JOBS work activities that did not require waivers in order to be part of the State's program. The NPRM recognized that: (1) States had asked for waivers of the statutorily prescribed JOBS activities in order to provide what they considered to be the right mix of work activities; and (2) part of that mix included activities that did not require waivers under prior law. Thus, we would have considered such activities to be part of the waiver.

The second work inconsistency recognized in the NPRM related to the hours of participation necessary for a recipient to be counted as engaged in work for the purpose of calculating the participation rates. To the extent that the mandated hours of work in the waiver reflected the individual circumstances of the participant, either due to criteria in the waiver itself or under an individual self-sufficiency plan, we would have recognized an inconsistency with the fixed hours required by section 407.

The NPRM did not recognize, as inconsistent, waivers that served to increase the mandated hours of work for classes of recipients. The NPRM reasoned that there was no inconsistency in this case because TANF required those classes of recipients to participate for a greater number of hours than prior law required.

Further, the NPRM did not recognize any inconsistencies for exemptions that the State had had for work participation under AFDC. Under the demonstrations, States had obtained waivers to change the exemptions of individuals from participation in JOBS. We had assumed that the purpose for changing the exemptions was to require more individuals to participate. Since we believed the State's purpose was increasing participation, we reasoned that maintaining the AFDC statutory exemptions was not necessary or integral to achieving the waiver's purpose. Therefore, the NPRM did not recognize the AFDC statutory exemptions as part of the waiver for determining inconsistency with TANF.

In applying the definitions of ''waiver'' and ''inconsistent'' to time limits, the proposed rule recognized only those waivers that provided for terminating cash assistance because of the passage of time. We said that if a State would have to change its waiver policy on terminating assistance, due to the TANF time limit at section 408(a)(7), it could apply its waiver time limit instead of the TANF time limit. In general, individuals subject to a State time limit would concurrently be subject to the TANF time limit. Those individuals who were exempt from the State waiver time limit would not be subject to the TANF time limit until the State's waiver expired. In addition, if the extensions of the receipt of assistance under the State waiver limit exceeded the 20-percent limit on extensions allowed under TANF, the State's extensions would govern.

The NPRM did not recognize inconsistencies for States with waivers that: (1) had time limits that triggered work requirements, but did not result in the termination of assistance; or (2) had implemented comprehensive welfare reform initiatives under waivers that consciously chose not to include policies time-limiting assistance. Thus, in either of these situations, the State would have had to comply with the TANF time-limit requirements.

The NPRM also recognized one other type of inconsistency. TANF cases that were part of a research group, whose treatment policies were being maintained for the purpose of continuing an impact evaluation, could continue to be fully subject to prior law policies, except as modified by waivers. Further, the NPRM allowed for exclusion of such cases from the numerator and denominator of the work participation rates. Maintaining different requirements for these groups was necessary to avoid compromising the evaluation. Information on the research group would be the primary basis for impact and cost-benefit analyses of the effects of demonstration provisions and would be essential to all major components of an evaluation.

In the interest of balancing State flexibility with accountability and preserving the purposes of TANF (particularly those of encouraging work and focusing TANF on the provision of temporary support to families as they move to self-sufficiency), the NPRM also proposed certain other requirements. Specifically it: (1) Required Governors to certify waiver inconsistencies that a State believed apply in order to have the waiver rules apply in the penalty determinations; (2) denied certain forms of penalty relief to States continuing waivers that were inconsistent with TANF if States failed to meet work participation rates or time-limit requirements; and (3) proposed that we would publish information related to a State's success in meeting work participation rates and time-limit restrictions, as measured against both TANF and waiver requirements.

Because States operating under alternative waiver requirements could have an advantage compared to other States, we proposed that States continuing inconsistent waivers would not be eligible for a reasonable cause exception from a related work participation or time-limit penalty. Nor would they be eligible for a work participation rate penalty reduction based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c) of the NPRM. Further, in developing a corrective compliance plan, the NPRM proposed that a State would have to consider modifying its alternative waiver requirements as part of that plan. If a State then continued its waivers and failed to correct the violation, the NPRM proposed that it would not be eligible for a reduced penalty for noncompliance regardless of whether the State made significant progress towards achieving compliance or if the State's failure to comply was attributable to natural disaster or regional recession.

Overview of Comments

With few exceptions, the comments from States, organizations representing States, other organizations, and Congress relating to the proposed rules governing waiver inconsistencies strongly opposed our proposals.

Specifically, most commenters argued that our application of the proposed rule violated the spirit of the law and Congressional intent to encourage waivers. To support this argument, they cited the language at section 415(c), which directs the Secretary to encourage States to continue operating their waivers. They argued that our narrow interpretation of waiver inconsistencies, along with our decision to deny penalty relief, would discourage continuation of waivers and violated the principle of State flexibility in PRWORA. They asserted that the proposed policies would force States to abandon their waiver programs.

Finally, a number of commenters indicated that they found the definitions of ''waiver'' and ''inconsistent'' difficult to understand and apply to specific factual situations.

Overall Response

In response to the many comments we received, the final rules take a different approach to the relationship between the continuation of AFDC waivers and the TANF requirements. While the definition of ''inconsistent'' remains substantially the same, we have modified the definition of ''waiver'' to eliminate the proposed focus on intent. The new definition reflects the common use of the term, which refers to the policies that implement a particular area of reform in the demonstration. The revised definition allows the waiver to include a cluster of AFDC provisions with regard to work participation. Thus, it modifies how we would determine when work waivers are inconsistent.

We also made one change in the application of the term ''inconsistent'' to time limits; after further review, we believe that the NPRM did not adequately recognize a certain type of inconsistency.

Generally, the revised definition of ''waiver'' continues to reflect the philosophy that a narrow, technical definition would be inappropriate. Rather, as reflected in common usage, the term should recognize that States rarely implemented the technical waivers of the former section 402 of the Act in isolation. Instead, technical waivers were generally part of a cluster of policies and requirements related to administering a component of a State's welfare program. For example, States implemented components related to time limits, family caps, work activities and requirements, treatment of teen parents, income and resource eligibility, and treatment of two-parent families. Although the substantive policies making up the components and the combination of components differed from demonstration to demonstration, these component areas were the core elements of the reform efforts in various State demonstrations and were commonly referred to as waivers.

In the discussion that follows, the term ''waiver'' could have two distinct meanings; it could refer to either the technical waiver that was explicitly approved or the component of the demonstration. To avoid confusion, when we mean the technical use of the term (i.e., the waiver of an actual provision of former section 402 as reflected in the waiver list in the demonstration's terms and conditions), we will use the term ''technical waiver.'' When we simply use the term ''waiver,'' we are using it (as defined in these regulations at § 260.71) to mean the cluster of demonstration policies that the State implemented under its technical waiver. It is this broader definition that we will use to determine inconsistencies. The requirements and policies making up a waiver begin with one or more technical waivers, but could also include one or more related provisions of prior law.

The NPRM recognized this concept of including prior law provisions as part of its definition of waiver, but it depended on the State's intent in seeking the technical waiver to determine which AFDC provisions should be included. Many commenters objected to this reliance on the State's intent to operationalize a broader waiver definition. The final rule contains a simpler and more objective definition based on the demonstration component of which the technical waiver is a part.

Since our penalty authority that might be affected by waiver inconsistencies is related to work requirements at section 407 and time limits at section 408(a)(7),

we use those two sections to define the waiver components of work and time limits. We also limit our regulatory consideration of waivers to whether the waiver components that relate to work requirements and time limits are inconsistent with the respective provisions of the Act (i.e., section 407 for the work participation component and sanctions and section 408(a)(7) for the time-limit component). To the extent that a State's policies in the component area differ from the TANF policies, we will follow the waiver policies in making penalty determinations. You can find further discussion of the application of this definition in the section-by-section discussion that follows.

Although some commenters objected to our attempt to balance State flexibility and accountability, accountability to the purposes of TANF remains important under the final rule. We believe our modified approach will ensure accountability while allowing waiver policies to continue. We recognize that States, whether continuing waivers or not, have generally made serious and concerted efforts to promote the TANF objectives as they have implemented their programs. Further, as more and more States reach or approach the end of their waivers, our concerns about delays in the implementation of the TANF provisions have diminished. By the effective date of these rules, waiver authority will have expired for 14 States, and it will expire for the remaining 32 demonstration States within a few years. Moreover, for some of the remaining demonstration States, the limited scope of their waivers (e.g., limited to pilot sites or limited classes of recipients) means that the TANF provisions will be implemented broadly within the State, in spite of continuing waivers. Also, some of the remaining demonstration States have chosen to terminate waivers or to adopt modified policies that are more consistent with TANF than the original waivers.

Discussion of Specific Comments and Responses, by Section

(a) Section 260.70—What Is the Purpose of This Subpart?

We added this section to the regulation to clarify that the Department's authority and interest in identifying waiver inconsistencies is limited to the determination of penalties in three areas: (1) Failing to meet the work participation requirement; (2) failing to impose sanctions on nonparticipants; and (3) failing to meet the time-limit requirement.

Comment: A number of commenters asserted that we had totally exceeded our authority in regulating in this area. Some cited section 417 and said its provisions prohibited us from defining waiver inconsistencies at all, leaving authority for reasonable interpretation to individual States. Also, some commenters believed we should give States full authority to determine the extent to which waiver inconsistencies apply.

Response: We added this section to the final rule to clarify our interest in promulgating regulations on State waiver policies. In neither the NPRM nor the final rule have we shown any direct interest in regulating section 415, per se; however, continuation of waivers might affect the application of certain of the penalty provisions for a State, specifically those regarding work and time-limit requirements (under sections 407 and 408(a)(7) of the Act). Thus, we have the authority and responsibility to regulate in this area. In order to administer the penalty provisions on work and time limits fairly, we need to provide notice concerning the rules that we will use in applying these penalties. We limit our regulatory consideration of waivers to whether the waiver components relating to sections 407 and 408(a)(7) are inconsistent with the respective provision. To the extent that a State's policies in the component area are inconsistent with TANF policies, we will follow the waiver policies in making penalty determinations.

Comment: A few commenters specifically questioned the legitimacy of our stated objective for regulating in this area—to try to balance State flexibility to continue and test innovations begun under welfare reform waivers with accountability to the purposes of the TANF, particularly related to work and time-limit requirements. As some commenters noted, section 415 does not ''ask HHS to balance State policies against the virtue of the law.''

Response: Section 415 contains ambiguity in using the terms ''waiver'' and ''inconsistent'' without defining them. The Department's exercise of its work and time-limit penalty authority in a rational manner requires that we define those terms. As they are ambiguous on their face, we must look at Congressional intent. In this case, we find it necessary to try to balance the two potentially conflicting purposes of accountability and State flexibility to determine the meaning of the terms.

(b) Section 260.71—What Definitions Apply to This Subpart? (§ 270.30 of the NPRM)

In the final rule, we retain the definition of ''inconsistent'' given in the NPRM. We define inconsistent to mean that complying with the TANF work participation rates or sanction requirements at section 407 of the Act or the time-limit requirement at section 408(a)(7) of the Act would necessitate that a State change a policy reflected in an approved waiver.

However, as previously discussed, we have revised and simplified the definition of waiver. In the final rule, we define a waiver as consisting of the work participation or time-limit component of the State's demonstration project under section 1115 of the Act. The component includes the revised AFDC requirements indicated in the State's technical waiver list, as approved by the Secretary under the authority of section 1115, and the associated AFDC provisions that did not need to be waived.

Thus, the final rules for determining whether an inconsistency related to work exists depend on the existence of a technical waiver corresponding to any of the cluster of provisions included in section 407. These provisions include: allowable work activities; mandated hours of, and exemptions from, work participation; and applicable sanctions for noncompliance with work requirements. Under the modified definition of waiver, if a State has any single technical waiver enumerated in its list of approved waivers that corresponds to any provision of section 407, it may incorporate prior AFDC (and the related JOBS) work participation rules that were part of the cluster of policies implemented under the waivers. Under the final rule, the inclusion of prior law as part of the waiver does not depend on the original purpose or objective of the State in seeking approval of the waiver.

Finally, we have added definitions for ''control group'' and ''experimental group'' that recognize the definitions included in the terms and conditions of the State's demonstration. The NPRM had special rules for research, control, and experimental groups in States that were continuing evaluations to avoid tainting the evaluations. However, it did not define any of those terms. The final rule retains the basic policies that were in the proposed rules, but refers only to ''control'' and ''experimental'' groups. The revisions have the effect of making the policy clearer and addressing the concern of one commenter that the original terminology was not consistent

with its waiver approval and could undermine its ability to continue its evaluation.

Comment: Commenters generally supported certain inherent concepts of the proposed definitions for ''waiver'' and ''inconsistent.'' In particular, they agreed that ''waiver'' should not include only the technical provisions listed in the documents approving the State's waivers, but should also encompass related and integral provisions of prior law. Similarly, they generally agreed that the term ''inconsistent'' should apply where a State would need to change its waiver policies in order to comply with TANF.

However, many commenters asserted that the proposed rules did not sufficiently recognize prior law as being integral to specific waivers. Thus, they argued the NPRM provisions would compel States to abandon policies they had implemented under waivers.

Many also objected that we presupposed State objectives in obtaining work and time-limit waivers and thus arbitrarily narrowed the breadth of applicable inconsistencies. In particular, they disagreed with our characterizations of the purpose of the waivers that eliminated exemptions from JOBS participation requirements under AFDC law and that increased the number of hours of mandatory work participation for certain classes of recipients, believing they were too limited. (Under the proposed rules, we would have disallowed inconsistencies applicable to these types of waivers based on the rationale that TANF itself eliminated prior law work exemptions and expanded hours of required work participation for these affected classes of recipients, and thus TANF requirements were consistent with the purpose of State waivers.) In effect, the commenters argued that States increased their work requirements to establish the appropriate universe of recipients who should be required to work and the appropriate level of work participation. They noted that these stated purposes were analogous to the purpose we had already recognized in the NPRM for accepting AFDC work activities as part of the waiver, i.e., to find the appropriate mix of participation activities.

A number of commenters further argued that section 415 did not confer on the Secretary the authority to judge a State's objectives.

Response: The final rules reflect our continued belief that regulating on how a State's waiver policies would affect the application of certain penalty provisions is well within our statutory authority. However, we recognize that the NPRM's reliance on our ability to judge the State's purpose in seeking a specific technical waiver was problematic, given the limited documentation available on the specific purposes of particular waivers. Therefore, we have recast the definition in terms of an objective demonstration component. Components were commonly recognized as parts of the demonstration and are readily identifiable for penalty determination purpose; one merely has to associate a technical waiver relating to work requirements or time limits with the corresponding TANF provision that is subject to penalty. Thus, while maintaining the concept that ''waiver'' includes both the technical waiver and some portion of the former AFDC provisions, we have revised the definition to remove its reliance on the State's purpose.

You can find a further discussion of the application of the new definition for work and time-limit policies at §§ 260.73 and 260.74.

Comment: Some of these commenters offered the perspective that a waiver should encompass the whole of prior AFDC law as part of the State's welfare reform strategy, not just specific individual waivers and limited related extensions of prior law.

Response: We disagree with the commenters that Congress intended waivers to cover the whole of prior AFDC law. Section 415 allows States to continue ''one or more waivers to the extent they are inconsistent.'' The fact that it refers to one or more waivers and does not use the broader term, demonstration, in describing what is to be compared for inconsistency, indicates that Congress intended the determination of inconsistencies to be made on a more specific basis.

Comment: A number of commenters recommended that we modify the definition of ''inconsistent'' to include any prior law policy in effect under its demonstration that, if continued, but not recognized as inconsistent, would give the State reason to believe that it was at risk of being subject to a TANF penalty.

Response: We addressed this concern to some degree in the final rule by changing the definition of ''waiver.'' A State may continue prior law policy that is part of a demonstration component area (e.g., work requirements) for which the State has a waiver. Continuation of prior law policy that is not in a policy area that is subject to penalties under TANF (i.e., not related to sections 407 or 408(a)(7)) is outside the scope of this final rule and is left to State discretion.

We declined to change the definition of ''inconsistent'' to mean a situation in which the State believes that continuing the policy would put it at risk of a penalty. Congress did not intend to eliminate penalties for States with waivers. Rather, it intended that we judge the conduct of such a State based on the requirements in the waiver, rather than in those in TANF, in determining whether a penalty is appropriate. If the State has waivers that are inconsistent with TANF, then the State may be subject to penalties if it fails to submit the required certification, fails to take the appropriate sanctions, fails to achieve the required participation rates under its own waiver policies, or otherwise violates its own waiver policies (e.g., exempts from time limits individuals subject to the State's demonstration time limit).

(c) Section 260.72—What Basic Requirements Must State Demonstration Components Meet for the Purpose of Determining If Inconsistencies Exist With Respect to Work Requirements or Time Limits? (§ 272.8 of the NPRM)

In the final rules, we have eliminated those NPRM provisions that would have denied penalty relief to States that continued waivers that were inconsistent with TANF, but failed to meet work participation rates or time-limit requirements. Specifically, the NPRM had proposed that waiver States ought not be eligible for: (1) A reasonable cause exception from any of four related work participation or time-limit penalties; or (2) a reduction of work penalty amounts based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c). We have also eliminated proposed rules that would have required a State, in developing a corrective compliance plan to address work or time-limit requirement failures, to consider modifying its alternative waiver requirements as part of its corrective compliance plan. Finally, we have decided not to deny a State that continues its waivers eligibility for a reduced penalty based on making significant progress towards achieving compliance with the work or time-limit requirements (as we had proposed and described in subparts B and C of part 271 and §§ 274.1 and 274.2 of the NPRM).

We had proposed imposing these rules on the basis that States operating under alternative waiver requirements were at an advantage compared to other States in being able to meet participation rates and comply with time-limit requirements. However, a

large number of commenters questioned whether the advantage that a waiver State had over other States in complying with specific TANF requirements was so great as to warrant such absolute restrictions; some noted the proposed rule was arbitrary in that we did not consider the degree of any advantage vis-a-vis other legitimate factors and situations that might result in noncompliance. Based on our assessment that our proposals might discourage States from continuing successful demonstration efforts, we have removed these restrictions on penalty relief.

In the final rules, at § 260.73(d), we retain the regulatory expectation to publish information about a State's success in meeting work participation rates, as measured against both TANF and waiver requirements. We do not expect to publish dual time-limit figures for States that have waivers of time limits that are inconsistent with the TANF requirements. Upon further review, for such States, we do not believe that it will be possible to compute the percentage of cases with an adult recipient that received more than 60 months of Federal TANF benefits under the standard TANF rules. Data reported in accordance with section 411(a) will not be sufficient to allow this calculation. We do not have the authority under section 411(a) to require waiver States to report the data that this calculation would require, and they are not germane to our penalty determinations. Therefore, we have deleted this specific regulatory expectation. However, we will be able to calculate dual work rates, and the final rules indicate our commitment to follow through on that proposal.

The final rules also clarify other necessary conditions that apply if a State wants us to use its inconsistent waiver policies and requirements in the penalty determination process.

First, the inconsistencies claimed must be within the scope of the approved waivers, both in terms of geographical coverage and coverage of the types of cases specified in the waiver approval package. For example, a State could not claim a statewide inconsistency if we approved its waiver policies for an eight-county pilot. Similarly, a State could not extend waivers to all adults when the approved waivers applied only to teen parents. Nor could waivers applicable only to two-parent families apply to other types of cases. However, a State that is no longer maintaining control group cases for the purpose of completing an impact evaluation may choose to apply approved waiver policies to cases formerly assigned to a control group.

Second, the State must have applied its waiver policies on a continuous basis from the date that it implemented its TANF program. Section 415(d) allows the State to ''continue'' one or more individual waivers (which, under the definitions enumerated in these final rules, means one or more individual demonstration components). Section 415(c) requires the Secretary to encourage States to ''continue'' their waivers. Implicit in both these provisions is that continuation of the waivers is necessary for a finding of inconsistency.

This ''continuation'' requirement does not prevent a State from modifying policies begun under waivers. TANF clearly provides States with the authority to modify waiver policies inconsistent with prior law, but consistent with TANF (e.g., related to eligibility rules such as income and resource standards). These rules clarify that a State may modify waiver provisions that are inconsistent with TANF, provided that, in doing so, it makes its policies more consistent with TANF. For example, a State could choose to reduce the geographical scope of waivers, applying waivers approved for statewide implementation in only certain parts of the State, or a State could choose to eliminate some exemptions applicable to work participation or time-limited assistance, retaining other exemptions that are still inconsistent with TANF.

We recognize that the issue of whether a State has continued waivers since the advent of TANF may be difficult to determine. Although ACF requested voluntary information on continuation, absent a final regulation, it never indicated a formal process or requirement for the States to submit such information about the continuation of the waiver policies. And, since States need not conduct evaluations as a condition of operating waivers, some States may have indicated that they were discontinuing their waivers, when in fact they intended only to notify us that they were discontinuing evaluations of the demonstration, not their waiver policies. Further, in the absence of final rules, some States may not have clearly understood how they should identify and report inconsistencies under their TANF plans. Also, although some may have indicated that they were continuing waivers with policies inconsistent with TANF, they may not have identified subsequent modifications in their operating policies.

Under these final rules, to determine if a State has continued its work participation or time-limit waiver component and, therefore, may claim applicable inconsistencies, we will accept the certification of the Governor regarding the actual practice of the State. Many of the former waiver policies (for example, variations in the counting of income and resources for eligibility purposes) are unrelated to work and time limits and need not be addressed in the certification. A State need address only the inconsistencies related to work provisions in section 407 and time limits in section 408(a)(7), as explained further below.

However, we wish to note that if a State has abandoned a policy provision that is inconsistent with TANF, the State has voided its waiver authority. Thus, it has lost its right to claim an inconsistency related to that provision. For example, a State that had technical waivers that allowed it to exempt all adult caretakers from work may have changed its policy to require participation of adult caretakers after it implemented TANF. While the State always had the flexibility subsequently to reinstate a policy exempting adult caretakers, we would not recognize this policy as an inconsistency in determining the work participation rates because the State had discontinued the prior technical waiver.

We treat each technical waiver separately for continuation purposes. If a State discontinues one technical waiver, we will continue to recognize other continuing technical waivers related to work (for example, when a State discontinues an exemption waiver, but continues unlimited job search as a work activity). However, there is no authority in section 415 to restore discontinued policies; the statute allows for consideration only of continued inconsistent policies.

Similarly, if a State had modified its implementation of the technical waiver to be more consistent with TANF, we would recognize only the modified policy as a continuation of the waiver.

Third, the Governor must certify the waiver inconsistencies that the State is claiming, including an affirmation that the State has not expanded the scope of its policies and has continued the policies under section 415 in the interim period since implementing TANF, as discussed above. This requirement continues a provision of the proposed rules, but provides new detail about the expected content of the certification, particularly as it pertains to claiming specific inconsistencies related to work and time-limit requirements. See §§ 260.73 and 260.74

for a more detailed discussion of work and time-limit inconsistencies.

Finally, these final rules clarify that, despite broadening the scope of inconsistencies that a State may claim compared to the NPRM, inconsistencies with sections 407 or 408(a)(7) do not create inconsistencies with the penalty provisions at section 409. Thus, they do not have the general effect of delaying the application of the work participation rate or time-limit penalties at §§ 261.50, 261.54, 264.1, and 264.2 or the data collection requirements at part 265.

We came to this decision because we never approved any waivers eliminating compliance with JOBS work participation rates (while they were operable) or voiding their applicability should they become operable. Our work component waivers only changed the substance of the work requirement. As for applicable data requirements, we never approved waivers that relieved States of data reporting requirements; thus, we approved no waivers that would be inconsistent with section 411 of the Act. The work and time-limit components affected by sections 407 and 408(a)(7) do not, of themselves, create inconsistencies because neither encompasses data collection requirements.

Comment: One commenter noted that when the waiver expires for a State providing extensions of assistance in excess of the 60-month Federal time limit, a State would need to comply fully with the 20-percent limit on extensions and that this could cause serious transition problems. The commenter recommended that we provide that ''reasonable cause'' include a reasonable transition time in the case of a State that had been implementing an inconsistent policy under an approved waiver.

Response: The ''waiver terms and conditions'' for demonstration projects affected by these regulations generally included a requirement that the State provide, and the Department approve, a plan to phase down and end the demonstration on the date the waiver approval expires. We did not authorize any waiver-related activities or costs to extend beyond the project period. Given that the project period for a waiver demonstration already includes a phase-down period, States should not require an additional transition period. In addition, we would remind States that they may fund cases above the 20-percent cap with State MOE dollars.

(d) Section 260.73—How Do Existing Welfare Reform Waivers Affect the Participation Rates and Work Rules? (§ 271.60 of the NPRM)

If a State is implementing a work participation component under a waiver as defined in this subpart, the requirements of section 407 of the Act will not apply in determining whether a penalty should be imposed, to the extent that they are inconsistent with the State's waiver work demonstration component.

To determine that the State's demonstration has a work component, the waiver list for the demonstration work participation component must include one or more specific provisions that directly correspond to provisions enumerated in section 407 (i.e., that cover allowable work activities, exemptions from participation, required hours of participation or sanctions for noncompliance with participation). In other words, the State's waiver list must include at least one technical waiver that changed the allowable JOBS activities, exemptions from JOBS participation, hours of required JOBS participation, or sanctions for noncompliance with JOBS participation.

After the Governor has certified the inconsistencies with section 407, we will calculate the State's work participation rates, if applicable, by: (1) Excluding cases exempted from participation under the demonstration and experimental and control group cases and not otherwise exempted; (2) defining work activities as defined in the demonstration in calculating the numerators of the rates; (3) including cases meeting the required number of hours of participation in work activities in accordance with waiver policy in calculating the numerators of the rates; and (4) excluding other cases exempt from participation under the waiver in calculating the denominators of the rates.

We will also determine whether a State is taking appropriate sanctions when an individual refuses to work based on the State's certified waiver policies. These final rules explicitly recognize waiver inconsistencies related to sanctions for noncompliance with work requirements; the proposed rules were silent on this matter. They also recognize exemptions from work and changes to the required hours of work. Finally, they continue to recognize inconsistencies related to allowable work activities, as we proposed in the NPRM.

It is important to stress that a State need not have a technical waiver in a particular part of the work component (e.g., work activities or exemptions) to claim that the *related* AFDC provisions for that part of the component are part of its waiver. Rather, the State needs one or more technical waivers related to a provision of section 407 to claim applicable prior law in all areas that are part of section 407.

Thus, a State with a waiver work component may delay implementing TANF requirements for work participation for individuals exempt from JOBS if such exemptions have been part of the State's continuing demonstration policies. A State with a demonstration work component, but without a technical waiver modifying JOBS exemptions, may still include all prior law exemptions (or a modification of these exemptions that is more consistent with TANF), if such exemptions have been part of the State's continuing policies for work participation. For States with waivers that eliminated some (but not all) JOBS exemptions, the remaining exemptions would apply, if they have been part of the State's continuing demonstration policy. However, because all States will need to conform to all TANF rules once their waivers expire, we urge States to plan accordingly.

Under these final rules, a State may claim inconsistencies applicable to hours of work if it has technical waivers related to section 407 and could, in an audit, provide written evidence (e.g., terms and conditions or policy manuals) to document that its waiver policies, as implemented, expressly provided for alternative rules with respect to the hours of work required of nonexempt individuals.

The ability to provide such written evidence is necessary because prior law did not generally have requirements for the number of hours an individual must work to be considered participating. Rather, prior law had a calculation methodology that included any JOBS participants as long as including them did not reduce average hours below 20 hours per week. If no written policy was in effect, we would hold the State to the TANF hours-of-work requirements.

Finally, a State may also choose to exempt, from the participation rate calculation, experimental and/or control group cases that are not otherwise exempt. It may remove experimental group cases as a class, control group cases as a class, or both experimental and control group cases on a class basis. However, it may not exclude such cases on an individual basis.

Comment: All those commenting on the subject supported counting towards the work participation rate calculation those work activities allowed under

waiver authority without regard to TANF restrictions, as we proposed in the NPRM. However, many commenters asserted that the rules should not restrict inconsistencies related to prior law exemptions from work participation, where those policies were part of a State's welfare reform program. In support of their position, several organizations and States argued that, because section 415(a)(2)(B) specifies that waivers approved after enactment may not affect the applicability of section 407 (concerning compliance with work participation rates), Congress fully intended the inverse to apply to waivers approved before enactment. Therefore, we should recognize all continued policies related to compliance with TANF work requirements as inconsistencies.

Response: Our revised waiver definition would allow the States with waiver work components to include all prior law exemptions, and other AFDC (and JOBS) work policies, as part of the waiver, if such policies were part of the welfare reform demonstration that the State implemented under its technical waiver(s).

Comment: A number of commenters asserted that hours of mandated work that were related to waivers and increased the JOBS requirements for a class of individuals should be claimable as an inconsistency.

Response: These comments addressed a problem with the reference to a State's intent in our proposed definition of waiver (an issue that we addressed earlier). Since the final rules rely on the existence of waiver work components, rather than intent, they recognize increased hours as part of the waiver. If the amount of the required hours under the waiver is inconsistent with the required hours under section 407, the Governor can certify the inconsistency.

Comment: Some commenters asserted that we could not even hold States operating under waivers to a work participation rate requirement—i.e., that we should delay the effect of section 407 in its entirety until State waiver authority expires.

Response: Under section 1115, there were limits on what we approved as part of a demonstration project. The Secretary only had authority to waive provisions of the AFDC program that were included in former section 402. That section contained the provisions regarding the determination of eligibility, the amount of assistance, and required procedures for State administration of the plan. The Secretary could, and did, grant waivers concerning the content of the JOBS program (the AFDC work program), which was included at section 402(a)(19). However, the required work participation rate associated with JOBS was at the former section 403(l). Since the Secretary had no authority to waive this provision, we never approved any requests from States to waive it.

Thus, no State has a waiver of participation rates that would conflict with the work participation rate penalty provision at the former section 409(a)(3). For a State to argue that the work penalty does not apply, it would have to show a technical waiver that is inconsistent with any application of the work penalty. However, waivers that create the content or substance of a State's demonstration work program are just that—definitions of the content of a work program. As such, they may be inconsistent with the content of the TANF work program at section 407 and may allow the State to substitute the substance of the work program in its demonstration for the program specified in section 407, to the extent that the State determines there is an inconsistency. However, there would be no inconsistency in applying the section 409(a)(3) work participation penalty as long as participation was determined under the State's demonstration work program.

Since the final rule bases the penalty under section 409(a)(3) on what was required participation under the State's demonstration work program, there is no inconsistency. Delay of the work participation penalty itself in these circumstances would fall outside any reasonable definition of waiver or inconsistency.

(e) Section 260.74—How Do Existing Welfare Reform Waivers Affect the Application of the Federal Time-Limit Provisions? (§ 274.1(e) of the NPRM)

If a State is implementing a time-limit component under a waiver, until the waiver expires, the provisions of section 408(a)(7) of the Act will not apply in determining whether to impose a penalty, to the extent that they are inconsistent with the waiver.

To determine that the State's demonstration has a time-limit component, the waiver list for a demonstration time-limit component must include provisions that directly correspond to the time-limit policies enumerated in section 408(a)(7) (i.e., that address which individuals or families are subject to, or exempt from, terminations of assistance based solely on the passage of time, or who qualifies for extensions to the time limit).

In general, the final rule requires a State with a waiver time-limit component to count, toward the Federal five-year limit, all months for which the adult who is subject to the State time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver.

The State need not count, toward the Federal five-year limit, any months for which an adult receives assistance with Federal TANF funds while the adult is exempt from the State's time limit under the State's approved waiver. Nor need the State count, toward the Federal five-year limit, months for which an adult subject to an adult-only State time limit under the State's waiver receives assistance with Federal TANF funds.

The State may continue to provide assistance with Federal TANF funds for more than 60 months, without a numerical limit, to families provided extensions to the State time limit, under the provisions of the terms and conditions of the approved waiver.

After the Governor certifies time-limit inconsistencies, we calculate the State's time-limit exceptions by: (1) Excluding, from the determination of the number of months of Federal assistance received by a family, any month in which the adult(s) (or children where a waiver only terminated assistance to adults) were exempt from State's time limit under the terms of the State's approved waiver; and (2) applying the State's waiver policies with respect to the availability of extensions to the time limit.

The changes that we have made to the framework of how we define waiver inconsistencies have less effect on inconsistencies related to time-limiting assistance than to work. The main reason for this difference is that no prior law policies existed governing time-limited assistance. All time limits were the result of waivers. Thus, there are fewer issues about what a time-limit waiver includes. However, there are significant issues about what is allowable as an inconsistency; under these rules, the constraining factor is whether a State's demonstration project has a time-limit component related to the provisions in section 408(a)(7).

Prior to the passage of PRWORA, a ''time limit'' could take any number of forms. However, under TANF, the penalty relates to the time limit in section 408(a)(7), which recognizes only time limits that terminate assistance with the passage of time (i.e., that terminate assistance to families with adults who received Federal TANF assistance for 60 months). Other parts of TANF address time limits in different contexts, such as those that trigger work requirements. However, these latter types of provisions are not subject to the penalty provision under section

408(a)(7), and we do not address them in this regulation.

Therefore, as we proposed under the NPRM, we are allowing time-limit inconsistencies only for those States with waiver policies that terminate assistance solely as the result of the duration of receipt. Under these rules, if a State has a technical waiver meeting this requisite, we compare its provisions with those at section 408(a)(7) to determine whether there are inconsistencies.

As with work participation, States may also choose to exempt experimental and/or control group cases that are not otherwise exempt from time limits. However, a State may exclude such experimental and control group cases only on a group basis, not on an individual basis.

Comment: Commenters generally agreed that inconsistencies should be recognized that allowed a State to: (1) exempt certain cases from having months counted toward the 60-month time limit; and (2) provide extensions to more than 20 percent of the caseload after reaching the limit.

Response: We have retained these policies in the final rule.

Comment: Some commenters argued that section 415 was designed to allow States to continue their welfare reform initiatives as a whole. On this basis, they maintained that any State that consciously chose not to include time-limited assistance provisions in the comprehensive welfare reform initiatives that it implemented under waivers should be able to claim a time-limit inconsistency.

Response: Section 415 was not designed to carry over prior law in its entirety, nor to delay TANF requirements where waivers did not exist prior to implementation. Rather, it allows delay in implementing new TANF provisions ''to the extent such amendments are inconsistent with the waiver.'' Thus, we find no statutory basis for allowing inconsistencies to be claimed in this particular situation because no waiver exists.

Comment: Some commenters argued that we should also allow time-limit inconsistencies to apply where a State has implemented time limits that serve to trigger work requirements.

Response: We do not recognize other waiver provisions, such as those where States used ''time limits'' to trigger work requirements, as inconsistent with time limits. The purpose of this section of the regulation is to determine the applicability of the time-limit penalty at section 409(a)(9). This penalty applies to any failure to meet the time-limit requirements at section 408(a)(7). Time limits triggering work requirements are found in sections 402 and 407, not section 408(a)(7). Therefore, such policies do not fit within the definition of a waiver related to the time-limit component associated with 408(a)(7).

Comment: One commenter recommended that, if we retained the proposed rules related to time-limit waiver inconsistencies, the preamble discussion should clarify that ''reduction waivers'' (adult-only time limits) represent an inconsistency.

Response: We have incorporated this change in the final rule. States with waivers terminating assistance for adults only may choose to delay counting months toward the Federal 60-month time limit for as long as they continue to apply adult-only policies under their State time limit. While the proposed rules had required that time against the Federal time clock be counted for any month in which an adult was subject to the State time limit (i.e., that the Federal and State clocks would run concurrently), this policy would have had an effect that was inconsistent with the waiver policy. Because time charged against an adult would have ultimately resulted in the termination of benefits to the whole family under TANF, the proposed policy would have resulted in time being counted against child recipients. While children are protected from termination of benefits while the waiver is operable, counting time against adults in the case would have, in effect, counted time against the family's (and children's) length of receipt of assistance. This result would have been contrary to the purpose of the adult-only time-limit waivers, which was to exempt children from any effect of the time limit. Thus, in submitting a Governor's certification of continuing waiver inconsistencies, the State may claim a time-limit inconsistency for its adult-only time limit.

Comment: Another commenter said that we should allow all cases subject to a time limit adequate prior notice before a clock begins to count against them. Thus, States that have applied a reasonable statutory interpretation of section 415 to exempt cases from the Federal time limit should not have to count time retroactively against these cases (i.e., count time accrued prior to the effective date of the final rules).

Response: As we have previously stated, these rules apply only prospectively; until they are effective, the State's reasonable interpretation of the statute applies. An individual who was considered exempt from the Federal time limit under the State's reasonable interpretation of its waiver would only have the Federal limit apply prospectively, beginning October of 1999. This policy will allow States time to provide the recipient with adequate notice.

(f) Section 260.75—If a State Is Claiming a Waiver Inconsistency for Work or Time Limits, What Must the Governor Certify? (§ 272.8(a) of the NPRM)

If a State is claiming waiver inconsistencies, the Governor must certify that the State has continuously maintained applicable policies in operating its TANF program and that the inconsistencies claimed by the State do not expand the scope of the approved waivers. Further, the certification must identify the specific inconsistencies that the State chooses to continue with respect to work and time limits.

If the waiver inconsistency claim includes work provisions, the certification must specify the standards that will apply in lieu of the provisions in section 407. Specifically, it must include, as applicable: (1) Descriptions of two-parent and other cases that are exempt from participation, if any, for the purpose of determining the denominators of the work participation rates; (2) the rules for determining whether nonexempt two-parent and other cases are ''engaged in work'' for the purpose of calculating the numerators of the work participation rates, including descriptions of the countable work activities and minimum required hours; and (3) the penalty against an individual or family when an individual refuses to work. Again, the certification may include a claim of inconsistency with respect to hours of required participation in work activities only if the State has written evidence that, when implemented, the waiver policies established specific requirements related to hours of work for nonexempt individuals.

If the waiver inconsistency claim includes time-limit provisions, the Governor's certification must include the standards that will apply in lieu of the provisions at section 408(a)(7). It must specify the standards that will apply in determining: (1) Which families are not counted towards the Federal time limit; and (2) whether a family is eligible for an extension of its time limit on federally funded assistance.

If the State is continuing policies for evaluation purposes, the certification must specify any special work or time-limit standards that apply to the experimental and control group cases. The State may choose to exclude cases assigned to the experimental and

control groups that are not otherwise exempt, for the purpose of calculating the work participation rates or determining State compliance related to limiting assistance to families including adults who have received 60 months of TANF assistance. Thus, the State may exclude all experimental and control group cases, not otherwise exempt. However, it may not exclude such cases on an individual, case-by-case basis.

A State must provide the initial Governor's certification by October 1, 1999. It would be very helpful to receive the certification by July 1, 1999, in order to assess how inconsistencies will apply for data collection and reporting efforts before the effective date of the new requirements. We would like to resolve any issues about the treatment of waiver cases before the reporting requirements take effect, because it is much easier to code information correctly the first time than to modify the codes retroactively. In light of the number of States continuing waivers and some of the detailed, case-specific questions that we anticipate might arise, we want to build in ample time to resolve all issues by October 1, 1999. It will certainly be in a State's interest if we can resolve all questions by the effective date of the new requirements.

Also, we would point out that, until a State has submitted its Governor's certification, we will treat the State as a nonwaiver State in determining its compliance with work participation rate and time-limit standards. Likewise, if we determine that a Governor's certification does not comply with the requirements of this subpart, we will advise the State of the inconsistency and give it an opportunity to revise the certification. We will accept alternative rules for determining penalties related to work participation rates and time-limit exceptions only to the extent that they comply with the requirements of this part.

If a State modifies its waiver policies, after it provides the certification, in a way that has a substantive effect on the calculation of its work participation rates, time-limit exceptions, or sanctions, it must submit an amended certification by the end of the fiscal quarter in which the modifications take effect.

Comment: A few commenters questioned whether we had the authority specifically to require that Governors certify which waivers States were continuing. Some of these saw this requirement as an added burden that duplicated information already submitted in their State TANF plans or documented as part of their waiver approval.

Response: We disagree that we have no authority to require the certification. As discussed, the Department has had no formal process for determining a State's decisions on the continuation of waivers. The information that has been provided has been sporadic and is not necessarily current or complete. Since we will be relying on the State's determination that it has continued an inconsistent waiver component in making penalty determinations, we must have accurate, up-to-date information on the State's decision to continue its inconsistent work and time-limit components in order to make those penalty determinations correctly and on a timely basis. As such information is necessary to our implementation of the penalty provisions, we have authority under those provisions to collect it.

(g) Section 260.76—What Special Rules Apply to States That Are Continuing Evaluations of Their Waiver Demonstrations? (§ 271.60(c) and (d) and § 274.1(e)(4) of the NPRM))

If a State is continuing policies that employ an experimental design in order to complete an impact evaluation of a waiver demonstration, the experimental and control groups may be subject to prior law, except as modified by the waiver.

We have added definitions for experimental and control groups at § 260.71 (and cross-references at § 260.30). These definitions reference the terms and conditions in the State's demonstration.

Comment: One commenter suggested that we should allow any State in which more than half of its families are subject to waiver policies as part of a research group to apply the same waiver policies to the rest of the families in the State, as long as the State does not expand the geographical scope of the waiver authority. The same rule would apply to a county operating a waiver demonstration in a county-administered State. Another commenter indicated that States may be less likely to continue an evaluation if we do not allow a State to apply policies permitted for the research group to a broader set of families.

Response: While we sympathize with the commenters' desire to reduce administrative complexity, we do not see why the complexity is any greater when a majority of the caseload is in the experimental and control groups than when a minority is. Furthermore, implementing this policy would introduce complexities of its own in terms of the measurement required to determine what rules apply in a given jurisdiction. Since both the number of families in the experimental and control groups currently on assistance and the total number of families currently on assistance vary from month to month, rules could vary month to month. In contrast, the experimental and control groups are well-defined; a family is either assigned to them or not. Therefore, under the final rule, determining when and to which families to apply the pre-TANF policies is relatively simple.

C. Child-Only Cases

Background

The calculations for work participation rate and time-limit penalties center around the concept of ''family.'' Under the proposed rules, we indicated that a State could develop its own definition of ''family,'' with the proviso that States could not create definitions that excluded adults from cases solely for the purpose of avoiding penalties. To monitor that restriction, we proposed that States report annually on the number of cases excluded from penalty calculations, and the reasons for each exclusion. We said we would add families back into the calculation if we found they were excluded for the purpose of avoiding penalties. You may find the specific proposals in §§ 271.22(b)(2), 271.24(b)(2), and 274.1(a)(3) of the proposed rule.

These provisions reflected our concern that States might convert cases to child-only cases to avoid the statutory work participation and time-limit requirements. In part, our concern was a reaction to public comments that States and advocates made shortly after PRWORA's enactment suggesting that States might take such actions. It also reflected our view that such conversions would seriously undermine critical provisions of welfare reform.

Overview of Comments

Several commenters supported our decision to recognize that States had the primary authority to define ''family.'' However, a large number of commenters, from a diversity of groups, opposed or expressed concerns about our specific proposals in this area. The comments generally objected to our distrust of States and the pre-emption of State decisions to define families as they deemed appropriate.

Several commenters challenged the statutory basis for our proposal. Some did not directly challenge our authority, but questioned the practicality of our proposed approach. Commenters pointed out inconsistencies in the language that we had used in different parts of the regulation and noted that

the determination of whether States created definitions for the sole purpose of avoiding penalties would involve subjective determinations of motive. To minimize these problems, they offered several suggestions about how we might clarify what types of cases might be subject to recalculation.

Under one proposal, States would describe their child-only cases in the State plan or procedures. We could then discuss beforehand with States the appropriateness of these cases. Other commenters offered a related suggestion that we set up a process for States to get approval of reasons for conversions up-front, but did not identify a specific format for the State submissions.

Another suggestion was that State definitions would automatically prevail, but that HHS would inform Congress if distortions of legislative intent seemed to result. In other words, in the absence of any documented abuses, we would simply gather information on what States are doing and permit States to use any definition of family that has a reasonable policy basis. Then, if we discover evidence that States were trying to subvert the TANF provisions, we could work with Congress in developing solutions.

Some commenters noted that child-only cases existed under AFDC and enumerated examples of child-only cases that we should acknowledge as acceptable, including: cases in which the adults have no legal liability for the care of the children, cases with recipients of SSI or other disability payments, cases with adults not receiving assistance because they exhausted shorter State-imposed time limits, cases with noncitizen parents or adults ineligible for other reasons (e.g., SSI receipt or a drug felony conviction), cases that were previously converted under approved waiver policies, and cases with elderly caretakers.

We also received suggestions that we should explicitly permit States to continue to provide assistance to children: (1) once the parent/relative loses eligibility due to the expiration of the five-year time limit; (2) whose parent/relative was sanctioned for failure to participate in work or cooperate with child support enforcement requirements; and (3) whose parent or caretaker would be better served by some other State program, such as if she is disabled.

In addition to specific objections or questions, many commenters expressed the overall concern that our proposal to control for inappropriate child-only cases may inhibit the State flexibility essential to TANF. State anxiety about Federal recalculation of penalty liability could create a ''chilling effect'' that caused States to limit child-only cases unnecessarily and inappropriately. In the words of one commenter, ''the uncertainty of knowing whether their policy basis will be considered legitimate and how work participation rates and time-limit compliance will be measured by HHS could simply lead States to avoid serving children as child-only cases even if the result is not to serve the children at all.''

Commenters did not want to see assistance to valid child-only cases undermined by our rules. Of particular concern was the effect of our proposals on State efforts to keep children in the homes of relatives, in lieu of foster care placements.

Others noted that, up to this point, we do not have evidence that States are converting cases to child-only cases for the purpose of avoiding TANF requirements; we have not observed significant changes in State policy or practice to create new child-only cases. Only if such changes actually occur should HHS develop corrective procedures.

Overall Response

When we were developing the proposed rules, we were very concerned that States would use the flexibility available in defining families to avoid work participation requirements, time limits, and other TANF requirements. Within the authority that we have to collect participation rate information and make decisions on State penalties, we proposed specific regulatory policies with respect to penalties and reporting in response to that concern. However, as we have seen the TANF programs evolve, our concerns about possible abuses have diminished.

While the number of child-only cases has been increasing over time, commenters correctly observed that the increases began well prior to TANF and that there is little indication so far that States are converting cases merely to avoid penalties. In fact, a couple of internal State analyses (i.e., in Florida and South Carolina) have found no evidence of conversion of cases to child-only cases from other statuses.

Also, commenters correctly noted that there were numerous child-only cases that were considered valid under prior law. Their existence under TANF therefore does not suggest that States are working to subvert TANF requirements in this manner. Over the past several years, there were a number of social and demographic changes underway that could have contributed to much of the growth in child-only cases. For example: (1) Because of the ''crack'' epidemic, some infants moved from the care of their mothers to the care of their grandmothers or other adult relatives (who may or may not have been needy); (2) in some places, immigration changes could have caused a growth in the number of eligible children with ineligible alien parents; and (3) in other places, States have made an effort to establish eligibility for SSI. (If parents became SSI-eligible, the children normally received assistance as child-only cases.)

Recently, we have seen a reduction in the total number of child-only cases. However, because the number of other types of cases has been declining faster, the proportion of child-only cases has not gone down. Thus, State success in moving more families to work may actually be causing an increase in the proportion of child-only cases.

At the same time, we disagree with the suggestion that it would be appropriate to provide federally funded assistance to children in child-only cases when their parents reach the 60-month limit on Federal assistance. Such a result would be consistent with an adult-only time limit, but does not seem consistent with the intent of the specific provision in the law. For example, the provisions on transfers to the Social Services Block Grant program suggest that children in families whose adults reached their 60-month limit were not expected to continue receiving federally funded TANF assistance.

While we disagree with the commenters' suggestion that we did not have legal authority to regulate in this area, we understand commenters' concern that the provisions in the proposed rules may do more harm than good. In the absence of clear evidence that States are converting cases to avoid the TANF rules, we have decided that the most appropriate response at this point is to give States leeway to define families in ways that they think are most appropriate while gathering better information on how child-only policies might be affecting the achievement of TANF goals.

However, the possible conversion of cases to child-only status to avoid TANF requirements remains a major policy concern. For example, such conversions could effectively eliminate restrictions on the amount of time that any family could receive federally funded TANF assistance or could undermine the statutory provisions on the treatment of sanction cases in the participation rate calculations. We therefore intend to track it closely. To that end, we have added one data element to the disaggregated case-record reporting that will identify cases that have been

converted to child-only status since the past month. We will use the quarterly TANF Data Report to monitor trends both in the aggregate number and type of child-only cases and the number of conversions. By monitoring these trends, we should be able to identify changes in State practice or caseload characteristics that would merit further investigation. If we saw a significant number of conversions to child-only status in a particular State (i.e., a number that was out of line with prior State numbers or the numbers for other States), we would look more closely at that State.

We have a variety of investigative tools available to us, including detailed analysis of the case-record information reported to us, the Single State Audit, supplemental reviews, and targeted studies (like the current ASPE study mentioned below).

We will incorporate a full analysis of the information we have gathered on what has been happening with child-only cases in our annual report to Congress.

As a number of commenters suggested, under these final rules, we have adopted a strategy that includes gathering information, monitoring developments, and keeping our options open regarding future actions. Through our data collection, we will obtain substantial information on the characteristics of child-only cases, trends in their number and type, and conversions. This information will help us assess the possible effect of such cases on the achievement of TANF goals. We will consider proposing appropriate legislative or regulatory remedies if we find that States are using the flexibility available under these rules to define families to avoid work requirements or time limits or otherwise undermine the goals of TANF. However, we will not put any significant policy change into effect without appropriate prior consultation with States, Congress, and other interested parties.

Tracking of Child-Only Cases

Comment: A significant number of commenters also objected to our proposals at §§ 271.22(b)(2)(i), 271.24(b)(2)(i), 274.1(a)(3)(i), and 275.9(a)(1) that States annually report to us on their child-only cases and advise us of the specific nature of each of the cases. Commenters generally felt it was an unjustified additional burden for States. Some objected to the specific wording of the requirement because it suggested that we expected case-by-case reporting of such cases rather than aggregated reporting.

Response: We have removed the requirement for annual reports on families excluded from work-rate and time-limit calculations and the reasons for their exclusion. The proposed language was not consistent in different parts of the NPRM package and caused some confusion.

Monitoring trends in the number and type of such cases remains an important issue. However, we decided that a different type of data would be more helpful in helping us track conversions. Thus, we have added a new data element to the TANF Data Report that will identify the specific cases that have become child-only cases. These new data will supplement other data on child-only cases available through the TANF and MOE–SSP data reports and give us a solid basis of information for assessing national and State trends in the number and nature of child-only cases. From other data elements in those reports, we will get disaggregated, case-level data on parents and other individuals who are in the household, but not in the family receiving assistance. We will get information on whether there are parents who are ineligible for receipt of Federal benefits, whether the cases are under sanction, and whether cases have no parent in the home. To provide still further supplemental information, the Office of the Assistant Secretary for Planning and Evaluation is undertaking a study in three States to explore the circumstances of child-only cases in more detail.

Together, these information sources will provide valuable insight into the nature of child-only cases and the types of services and assistance States are providing them. We will be able to track any significant changes in the number and types of such cases and be in a better position to determine if we need to pursue further action. Depending on what specifically is happening, an appropriate response could be information-sharing, consultations, technical assistance, or regulatory or legislative proposals.

To reflect our other decisions on child-only cases, we deleted the provisions at §§ 271.22(b)(2), 271.24(b)(2), and 274.1(a)(3) of the proposed rule that prohibited conversion of child-only cases for the purpose of avoiding penalties, indicated that we would add cases back into the work participation rate and time-limit calculations if we found that they had, and required separate annual reporting on child-only cases. We also deleted comparable annual reporting language at § 275.9(a)(1). We believe that we will have sufficient information through the TANF Data Report to monitor child-only cases; we determined that the separate annual reporting requirements were redundant.

D. Treatment of Domestic Violence Victims

Background

The Administration has shown a strong commitment to reducing domestic violence and helping victims of domestic violence access the safety and supportive services that they need to make transitions to self-sufficiency. In the proposed rule, we showed this commitment by promoting implementation of the Family Violence Option (FVO), a TANF State plan provision that provides a specific method for addressing the needs of domestic violence victims receiving welfare.

Under section 402(a)(7) of the Act, States may elect the FVO. This State plan option provides for identification and screening of domestic violence victims, referral to services, and waivers of program requirements for good cause. In the NPRM, we proposed to grant ''reasonable cause'' to States that either failed to meet the work participation rates or exceeded the limit on exceptions to the five-year time limit because of program waivers granted under this provision. To be considered for this purpose, a ''good cause domestic violence waiver'' would need to incorporate three components: (1) Individualized responses and service strategies, consistent with the needs of individual victims; (2) waivers of program requirements that were temporary in nature (not to exceed 6 months); and (3) in lieu of program requirements, alternative services for victims, consistent with individualized safety and service plans.

In addition, to be considered in determining reasonable cause for exceeding the time-limit exceptions, such waivers had to be in effect after an individual had received assistance for 60 months, and the individual needed to be temporarily unable to work.

Our proposed rules attempted to remain true to the statutory provisions on work and time limits and to ensure that election of the FVO was an authentic choice for States. In deciding to address these waiver cases under ''reasonable cause'' rather than through direct changes in the penalty calculations, we tried to both reflect the statutory language and maintain the focus on moving families to self-sufficiency. At the same time, we were giving States some protection from penalties when their failures to meet the

standard rates were attributable to the granting of good cause domestic violence waivers that were based on individual assessments, were temporary, and included individualized service and safety plans. We hoped our proposal would alleviate concern among States that attention to the needs of victims of domestic violence might place them at special risk of a financial penalty.

We welcomed comments on whether our proposed approach and language achieved the balance we were seeking.

Also, to ensure that these policies have the desired effect, we proposed to limit the availability of ''reasonable cause'' to States that have adopted the FVO. We indicated that we reserved the right to audit States claiming ''reasonable cause'' to ensure that good cause domestic violence waivers that States include in their ''reasonable cause'' documentation met the specified criteria. And we said we intended to monitor the number of good cause waivers granted by States and their effect on work and time limits. We wanted to ensure that States identify victims of domestic violence so that they may be appropriately served, rather than be exempted and denied services that could lead to independence. We also wanted to ensure that the provision of good cause waivers did not affect a State's overall effort in moving families towards self-sufficiency. Thus, we said we would be looking at information on program expenditures and participation levels to see if States granting good cause waivers were making commitments to assist all families in moving toward work.

If we found that good cause waivers were not having the desired effects, we said we might propose regulatory or legislative remedies to address the problems that we identified.

For additional discussion of our proposals, we referred readers to §§ 270.30, 271.52 and 274.3 of the preamble and proposed rule.

In the final rule, we have consolidated the provisions in a new subpart in order to make our policies more coherent. We have also made some changes to align the regulatory text more closely with the statutory language. For example, we modified the six-month time limit placed on good cause domestic violence waivers. Recognizing that the statute authorizes waivers for ''as long as necessary,'' we have incorporated similar language in the rule, but called for six-month redeterminations. We have also incorporated statutory language describing the Family Violence Option, including its reference to confidentiality.

Comments and Responses

(a) General Approach

Most commenters generally approved of the way that the proposed rule attempted to protect victims of domestic violence. A significant number commended DHHS for recognizing the significance of domestic violence as a national problem and acknowledging the link between domestic violence and poverty. Many expressed the view that the approach we took was reasonable and provided States with the penalty protection that they needed. However, a few disagreed with the basic approach we took, and a substantial number of commenters raised concerns about specific aspects of the proposed rule.

Response: Our rules do not limit a State's authority to grant ''good cause'' waivers under the Family Violence Option, but they do limit the circumstances under which we will provide special penalty relief to States granting such waivers. In other words, if a State's waivers do not comply with the standards in these rules, the State does not get special consideration in our penalty determinations if it fails to meet the work participation requirements or exceeds the limit on Federal time-limit exceptions.

To emphasize this distinction, in the final rules, we created a new term ''federally recognized good cause domestic violence waivers'' at § 260.51. A ''good cause domestic violence waiver'' refers to any waiver granted by a State consistent with the FVO. A ''federally recognized good cause domestic violence waiver'' refers to a waiver that also meets the standards that we have established for special consideration in our penalty determinations.

As we discuss in more detail below, we made some additional changes to the proposed rule in response to the comments that we received. We also moved the provisions on domestic violence (including the definition provisions that were in § 270.30 of the proposed rule) to a new subpart B of part 260. In addition, we revised the language at § 264.30(b). The revised language explicitly recognizes that individuals may receive waivers of child support cooperation requirements under the FVO and that our rules would treat such waivers like good cause exceptions granted under the child support statute (at section 454(29) of the Act).

In summary, the final rule retains the same basic approach as the proposed rule—i.e., it gives States penalty relief if their failure to comply with the work participation rate or time-limit standards is attributable to the granting of good cause domestic violence waivers that meet certain Federal standards. It retains a requirement for service and safety plans, but makes important modifications related to policies on the duration of the waivers that we would recognize, confidentiality protections, work expectations, information that the State must provide with respect to its service strategies, and the standards for time-limit waivers. In addition, the preamble clarifies the flexibility available to States in delivering services to victims of domestic violence and the mechanisms in place for protecting victims from unfair penalties.

Comment: A minority of the commenters argued that we should exclude individuals granted waivers of work requirements under the FVO from the calculation that determines a State's overall work participation rates for each month in the fiscal year.

Response: We chose to address this as a State penalty-relief issue, in large part because we believe that keeping victims of domestic violence in the denominator of the work participation rates represents a better reading of the statute. Section 407 makes no reference to domestic violence cases or to a State's good cause waiver of work requirements under the Family Violence Option. In the statutory provisions on calculating work participation rates (at section 407(b)), there are only two explicit exemptions from the calculation: one for a single custodial parent of a child under 12 months old and the other for a recipient who is being sanctioned. There is no mention of the victims of domestic violence or cross-reference to the waivers granted under the FVO.

We believe that victims of domestic violence and the objectives of the Act will best be served if we maintain the integrity of the work requirements and promote appropriate services to the victims of domestic violence. We do not want our rules to create incentives for States to waive work requirements routinely, especially in cases where a recipient can work; service providers who work closely with victims of domestic violence attest that work is often a key factor in helping victims escape their violent circumstances.

We do realize that, in certain cases, working or taking steps toward independence may aggravate tensions with a batterer and place the victim in further danger. Under the final rule, States may provide temporary waivers of work requirements in such cases. Also, States may grant waivers to extend time limits to families that were not able to participate in work activities or to make due progress towards achieving

self-sufficiency within 60 months; we would give Federal recognition to waivers granted to extend time limits under such circumstances. We have revised the language on service plans to provide that work elements in a service plan should be consistent with the statutory expectations about ensuring safety and fairness. We have also modified the language on waivers to extend time limits (as discussed in a subsequent comment and response).

We continue to believe that removing victims of domestic violence from the work participation rate calculation could result in inappropriate exemptions or deferrals of work requirements for victims of domestic violence. As an alternative, commenters suggested that we could protect against this result by requiring States to give waiver recipients access to appropriate education and training services. However, we do not believe such a requirement would suffice; States will have an inherent interest in focusing their resources on individuals who are part of the participation rate calculations and who could put them at penalty risk.

Comment: Many commenters expressed general concerns about the proposed definition of the good cause domestic violence waiver. They argued that it should be more in line with the statutory language and less prescriptive.

Response: We added the extra criteria related to Federal recognition of waivers (at § 260.55) because we wanted to assure that victims of domestic violence would receive appropriate protections and services and the goals of TANF would be sustained. At the same time, as we have discussed, we have made a few modifications to the provisions that make the rules more consistent with the statute and responsive to the specific concerns that commenters raised.

To ensure that our rules promote access to appropriate services, we have added reporting requirements at §§ 260.54 and 265.9(b)(5) designed to ensure that States seeking Federal recognition of their good cause domestic violence waivers implement meaningful alternative service strategies for victims of domestic violence. The new reporting will tell us and other interested parties about the strategies and procedures States have put in place to ensure that these families receive appropriate supports. It will also give us information on the aggregate number of good cause domestic violence waivers granted by the State each year.

Comment: One commenter expressed concerns about the administrative burden that States would face in filing a claim of reasonable cause.

Response: We have not regulated specific requirements that States must meet in filing reasonable cause claims. While States must provide information sufficient to justify their claims, the burden associated with demonstrating reasonable cause should not be great. In fact, we would encourage States to present their reasonable cause arguments as succinctly as possible.

State data reporting systems will contain information on the number of cases that received federally recognized good cause domestic violence waivers every month. States will be able to rely on that data in justifying their reasonable cause claims.

(b) Time Limits on Good Cause Waivers

Comment: A significant number of commenters objected to the six-month durational limit that we placed on good cause domestic violence waivers. They said that six months did not provide enough time and that the length of waivers should be determined on a case-by-case-basis. They also argued that our proposed rule could create an additional administrative burden on States for cases where a waiver needed to be renewed. They noted that the six-month limit is neither required by statute nor consistent with the statutory language that waivers continue ''as long as necessary.'' Finally, commenters noted that they found our policy authorizing extension or renewal of waivers only in the preamble language; at a minimum, they wanted this policy to be added to the regulatory text.

Response: In the NPRM we said that we did not intend that all good cause waivers should last six months. Rather, the length of the waiver should reflect the State's individualized determination of what length of time a client needs. This was our way of giving States significant leeway in how they implemented their Family Violence Option programs. However, we agree with the commenters that our rules should be more consistent with the statute and have revised the final rule accordingly. At the same time, the rule continues to assure that these cases will receive periodic attention from service workers. More specifically, like the statute, it allows for the waiver to be granted for ''as long as necessary.'' However, at § 260.55(b) and (c), it also requires that a reassessment will take place every 6 months to determine if the waiver is still necessary and if the service plan is still appropriate.

(c) Adoption of the Family Violence Option

Comment: A small number of commenters expressed concern that, by providing special consideration only to States that have opted for the FVO, we could be penalizing States that did not choose the option.

Response: As we stated in the proposed rule, we consciously tied penalty relief to State implementation of the FVO because we felt the FVO provided a constructive framework for identifying, screening, and serving victims of domestic violence. Also, because the FVO is a State plan provision, there are some statutory expectations on States that adopt it, the public will have access to information about it, and consultation with local governments and private sector organizations will take place.

Comment: A couple of commenters said that we should mandate that any State seeking relief from penalties for not meeting work participation rates or for exceeding the cap on exemptions to the time-limits must officially adopt and properly implement the FVO within 60 days as part of the corrective plan.

Response: States have the option of submitting corrective plans for our review, and this final rule provides wide latitude to States in developing the content of those plans. In that context, we do not believe it would be appropriate to be very prescriptive about what a State must include related to adoption of the FVO. Also, we want States to adopt the FVO based on broad policy and programmatic considerations, not because such a step would give them a quick way to avoid penalty liability.

It is important that States understand that, to us, compliance means more than adoption of the Family Violence Option. In deciding whether a corrective compliance plan is acceptable, we will consider the strides that a State has already taken toward developing and implementing a broad strategy to serve victims of domestic violence and ensure their safety.

Comment: A small number of commenters expressed concern that the regulations should require all States to demonstrate that the Family Violence Option is being implemented statewide.

Response: We reviewed the TANF State plan provisions at section 402 and found no specific requirement that the provisions there be implemented on a statewide basis. In fact, because the statutory language at section 402(a)(1)(A)(i) refers to TANF as a ''program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner),'' it would be a reasonable interpretation of the statute to conclude that plan provisions need not be implemented statewide.

If we were sure that a statewide requirement would produce the optimal policy results, we would have the authority to add such a requirement to our standards for waivers in determining penalty relief. However, we are not convinced that a statewideness requirement would result in better protections or more appropriate services for victims of domestic violence. For example, if a State could not enact statewide legislation for political reasons or could not implement a program in remote areas of the State for administrative reasons, a statewideness requirement might preclude any residents of the State from benefiting from the FVO.

Thus, under the statute and this rule, there can be variations in the implementation of the FVO across a State. However, we hope that all States will work toward statewide implementation because we believe that recipients would generally be better served under a statewide program. Also, we point out that States can expect broader protection against penalties if they implement statewide.

We would like to take this opportunity to clarify the meaning of the phrase ''optional certification'' in section 402(a)(7). Under this provision, election of the Family Violence Option is optional, i.e., States may use their own discretion in deciding if they will elect the option. However, for States that have adopted the option, the State plan certification is not optional. States adopting the option must submit the certification with their State plan or submit a State plan amendment and notify the Secretary of DHHS within 30 days.

(d) Scope of Penalty Relief Available

Comment: A couple of commenters pointed out that our ''reasonable cause'' proposal gave States very limited penalty relief with respect to FVO waivers. If a State did not fully meet the work participation rates or time-limit cap when we removed waiver cases from the calculations, it could get no other consideration. For example, our proposed rules did not consider such waivers in deciding whether a State qualified for penalty reductions under § 271.51 or in deciding the potential size of reductions under that provision.

Response: In the revised language at § 260.58(b), we indicate that we will consider good cause domestic violence waivers in deciding eligibility for, and the amount of, penalty reduction under § 261.51. In §§ 260.58(c) and 260.59(b), we indicate that we may take waivers into consideration in deciding if a State qualifies for penalty relief as the result of its performance under a corrective compliance plan.

Also, while §§ 260.58 and 260.59 set specific criteria for automatic reasonable cause determinations based on domestic violence waivers, under the revised language at § 262.5(a), the Secretary has some discretion to grant reasonable cause in cases where a State could not attribute its failure entirely to one of the established ''reasonable cause'' criteria. Thus, a State could request that we grant ''reasonable cause'' in cases where federally recognized good cause domestic violence waivers did not justify ''reasonable cause'' in and of themselves, but were one of several factors contributing to its failure.

Taking waivers into consideration in deciding penalty reduction under § 261.51 seemed to be a logical extension of our proposed ''reasonable cause'' provision. Under the statute and rules, the penalty reduction under § 261.51 is available based on the degree of noncompliance. If two States had the same participation rate, but one could attribute its failure in part to the granting of federally recognized good cause domestic violence waivers and the other could not, we think that the State granting waivers is complying to a greater degree and deserves a smaller penalty. The revised rules at § 260.58(b) reflect this philosophy.

The revised rules do not provide for automatic penalty relief for waivers granted during a corrective compliance period. As we have indicated in the response to another comment, we do not want States to look to the FVO as a quick fix for their penalty problems. Under these rules, at §§ 260.58(c) and 260.59(b), we reserve discretion whether to give an individual State credit for good cause domestic violence waivers in determining whether it has achieved compliance during the corrective compliance period. In making this decision, we would expect to look at evidence provided by the State that it had adopted the FVO and had implemented a broad, thoughtful, and long-term strategy for identifying and serving victims of domestic violence.

(e) Service Plans and Work Requirements

Comment: We received a number of comments on the requirement in the proposed rule that waivers be accompanied by service plans that ''lead to work.'' They argued that this language diverted the focus of the FVO away from the safety considerations emphasized in the statute and that the reference to work had no statutory basis.

Response: As we indicated in the proposed rule, we believe that work is an important part of service plans because many victims of domestic violence need to make progress on that front in order to escape their abusive situations. In § 270.30 of the proposed rule, we indicated that good cause domestic violence waivers must be designed to lead to work. However, we recognize that, in the short-term, safety issues and other demands on the family may preclude specific steps toward work. Thus, we have added new regulatory text at § 260.55(c) to clarify that States have the ability to postpone work activities when safety or fairness issues would so indicate. For example, if a victim of domestic violence needs time to recover from injuries, secure safe and stable housing, and get her children resettled, or needs to stay at home or in a shelter to avoid danger, there may be a need to postpone work activities.

We encourage States to incorporate work activities as a key component of the service plan for victims of domestic violence, to the extent possible. Also, we note that, with our removal of the 6-month limit on the duration of waivers, these final rules may make it more feasible to do so.

Comment: Several commenters expressed concerns that the service plan requirements in the proposed rules would make victims of domestic violence more vulnerable to sanctions (i.e., penalty reductions) for not meeting welfare agency expectations. TANF caseworkers are trained to sanction participants who do not adhere to the caseworkers' instructions or who do not comply with eligibility conditions. Additionally, they stated that, in certain circumstances, an appropriate service plan for a victim may be to do nothing. Forcing victims to take specific steps within a fixed time frame may make their situation more precarious. They also argued that services provided by domestic violence counselors would be better for victims since these workers understand that developing a plan for the family's safety can be emotionally painful and may involve continuous reassessments.

Response: The FVO provides for waiver of program requirements ''where compliance with such requirements would make it more difficult for individuals receiving assistance * * * to escape domestic violence or unfairly penalize such individuals. * * *'' Thus, it would be inconsistent with the FVO for domestic violence victims to be more at risk of program sanctions than other individuals receiving assistance. In other words, States should be giving victims of domestic violence the same, or greater, access to ''good cause'' for failing to comply or cooperate with

work, personal responsibility, and child support requirements. They also should consider the needs of victims of domestic violence in deciding eligibility for State time-limit exemptions and exceptions.

In general, we view service plans not as additional requirements for victims of domestic violence, but as alternatives to normal program requirements. In developing these plans, and determining if an individual has good cause for not complying with a plan, States should take the other demands on the family and the family's ability to respond into account. States should also recognize that a battered woman often does not have control over her own actions and respect a victim's judgment of whether she can safely take certain action steps (e.g., move out of her home).

Comment: A significant number of commenters asked that we delete the requirement for a service plan because they felt it placed an additional burden on TANF caseworkers who may not be equipped to engage in this type of work and raised potential privacy issues. Commenters also wanted to see a requirement that States provide referrals to supportive services, as specified in the statute.

Response: Implicit in these comments seems to be an assumption that TANF caseworkers would have full responsibility for developing and enforcing service plans. This is not our assumption, and it is not consistent with the evolving nature of the TANF program. The TANF statute does not have the same statutory or regulatory requirements for ''single State agency'' administration that the AFDC program did. Thus, under TANF, other public and private agencies can make discretionary decisions on behalf of the TANF agency.

In the context of the FVO, States have a lot of flexibility in deciding the appropriate roles for TANF staff and domestic violence service providers in administering these provisions. The statutory language in section 402 provides for State referral of domestic violence victims to counseling and supportive services. It makes no distinction as to who will provide these services. Thus, services may be provided within the TANF agency, with referrals to specially trained agency staff, or by referrals to an outside agency. There is also no specification as to when these referrals can occur; for example, they could occur before or after the service plan is in place.

If there are concerns about the ability of TANF staff within a State to perform certain roles, e.g., because of resource constraints or expertise, the TANF agency can and should work with third parties on the development of service plans and the delivery of supportive services.

Also, readers should note that we modified the regulatory text in § 260.55 to include an expectation that assessments and service plans be developed by persons trained in domestic violence. This regulatory text does not prescribe any specific training curriculum, any specific staff credentials, or any specific administrative structure for delivering services. However, it does require that staff performing these functions have some training in domestic violence. The regulatory change reflects our view and the view of commenters about the critical importance of these activities. Staff need some level of special knowledge and expertise in order to make appropriate decisions in these highly sensitive case situations.

At the Federal level we have been investing resources to improve the capacity of TANF staff to screen, identify, and serve victims of domestic violence. We supported a project in Anne Arundel County, Maryland, to pilot test such an effort. In 1997, ACF awarded a grant to train all of Anne Arundel County's Department of Social Services staff on domestic violence. This training has now been incorporated into the regular training for all new employees. This project is one of the first in the nation and has become a model for other States considering adopting a State domestic violence curriculum. In addition, we are developing resource materials that agencies can use as part of our

Welfare and Domestic Violence Technical Assistance Initiative, under the National Resource Center on Domestic Violence. The first two ''practice papers'' issued under this initiative address the subjects of ''Building Opportunities for Battered Women's Safety and Self-Sufficiency'' and ''Family Violence Protocol Development.'' You may contact the National Resource Center at its toll-free number, 1–800–537–2238.

Comment: A couple of commenters felt that our rules should specify that service plans should also provide for referrals to appropriate alternative support, such as SSI and child support.

Response: One of the expectations for all TANF recipients is to cooperate in establishing paternity and obtaining child support. Under both the Family Violence Option and the rules of the Child Support Enforcement program, the State may waive these requirements if the individual has ''good cause'' for not cooperating. Thus, we would expect child support referrals except in cases where it creates a risk to the family or is otherwise inappropriate.

Our rules generally expect that service plans will help enable victims to attain the skills necessary to ''lead to work'' and to become self-sufficient because economic self-sufficiency is a major goal of the TANF program. However, our rules also envision that the plans will reflect individualized assessments of the needs and circumstances of victims and their families. The rules recognize that work requirements are not necessarily appropriate in some cases and that some women will need extra time on assistance because of their current or past circumstances.

We would not prescribe the specific content of a State's assessments or the specific nature of its referrals. However, we would point out that, for a State's TANF program to achieve long-term success, families will need to receive appropriate supports and referrals. Also, based on State practice in recent years, it seems fairly clear to us that States understand the value of making appropriate referrals to SSI.

(f) Waivers of Time Limits

Comment: Some commenters felt that our regulatory interpretation on time-limit waivers appeared to be contrary to the purpose of the welfare reform statute. A majority recommended that the final regulations should allow States to ''stop the clock'' for families and give them good cause domestic violence waivers at the time they are at risk of violence, not just at the time that they approach the 60-month time limit. A number of commenters had similar concerns about the proposed language that only recognized time-limit waivers for cases that were ''unable to work.''

They felt that the proposed definition of good cause domestic violence waiver would not necessarily be consistent with an individual's circumstances. They argued that some domestic violence victims might need an extended period of time to set up a new household, help their children adjust to new surroundings, and receive counseling. If the trauma of the abusive relationship is substantial, a woman might not be psychologically ready to develop the employment skills that are required under TANF. In these types of cases, the clock should be stopped until the victim is healthy and feels safe enough to engage in work activities. Similarly, the clock should be stopped if States determine that abused women are not able to comply with the Federal work requirements. They also expressed concerns that our proposed policies

would treat victims inequitably, based on the particular timing of their domestic abuse situations.

Response: Although we have not adopted the specific suggestion of commenters to recognize waivers that ''stop the clock'' and automatically exempt families from the time limit, we have revised the final rules to give Federal recognition to a much broader array of waivers to extend the time limits. Under the final rules, we will recognize such waivers, based on need, due to current or past domestic violence or the risk of further domestic violence. Thus, States will be able to provide victims with specific assurances that: (1) They can receive assistance for as long as necessary to overcome the effects of abuse; and (2) extensions will be available in the future based on their current inability to move forward. For example, States could look at whether victims were unable to pursue work or child support for any period of time while they were on assistance or whether a current or prior unstable housing situation creates a need for extended assistance. As a result, States could advise a victim that the family will receive an extension for as long as necessary if the family accrues 60 months of assistance.

We encourage States to give victims the assurance they need that: (1) They will not be cut off assistance when they reach the Federal time-limit if they still need assistance; and (2) they will be able to return for assistance if the need recurs. Such assurances are important because they will alleviate pressure on victims to take steps that might jeopardize their personal or their family's safety. We intend to defer to State judgments on the need for such waivers and the length of time such waivers are needed. For example, if a State granted a waiver that extended a family's eligibility for assistance based on the length of time that the victim was unable to participate in work activities, we would recognize a State waiver that extended assistance for that period of time.

The disaggregated data reporting will indicate those cases whose time limit has been extended based on a federally recognized domestic violence waiver, as reported by the State. (We will also get information on the aggregate number of waivers granted under the annual report.)

As we have stated previously, we remain concerned that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. Therefore, we have added new annual reporting requirements at § 265.9(b)(5) that should give us insight into actual State practice in these waiver cases and tell us how frequently such waivers are being granted. In addition, at §§ 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information. The primary purpose for creating criteria for Federal recognition of a State's good cause domestic violence waivers was to set in place a structure for ensuring that victims receive appropriate alternative services. In addition, the reporting will provide a public description of the basic strategies that the State has put in place.

Comment: A few commenters expressed concern about the proposed language in § 274.3 that appeared to require that the victim of domestic violence receive both a hardship exemption from the 60-month time limit and a separate good cause domestic violence waiver based on inability to work. The language in the NPRM stated that, in order to qualify for exclusion from the calculation of work participation rates, families must have good cause domestic violence waivers that were in effect after the family received a hardship exemption from the limit on receiving assistance for 60 or more months. They expressed concern that the effect of this requirement would be that a State wishing to use the FVO must include domestic violence as part of the hardship extension criteria. Commenters stated that this is not supported by law and could result in some States not being able to benefit from the penalty relief that we were trying to provide.

Response: The language in the NPRM apparently did require that both a hardship exemption and a good cause domestic violence waiver be in effect. We agree with the commenters that waivers should not have to meet both requirements, and we have deleted the problematic language from the final rule.

(g) Confidentiality

Comment: A large number of commenters expressed concerns about the lack of attention paid to confidentiality. Commenters argued that individual case files should not be kept. Such files could have a negative effect on victims, potentially discouraging them from seeking services and even endangering them, if special attention is not paid toward protecting the files. They asked us to clarify in both the preamble and final regulation that we would neither require nor expect States to include sensitive information in their files that could jeopardize a woman's safety or security. They recommended that States retain and report information in an aggregated form to protect the anonymity of victims and their children.

Response: We have revised the regulation to incorporate the statutory language on confidentiality found in the FVO (see § 260.52). We also encourage States to consider the special needs of victims of domestic violence and to consult with providers of domestic violence services as they develop procedures to ''restrict the use and disclosure of information'' on recipients, pursuant to section 402(1)(A)(iv). The experience of domestic violence service providers should help shed light on questions such as what information is sensitive, what particular cautions should be taken with victims of domestic violence, and what practices work best in ensuring confidentiality.

We recognize the importance of this issue. However, in order to administer these provisions and have effective and accountable programs, it will be necessary for States to maintain records that identify victims and recipients of good cause domestic violence waivers. Since it is vital to keep this information, States should consider whether their standard confidentiality safeguards are sufficient to protect victims or whether they should institute additional safeguards. For example, these could include establishing special safeguards for both computer and paper files, training TANF staff about the importance of confidentiality for domestic violence victims and specific procedures to be used in their workplace, using extreme caution when determining whether to release the whereabouts of victims to anyone, and handling disclosures of abuse with extreme sensitivity.

(h) Notice Requirements

Comment: A small number of commenters asked to see language in both the preamble and the text of the regulation requiring that States provide TANF applicants written notice when a request for a good cause domestic violence waiver is denied.

Response: Under section 402(a)(1)(B)(iii), in their TANF plans, States must set forth objective criteria for fair and equitable treatment and explain how they will provide opportunities for hearings for recipients who have been adversely affected. Although we are not regulating this provision, in light of the restrictions on our regulatory authority at section 417, we encourage States to send notices in these cases as a matter of fairness and

equity and to treat these waiver denials as adverse actions.

E. Recipient and Workplace Protections

Background

A number of commenters expressed concerns that the NPRM focused too much on penalties and was unacceptably silent on protections for needy individuals and families, including the protections available through Federal nondiscrimination and employment laws.

One concern of commenters was that the stringency of the proposed rules on issues like penalty relief, waivers, child-only cases, and separate State programs would make it less likely that hard-to-serve families would receive appropriate services and treatment. Throughout the final rule you will find responses to this latter concern.

However, commenters also had some specific suggestions as to how we could incorporate specific protections available in the TANF law and other Federal laws into these rules. It is this latter set of comments that we address in this section.

You will find discussion of some related comments and our response in the sections of the rules dealing with nondisplacement (at subpart G of part 261) and individual sanctions (at subpart A of part 261).

Comments and Responses

(a) Applicability of Other Federal Laws

Comment: Several commenters noted that there was no reference in the TANF regulations to the applicability of Federal employment laws to TANF-funded positions, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA) and title VII of the Civil Rights Act. They noted that welfare recipients are not exempted from such laws; rather they are entitled to a safe, healthy employment environment, per OSHA, and to equal protection under all other statutes that apply to the workplace.

We received a number of related comments about the lack of reference to Federal nondiscrimination laws, including the Americans with Disabilities Act, Equal Pay Act, and Age Discrimination in Employment Act.

In both cases, commenters argued that we needed to take a more active role in the enforcement of these laws. There were a variety of suggestions about how we should do that.

At one end of the spectrum, commenters want us to speak to the applicability of such statutes under the TANF program, reference guidance put out by the Department of Labor and EEOC, inform welfare systems about existing laws and enforcement procedures, and acknowledge the role of EEOC in addressing individual complaints.

At the other end were comments saying that we should actively engage in litigation or promote actions through other agencies with enforcement authority upon evidence of systemic violations or a pattern of substantiated complaints. One commenter explicitly indicated that we could defer to agencies of proper jurisdiction for enforcement.

Response: In the NPRM preamble, we had noted that our proposed rules did not cover the nondiscrimination provisions at section 408(d) of the Act. These provisions specify that any program or activity receiving Federal TANF funds is subject to: (1) the Age Discrimination Act of 1975; (2) section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990; and (4) title VI of the Civil Rights Act of 1964. We had decided not to include the provisions in the NPRM because ACF was not responsible for administering these provisions of law, and they were not TANF provisions.

We suggested that individuals with questions about the requirements of the nondiscrimination laws, or concerns about compliance of individual TANF programs with them, should address their comments or concerns to the Director, Office of Civil Rights, Department of Health and Human Services, 200 Independence Ave, SW, Room 522A, Washington, DC 20201.

We recognize that this language and approach did not adequately represent this Administration's commitment to the enforcement of civil rights and labor laws. In that context, we have decided that we should focus more attention on these protections in the final rule. We can do that without violating section 417 (in letter or spirit) or interfering with the jurisdiction of other Federal agencies. In light of the concerns raised in these comments, we believed it would be helpful to include the nondiscrimination provisions referenced at section 404(d) of the Act in the regulation. They appear at § 260.35(a).

In § 260.35(b), you will find new regulatory language designed to further clarify the protections applicable to TANF programs and activities. In this new clarifying language, we make the point that section 417 of the Act does not limit the effect of other Federal laws, including those that provide workplace and nondiscrimination protections. We also indicate that Federal employment laws and nondiscrimination laws apply to TANF beneficiaries in the same manner as they apply to other workers.

Based on comments we received in this subject area and on some of the fiscal issues being raised, we were concerned that some States were reading the limitations in section 417 more broadly, in effect to free States from all provisions of Federal law, except those in the new title IV–A. In fact, section 417 only limits regulation and enforcement of the TANF provisions. It does not affect the applicability of other Federal laws or the authority of other Federal agencies to enforce laws over which they have jurisdiction.

In addition to adding this new regulatory text at § 260.35, we added a new reporting requirement at § 265.9(b)(7). Under this provision each State must include a description of the grievance procedures that are in place in the State to resolve complaints that it receives about displacement.

Each State must create nondisplacement procedures under section 407(f) of the Act. This provision and the related provision at section 403(a)(5)(J) of the Act (which applies to the WtW program) reflects long-standing concern among unions, labor groups, and others about the possibility that placement of welfare recipients at work sites could displace other workers from their jobs.

States also are concerned about displacement because of its potential negative effect on their labor force and the long-term success of their TANF programs. At the same time, States are facing economic and programmatic pressures to move applicants and recipients into the workforce. For example, they want to avoid work participation rate and time-limit penalties, and they want to increase their job placements in order to qualify for a High Performance Bonus. In light of these countervailing pressures, we believe that it is important that we monitor State activity in this area. Thus, we are asking for information on the procedures available in the States to protect against displacement. We will incorporate a summary of this information on nondisplacement procedures as part of the characteristics of State programs that we feature in the annual report to Congress (pursuant to section 411(b)(3)). We can also make the descriptions publicly available to interested parties within the State.

To the extent that a State includes such a description in its State TANF plan, it could merely cross-reference the plan material in the annual report. It

would not need to resubmit the information.

In addition to these specific regulatory changes, we encourage States to exercise due care as they promote work and implement new job development, placement, and referral activities. They should not use TANF programs in any way that would cause displacement or compel people to endure discriminatory work places, unsafe work environments, or unfair work conditions in order to obtain assistance.

There is a potential that States without adequate nondisplacement procedures may have an unfair advantage in obtaining job placements. Therefore, as we work on developing proposed rules for the High Performance Bonus, we will consider State grievance procedures or the record of a State with respect to displacement complaints as potential factors in determining eligibility for, or the size of, a High Performance Bonus. We look forward to receiving public comments on this issue and other issues when we publish the High Performance Bonus NPRM shortly.

Finally, we wanted to use this opportunity to provide additional information to State agencies, employers, and the public about the workplace and nondiscrimination protections that do apply in TANF. We will not attempt to provide detailed information on how various other Federal laws would apply to the TANF program or to TANF recipients. Rather, our goal is to give enough background information so that readers will understand the basic context and know where to go for further information.

As commenters pointed out, the four Federal laws that are cited in section 408(d) of the Act are not the only Federal nondiscrimination and employment laws that are applicable to, and relevant for, the TANF program. Other laws that may come into play include the Fair Labor Standards Act (which covers issues like minimum wage and hours of work), the Family and Medical Leave Act, the Occupational Safety and Health Act, title IX of the Education Amendments of 1972, title VII of the Civil Rights Act of 1964 (title VII), and the Equal Pay Act. A variety of Federal agencies are responsible for enforcing these laws, and the enforcement tools available differ by program.

The Department is developing guidance that will provide an overview of the applicable civil rights laws and the enforcement mechanisms for each. We advise you to consult this guidance for information on which Federal agencies have jurisdiction over which types of complaints; for example, as one commenter pointed out, the Department's Office of Civil Rights may be the appropriate reference for certain issues, but the EEOC generally handles individual complaints of employment discrimination. We will provide access to the guidance through the Web, when it is available.

The U.S. Department of Labor (DOL), and the Equal Employment Opportunity Commission (EEOC) have also issued guidance on the applicability of Federal discrimination and employment laws to welfare recipients. In part, this guidance indicates that welfare recipients participating in certain types of activities may be ''employees'' and thus covered by the FLSA, OSHA, and title VII. You may access these two documents through links on our Web site. The DOL guidance is entitled ''How Workplace Laws Apply to Welfare Recipients (May 1997),'' and the EEOC guidance is entitled ''Enforcement Guidance: Application of EEOC Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997).''

Likewise, the Internal Revenue Service (IRS) has issued guidance on the ''Treatment of Certain Payments Received as Temporary Assistance for Needy Families (TANF).'' IRS Notice 99–3, dated December 17, 1998, addresses the treatment of TANF payments under certain income and employment tax provisions. For example, it notes that, under the Internal Revenue Code, earned income for Earned Income Credit (EIC) purposes does not include amounts received for service in community service and work experience activities, to the extent that TANF subsidizes those amounts. It also specifies the conditions under which TANF payments would not be includible in an individual's gross wages, would not be earned income for EIC purposes, and would not be wages for employment tax purposes.

(b) Effect on Recipient Sanctions and State Penalties

Comment: We received a couple of comments saying that our regulations should provide that a person whose failure to comply with work participation requirements is caused by a violation of employment standards (e.g., a woman who leaves her job due to unremedied sexual harassment) may not suffer reduction or elimination of assistance, under section 407(e). Likewise, a few commenters suggested that we provide that State definitions of good cause (e.g., for failure to participate in work or meet responsibilities under an Individual Responsibility Plan) include workplace rights and/or discrimination situations.

Response: We have not directly required States to provide a good cause exception from the sanction provisions, as some of these comments suggest, because it is not clear that we have the authority to do so. Section 417 generally limits our regulatory authority, and the language at the end of section 407(e) indicates that State sanction decisions are ''subject to such good cause and other exceptions as the State may establish.'' Thus, we believe that we should defer to State decisions on the specific definition of ''good cause.''

At the same time, we do not want to see TANF programs fostering work or participation that is in violation of Federal law. If we learn that violations are occurring, we will pursue additional enforcement, administrative, regulatory, or legislative remedies, as appropriate.

Comment: A commenter also suggested that we deny reasonable cause and penalty relief if a State does not have an adequate process in place for recipients to raise good cause.

Response: We have not made any changes to our regulation in response to this comment. Section 402(a)(1)(B)(iii) requires that the State plan must explain how the State ''will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.'' Also, as we previously mentioned, section 407(e) indicates that States have discretion in establishing rules on good cause exceptions to sanctions. In light of these provisions, section 417, our lack of plan approval authority, and the general expectation under the TANF statute and rules that States will have discretion in deciding how services are delivered, we do not think it be appropriate to regulate a State's good cause process in this manner.

Comment: A couple of commenters said that we should not penalize States for failing to meet work requirements when their failure could be attributed to compliance with certain laws, such as employment discrimination. A related set of comments was that we should consider State efforts to comply with employment laws in determining whether a State gets reasonable cause or penalty reduction. For example, one said we should require States to develop ''an effective enforcement plan for the employment rights of recipients in work programs'' that include monitoring of laws as a prerequisite for getting a reduced penalty under § 261.51(a). One commenter said we should deny reasonable cause and penalty reductions if the State has no system in place for

monitoring and enforcing of compliance.

Response: We have not included any changes in our regulation in response to these comments. First, it was not clear to us that we should reward States for complying with other Federal laws. We thought it would be better to start with the presumptions that: (1) All States would comply with applicable Federal laws; and (2) we should rely on the procedures available under those other laws as the appropriate mechanisms for promoting compliance. We also had concerns about how we could incorporate such factors into our penalty determination decisions. We would not want to be making independent judgments about the level of State compliance with laws for which other agencies had jurisdiction. Further, it would be difficult for us to get timely, complete, and definitive compliance information from other agencies. Looking beyond Federal law to State and local laws would exacerbate these difficulties. Furthermore, we would have little assurance that official actions on official complaints accurately represented the overall level of compliance within the State, and we would have difficulty developing objective standards that would help convert evidence on violations—or State efforts to comply or enforce compliance—into objective, quantifiable standards.

(c) Procedural Requirements

Comment: A few commenters suggested that we require States to inform recipients of their rights and/or procedures for addressing violations. One commenter said we should require that staff be informed as well. One commenter also said we should require posting of appropriate nondiscrimination notices following the model under title VII of the Civil Rights Act.

Response: We recognize the value of providing full information to recipients, staff, and employees on these matters. However, we do not believe that imposing these requirements would be consistent with section 417 of the Act or the basic principle of State flexibility of the TANF legislation. Through the efforts by our Office of Civil Rights and other Federal agencies, we are making information on protections more widely available to the public, but in a framework more consistent with the TANF legislation.

You can find additional discussion about workplace protections in the preamble for part 261.

F. Comments Beyond the Scope of the Rulemaking

General

A few comments we received were outside the scope of this rulemaking. However, we wanted to take the opportunity to speak briefly to them in this preamble because they raise important TANF issues that merit discussion.

Special Issues

(a) Work Standards

Comment: We received some comments expressing concerns about the statutory provisions—most notably about the work participation rate requirements. Readers noted two specific concerns—their failure to recognize certain kinds of educational activities as participation and the inordinately high standards applicable to two-parent families.

Response: While certain policy decisions in this regulation respond to these concerns, to the extent that they represent statutory, and not regulatory, issues, they are beyond the scope of this rule. You may find additional discussion of this issue and our response in the preamble and rules for part 261.

(b) Drug Testing

Comment: One organization expressed its opposition to urine drug testing, provided a number of suggestions about guidelines we could issue to protect clients against unfair sanctions, asked that we promulgate guidance to States on how to conduct testing in a way that ensures the due process rights of clients, and suggested that treatment for addiction would be a more cost-effective approach than sanctions, in the long run, for States. It also asked that we remind States that the law allows sanctions only against the person who tests positive, not other family members.

Response: We are working with the Substance Abuse and Mental Health Services Administration (SAMHSA) on developing guidance and technical assistance materials that will help States deal effectively and appropriately with needy families that have substance abuse problems. In fact, we have developed an action plan of activities that we could undertake jointly with SAMHSA. Under that plan, we are co-sponsoring some sessions on substance abuse and welfare reform as part of our FY 1999 ''Promising Practices'' Conferences.

Regarding the commenter's last point, we assume the commenter is referring to section 902 of PRWORA, which says that the Federal government would not prohibit States from sanctioning welfare recipients who test positive for use of controlled substances. Clearly, this language envisions that sanctions in such cases would not extend beyond the individual to other family members.

Technically, we could claim the authority to regulate this provision because the limits to our regulatory authority at section 417 cover only those provisions in part IV–A of the Act. (Part IV–A of the Act incorporates section 103(a) of PRWORA, but not section 902 or the other sections.) However, requiring States to continue TANF benefits to other family members would contravene the intent of section 401(b) of the Act, which eliminates the entitlement to assistance under TANF, and the spirit of the TANF statute, in giving States discretion in deciding which families should receive benefits. Thus, while we might advise against sanctioning other family members, we decided not to regulate State decisions in this area.

(c) State Plan Requirements

Comment: One commenter asked that our regulations include specific requirements about State plan descriptions, due process, and notifications to recipients.

Response: In general, these are areas where we do not have clear, direct regulatory authority. However, there are places in the final rule where we have made changes that address this concern. One is in the section dealing with MOE expenditures. Because MOE expenditures must be made on behalf of ''eligible families,'' in order for us to determine if State MOE expenditures are ''qualified expenditures,'' State plans must contain information on how the State defines ''needy families.'' The revised rule at § 263.2(b) contains a reference to this State plan requirement. Also, in the sections of the rule and preamble that deal with appropriate implementation of the work sanction provisions (§§ 261.54 through 261.57), we draw a connection between the adequacy of a State's notification and hearings processes and its eligibility for penalty relief. We believe these provisions are clearly within our regulatory authority, because of their connection to penalty enforcement, even though we do not have general regulatory or enforcement authority in these areas.

However, we would point out to States that the absence of regulation does not eliminate the requirements as the statute does address State responsibilities in these areas. Under section 402(a)(1)(B), the State plan must

set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and objective treatment. It must also explain how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. Section 402(b) requires that States must notify the Secretary of plan amendments within 30 days, and section 402(c) requires that States make summaries of the plan and plan amendments available. Section 407(e) provides that State penalties against individuals (i.e., sanctions) are subject to such good cause and other exceptions as the State establishes, and it prohibits penalties against single custodial parents with children under age 6 who refuse to work and have a demonstrated inability to obtain needed child care.

(d) Tribal Issues

Comment: We also received a couple of comments concerned about the Tribal regulations and the consultation process used in that rulemaking.

Response: We have referred those comments to the Division of Tribal Services in the Office of Community Services for further consideration. At the same time, we would like to address a couple of concerns raised by the comments.

Comment: One commenter asked that we require States to coordinate with Tribes as part of the planning process. Another noted that the proposed rule did not provide specific mechanisms for building State-Tribal relationships. The commenter indicated that history of State-Tribal relationships over the past 200 years was primarily negative and suggested we add specific financial penalties or sanctions to foster cooperation.

Response: We believe it would be contrary to the spirit of this legislation and the restrictions placed on our regulatory authority by section 417 to require States or Tribes to take specific actions in this area. However, as indicated by our subsequent comments on State-Tribal coordination, for welfare reform to succeed in Indian country, States and Tribes need to work together in addressing administrative, economic, and service delivery issues. Thus, we have spent some time trying to identify ways to make coordination between States and Tribes easier and more beneficial, and we have included a few provisions in this rule designed to foster better coordination. More specifically, this rule: (1) allows State contributions to Tribal TANF programs to count towards the State MOE; (2) exempts individuals covered by Tribal TANF reporting from the State case-record reporting sample; and (3) gives States an option whether to include individuals in Tribal programs in the State work participation rate calculations. Also, we continue to look for opportunities outside of this rule—such as in our technical assistance and outreach initiatives—to enhance coordination of State and Tribal programs.

Comment: One commenter spoke about the concerns of Tribes and Tribal organizations in meeting the proposed TANF data collection and reporting requirements, in light of the limited resources available to Tribes. The commenter said that these requirements might prevent Tribes from implementing their own TANF programs and place those who do participate at risk of sanction. Because Tribes lack the same infrastructure as States, we should provide them administrative resources.

Response: Because the statute imposes the same reporting requirements on Tribes as States and specifies many of the data elements that must be reported, we have limited ability to reduce the reporting burden for Tribes. However, we have made a few adjustments, as we discuss in part 265. Also, we would point out that: (1) there are some reports that Tribes do not have to submit, including the MOE-SSP data report, which is inapplicable to Tribal programs; (2) Tribes are not subject to a penalty if they fail to submit complete, accurate, and timely reports; (3) in these rules, we try to facilitate State support of Tribal programs in the form of MOE expenditures, systems support, and infrastructure; and (4) we will be providing technical assistance to Tribal programs to help address their infrastructure needs.

G. Additional Cross-Cutting Issues

Pregnancy Prevention

Comment: One commenter asked that we address pregnancy prevention in the rules.

Response: This issue did not get much direct attention in the NPRM because of the scope of the regulatory package and our limited regulatory authority. However, it is clear from the statement of findings in section 101 of PRWORA, the stated TANF goals at § 260.20, the preamble discussions on allowable uses of Federal and MOE funds, and activities underway outside the scope of these rules that: (1) the TANF legislation recognizes out-of-wedlock pregnancy prevention as a critical component of welfare reform; and (2) subject to some general restrictions, States may spend Federal TANF and State MOE funds on pregnancy prevention efforts.

Because of the significance of this issue, in the final rule, we have added a limited amount of new reporting to capture information on State activities related to out-of-wedlock pregnancies. First, at § 265.9(b)(8), as part of their annual report, we are asking States to include a description of the out-of-wedlock pregnancy prevention activities they provide under their TANF program. Second, in the TANF Financial Report, we are asking States annually to provide a break-out of their expenditures on these activities—to the extent that such expenditures are not reflected in other reporting categories. (We have added similar requirements for reporting on activities related to the formation and maintenance of two-parent families.)

The TANF bonus provisions, which are the subject of separate rulemakings, also address this concern. First, there is a bonus under section 403(a)(2) for States that achieve the greatest reductions in their rates of out-of-wedlock childbearing (without increasing their abortion rates). We will also be considering inclusion of pregnancy prevention measures as we develop proposed rules for the High Performance Bonus, awarded under section 403(a)(4).

We would also point out that, under section 413(e) of the Act, we must rank States based on their rates of out-of-wedlock births for families receiving TANF assistance and conduct annual reviews of those States with the highest and lowest rankings. The TANF Data Report contains data collection related to this provision.

Program Coordination

Comment: One commenter complained that the lack of coordination between the U.S. Department of Agriculture and the Department of Health and Human Services shackled State efforts to meet Federal agency goals.

Response: We have worked diligently over many years to deal with some of the program inconsistency issues that have created administrative problems for States. We will continue our interagency efforts to coordinate program policies and minimize inconsistencies through active dialogue with the Department of Agriculture.

Rural and Transportation Issues

Comment: One commenter offered several suggestions in response to concerns about the effects of TANF in rural areas, including: (1) a rural set-aside of TANF evaluation funds to

determine whether there were inequities for rural areas; and (2) the use of existing rural networks to provide information on the effects of welfare reform in rural areas and lessons learned.

The commenter also suggested that we set guidelines for State implementation in rural areas.

The commenter's final suggestion was that we come up with a method to encourage innovative programs in rural areas as an alternative to State waivers or exemptions of rural residents.

Response: We referred the first two comments to the Director of the Office of Planning, Research and Evaluation for further consideration. At the same time, we would point out that a critical part of our overall research strategy is to ensure that our studies cover a broad diversity of geographic and demographic situations so that we can get a fuller understanding of the effects of our programs. In that context, in July of 1998, we announced that we would be awarding grants to State agencies to stimulate research of emerging approaches for welfare reform programs and policies in rural America. In the first phase of this project, we have awarded planning grants to increase knowledge about current rural strategies, develop new strategies that can be tested, and design evaluations for assessing these strategies. Contingent upon the availability of funds, we would then enter a second phase to fund implementation and evaluation activities.

With regard to rural implementation, we believe that setting guidelines would violate the principle of State flexibility in TANF and the restrictions on our regulatory authority at section 417. However, we will give consideration to rural concerns as we continue to develop our research and evaluation, technical assistance, and outreach agendas.

One of our goals in developing our technical assistance and outreach strategies is to foster efforts that help programs reach all families, including those in isolated communities. An area where we have made significant early progress is in the area of connecting needy individuals to work through more innovative uses of transportation resources and networks. We have been working with the Departments of Labor and Transportation to identify how new and existing resources can be used to address the transportation needs of low-income families and to highlight innovative approaches that have been developed at the community level. We expect these activities to develop further in response to the new Job Access program authorized under the Transportation Equity Act. You can find additional information on these transportation initiatives, including guidance on how TANF and other funds can support these activities and descriptions of program models, through the ACF Web site.

Comment: We received a related comment from a national public transportation group, which urged that TANF plans be developed at the local level with local public transit systems and metropolitan transportation planning organizations.

Response: We recognize the value of these local collaborations and are working on a variety of fronts to foster them. However, we have not included anything in our rule to require them because such a requirement would be beyond the scope of this rule and inconsistent with the limits of our regulatory authority at section 417.

Introduction to Section-by-Section Discussion

Following is a discussion of the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

V. Part 260—General Temporary Assistance for Needy Families (TANF) Provisions (Part 270 of the NPRM)

Subpart A—What Provisions Generally Apply to the TANF Program?

This subpart of the rules helps set the framework for the rest of the rule. For the convenience of the reader, it reiterates the goals stated in the new section 401. It also includes a set of definitions that are applicable to this part.

We received no comments on this section and have made no changes in the final rule.

Section 260.10—What Does This Part Cover? (§ 270.10 of the NPRM)

This section of the rules indicates that part 260 includes provisions that are applicable across all the TANF regulations in this rulemaking.

We received no comments on this section and have made no changes in the final rule.

Section 260.20—What Is the Purpose of the TANF Program? (§ 270.20 of the NPRM)

This section of the rules repeats the statutory goals of the TANF program. In brief, they include reducing dependency and out-of-wedlock pregnancies; developing employment opportunities and more effective work programs; and promoting family stability.

While we did not elaborate on the statutory language in the proposed rule, in the preamble we pointed out that, in a number of ways, the new law speaks to the need to protect needy and vulnerable children. We advised States to keep this implicit goal in mind as they implement their new programs.

Comment: A couple of commenters argued that we should do more in our rules to promote job preparation and/or marriage. One expressed explicit concern about the negative effect of the two-parent work participation rate on State support for two-parent families.

Response: This section of the regulation directly incorporates the statutory language and reflects the premise that States need and merit flexibility in deciding how to meet these goals. However, we have incorporated policies in other sections of the regulation to support State efforts in these areas. For example, our policy to let States define work activities will enable States to better support job preparation. Likewise, we have limited disincentives for States to serve two-parent families in TANF under our policy to limit the potential penalty States face when they fail only the two-parent participation rate (i.e., by basing the penalty on the proportion of the total caseload that two-parent cases represent). Also, we revised the calculation of caseload reduction credits in a couple of ways that address the commenters' latter concern. First, we allow the State an option of applying a credit based either on the two-parent caseload or on the overall caseload. Secondly, we provide for offsets in cases where the State has made eligibility changes that have the effect of increasing the caseload.

We have also made changes to help focus more attention on State efforts to promote the formation and maintenance of two-parent families. In recognition of the significance of this issue, we have added a limited amount of new reporting to capture information on State activities in this area. First, at § 265.9(b)(8), as part of their annual report, we are asking States to include a description of their activities to promote two-parent families. Second, in the TANF Financial Report, we are asking States annually to provide a break-out of their expenditures on these activities—to the extent that such expenditures are not reflected in other reporting categories. (We have added similar requirements for reporting on activities related to the prevention of out-of-wedlock pregnancies.)

In a related effort, the formula that we created to award high performances, under separate guidance, encourages State efforts to prepare recipients for work, by setting aside a substantial share of the monies for States whose recipients succeed in the workplace (i.e., retain jobs and show earnings gains).

Section 260.30—What Definitions Apply Under the TANF Regulations? (§ 270.30 of the NPRM)

General Explanation

(a) Scope

This section of the rule includes definitions of the terms used in parts 260 through 265. It also includes references to definitions that pertain only to individual parts or provisions. You can find the definition of terms that are specific only to individual parts or provisions in the appropriate individual parts of the final rules.

In drafting this section, we defined only a limited number of terms used in the statute and regulations. We understood that excessive definition of terms could unduly and unintentionally limit State flexibility in designing programs that best serve their needs. Commenters were generally supportive of this approach, but had specific concerns about specific terms, that we address below.

(b) General Terms to Note

In the proposed rule, we pointed out our use of the term ''we'' throughout the regulatory text and preamble—to mean the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on her behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

We also cited the terms ''family'' and ''head-of-household'' as examples of terms that we did not define. We said that States were thus free to define what types of families would be eligible for TANF assistance. (However, we also advised readers to look at several sections of the proposed rule because, while not defining the term ''family,'' they addressed key requirements on the State that related to the State's definition. These sections included: work participation rates (§§ 271.22 and 271.24 of the NPRM), MOE requirements (subpart A of part 273), time limits (§ 274.1), and data collection definitions (§ 275.2). We received a number of comments on the proposed policies in these related areas, including the proposed provisions on child-only cases. Thus, you will find related discussion in those other sections of the preamble.)

In the final rule, we have added a definition of noncustodial parent. It clarifies that, under TANF, this term is not used in the narrow legal context to refer to parents lacking legal custody, but to parents who do not live in the same household as the minor child. It also does not refer to parents who live outside the State and are beyond the reach of the State's TANF program. We felt it was necessary to include a basic definition because we received so many questions about how the TANF rules on expenditures, data collection, work requirements, and time limits applied to this group of individuals. You will find additional discussion of noncustodial parent issues throughout the preamble that follows.

We decided not to define the individual work activities that count for the purpose of calculating a State's participation rates. We directed readers to the preamble discussion for § 273.13 and subpart C of part 271 in the NPRM, respectively, for additional discussion. While commenters generally supported our decision not to define work activities, we received a few comments in this area. We discuss these comments in the preamble to subpart C of part 261. (NOTE:

The reference to § 273.13 in the NPRM preamble was incorrect, and we deleted it.)

For reference purposes, we noted the use of the term ''Act'' to refer to the Social Security Act, as amended by the new welfare law, and ''PRWORA'' for the new law itself. Any section reference is a reference to a Social Security Act section, unless otherwise specified.

This part incorporates the major definitions from the PRWORA statute, including: ''adult,'' ''minor child,'' ''eligible State,'' ''Indian, Indian Tribe and Tribal organization,'' ''State,'' and ''Territories.'' (Readers should note that the term ''State'' includes the ''Territories,'' unless specifically noted.) We include these definitions largely for the readers' convenience.

This part also incorporates some clarifying definitions, commonly used acronyms (such as ACF, AFDC, EA, IEVS, JOBS, MOE, PRWORA, TANF, and WtW), and commonly used terms and phrases (such as the Act and the Secretary). While the meaning of many of these terms is generally understood, we included them to ensure a common understanding and enable some reductions in regulatory text.

(c) Significant Fiscal Terms

This part also incorporates a number of definitions that have substantial policy significance, which we included for clarification purposes. For example, it incorporates terms that distinguish among several types of expenditures. These distinctions are critical because the applicability of the TANF requirements vary depending on the source of funds for the expenditures. In particular, it distinguishes between expenditures from the Federal TANF grant and from the State funds expended to meet MOE requirements (either within the TANF program or in separate State programs), as follows:

Federal expenditures. This is short-hand for the State expenditure of Federal TANF funds.

Qualified State Expenditures. This term refers to expenditures that count for basic MOE purposes (at section 409(a)(7)). (By regulation, many, but not all, of the requirements that apply for countable basic MOE expenditures also apply for Contingency Fund MOE purposes.)

Basic MOE. This term refers to the expenditure of State funds that a State must make in order to meet the basic MOE requirement for the TANF program and avoid the penalty specified at section 409(a)(7). (In the NPRM, we used the term ''TANF MOE,'' but we changed the term in response to comments and concerns about confusing readers.)

Contingency Fund MOE. This term refers to expenditures of State funds that a State must make in order to meet the Contingency Fund MOE requirements under sections 403(b) and 409(a)(10). States must meet this MOE level in order to retain contingency funds made available to them for the fiscal year. Note that this term is more limited in scope than the term ''basic MOE.'' See discussion at subpart B of part 264 for additional details.

State MOE expenditures. This term refers generically to any expenditures of State funds that may count for basic MOE or Contingency Fund purposes. It includes both State TANF expenditures and expenditures under separate State programs, where allowable.

State TANF expenditures. This term encompasses the expenditure of State funds within the State's TANF program. It identifies the only expenditures that can be counted toward the Contingency Fund MOE. It includes both commingled and segregated State TANF expenditures.

Commingled State TANF expenditures. This term identifies the expenditure of State funds, within the

TANF program, that are commingled with Federal TANF funds. Such expenditures may count toward both the State's basic MOE and Contingency Fund MOE. To the extent that expended State funds are commingled with Federal TANF funds, they are subject to the Federal rules.

Segregated State TANF expenditures. This term identifies State funds expended within the TANF program that are not commingled with Federal TANF funds. Such expenditures count for both basic MOE and Contingency Fund MOE purposes. They are not subject to many of the TANF requirements that apply only to Federal TANF funds (including time limits).

Separate State program (SSP). This term identifies programs operated outside of TANF in which the expenditure of State funds counts toward the basic MOE requirement, but not for Contingency Fund MOE. Expenditure of State funds must be made within the TANF program in order to count as MOE for Contingency Fund purposes.

It also incorporates terms to distinguish among different categories and amounts of TANF grant funds. These distinctions are important because they affect the size of grant adjustments and total funding available to the State. In some cases, different spending rules apply to different categories of funds.

State Family Assistance Grant (or SFAG). This term refers to the annual allocation of Federal TANF funds to a State under the formula at section 403(a)(1).

Adjusted State Family Assistance Grant, or ''Adjusted SFAG.'' In the NPRM, we indicated this term refers to the grant awarded to a State through the formula and annual allocation at section 403(a)(1), minus any reductions due to the implementation of a Tribal TANF program to serve Indians residing in the State. In the final rule, we modified the definition to also exclude any funds transferred from TANF pursuant to section 404(d) of the Act. We explain this change in the Comment/Response section below. The distinction between ''Adjusted SFAG'' and ''SFAG'' is significant in determining spending limitations and the amount of penalties that might be assessed against a State under parts 261–265.

Federal TANF funds. This term includes not just amounts made available to a State through the SFAG, but also other amounts available under section 403, including bonuses, supplemental grants, and contingency funds. In expending Federal TANF funds, States are subject to more restrictions than they are in expending State MOE monies, as discussed under subpart B of part 263. (The NPRM used this term and the terms ''Federal funds'' and ''TANF funds'' interchangeably.)

(d) Cross-References

In § 260.30, you will find cross-references for the definitions of ''assistance'' and ''WtW cash assistance.'' In the NPRM, the definition of ''assistance'' appeared at § 270.30. In the final rule, we decided to move it to its own separate section. You will find it in § 260.31. The discussion of the comments on our proposed definition appears in the corresponding preamble section. ''WtW cash assistance'' was not defined in the NPRM; in the final rule, it appears in § 260.32.

In the NPRM, we included definitions for the terms ''Family Violence Option (FVO),'' ''good cause domestic violence waiver,'' and ''victim of domestic violence'' in section § 270.30 and explained them in this section of the preamble.

In the final rule, § 260.30 only contains cross-references for the definitions of the domestic violence terms. As we discussed earlier in the final rule, we have moved the domestic violence provisions to a new subpart B of part 260. The definitions appear at § 260.51. For the discussion of these provisions, you should go to the earlier preamble section entitled ''Treatment of Domestic Violence Victims.''

Likewise, in the final rule, we have moved the waiver definitions (including the definitions of ''waiver'' and ''inconsistent'') to a new subpart C of part 260. For the discussion of the waiver definitions and waiver policies, you should go to the earlier preamble section entitled ''Waivers.''

We received a few comments on the definition of child care terms that are relevant to the issue of whether single parents with children under age 6 may be sanctioned for failing to meet work requirements. For a discussion of those comments, you should go to §§ 261.56 and 261.57.

Finally, we would like you to note that we added a reference to § 263.0(b), which contains a definition of ''administrative costs.'' We decided not to define ''information technology and computerization costs needed for tracking or monitoring required by or under title IV-A of the Act.'' However, we do provide some regulatory language to explain the scope of the exclusion at §§ 263.2(a)(5) and 263.13(b). You will find a discussion of this language in the preamble for § 263.0. (These terms are important because States are subject to 15-percent caps on the amount of Federal TANF and State MOE funds that they may spend on administrative activities, exclusive of such computer-related costs.)

Additional Definitional Issues in § 260.30

(a) Fiscal Terms

Comment: A few commenters pointed out that the proposed rule had an apparent inconsistency in that the base for determining the administrative cost cap and the base for determining penalty amounts were different in States that chose to transfer funds to CCDBG (the Discretionary Fund of the CCDF).

Response: Not all commenters presented this as a definition comment, but we think the appropriate place to address it is by revising the definition of the ''adjusted SFAG.'' The revised definition excludes amounts transferred to SSBG and the Discretionary Fund of the CCDF. This change has the effect of removing the transferred amounts from the base for both the administrative cost cap and the penalty calculations. We believe the exclusion is most consistent with the statutory provision at 404(d), which provides that transferred amounts are subject of the rules of the program to which they are transferred. You can find additional discussion of this issue in the preamble for § 263.0.

Comment: One commenter indicated that we had too many financial and program terms in the list of definitions and asked that we delete some. Of particular concern were: (1) the distinction between SFAG and TANF funds; and (2) State MOE expenditures versus State TANF expenditures, TANF funds and TANF MOE. The commenter recommended that a different term be used for either TANF MOE or State MOE expenditure.

Response: First, while ''SFAG'' and ''TANF funds'' are similar terms, they are not identical. It is important to make and understand the distinction. ''SFAG'' refers only to the basic Federal TANF block grant, the amount given to the State based on prior AFDC, JOBS, and EA payments. ''Federal TANF funds'' refers to Federal funds awarded to the State under section 403 of the Act, except for WtW funds. It thus includes any supplemental grants, bonuses, contingency funds. The ''SFAG'' amount (adjusted) is the base amount for determining any penalties assessed on the State. Most of the provisions on use of funds apply to all ''Federal TANF funds,'' and thus extend to the funding provided under section 403, not just the basic TANF block grant amount.

We have modified the definition of Federal TANF funds slightly to clarify

that the term does not include WtW funds provided under section 403(a)(5). By statute (section 403(a)(5)(C)(v)), the restrictions on the use of TANF funds do not generally apply to WtW funds and the Secretary of Labor is responsible for administering the WtW grants. The exceptions are the TANF provisions on use of funds for administrative costs, Individual Development Accounts, and Employment Placement Programs. The Department of Labor has addressed the restriction on administrative costs for WtW funds separately in its WtW rules, we have made a conforming change to our IDA rules (at § 263.21), and we have not addressed use of WtW funds for Employment Placement Programs because the TANF rules do not directly address this issue. While the proposed rule contained three definitions related to maintenance-of-effort—Contingency Fund MOE, MOE, and TANF MOE, we believe it is best to keep three terms. Since the statute applies some different rules for the basic MOE requirement and Contingency Fund MOE, the rules need to include at least two terms. We included the third term—MOE—because there are many places where the same rules apply to both types of State expenditures, and it is more efficient to use the one short acronym than two longer terms.

As we noted earlier, we did decide to change the term ''TANF MOE'' to ''basic MOE.'' We recognized that the term ''TANF MOE'' could cause confusion because States could expend funds outside the TANF program in meeting the basic MOE requirement; the term ''TANF MOE'' suggested that we were looking only at MOE expenditures under the TANF program.

The proposed rule also contained three terms for Federal TANF funds—TANF funds, Federal funds, and Federal TANF funds. In this case, the three terms were duplicative. We chose to eliminate the first two from the list of terms at § 260.30 and keep the definition for Federal TANF funds. We have made changes throughout the preamble and regulatory text to reflect this decision.

Comment: One commenter noted that our definition for ''Contingency Fund MOE'' contained an incorrect reference to child care expenditures.

Response: The commenter correctly noted that our proposed definition did not conform to the amendments in the Balanced Budget Act. We have revised the definition in the rules to remove the reference to child care expenditures. We also made conforming changes to the preamble discussion.

(b) Miscellaneous Issues

Comment: One commenter indicated that we needed a definition of Governor and that we should include the Mayor of the District of Columbia in that definition.

Response: We have added a standard definition that includes the Mayor of the District of Columbia and the chief executive officer of the eligible Territories as well.

Comment: One commenter wanted us to establish a Federal definition for ''violating a condition of their parole or probation,'' like the one used in New York State. The commenter's suggestion would have the effect of limiting the scope of the ''fugitive felon'' provision at section 408(a)(9) by providing for uniform standards that exclude certain ''technical violations.''

Response: For several reasons (including the limits to our regulatory authority under section 417 and existing variations in State law), we believe that this definition is an appropriate area to leave to State discretion. Therefore, we have not included a Federal definition.

Miscellaneous Technical Changes To Note

Finally, we made a few minor changes based on our own internal reviews. First, we noted that the proposed definition of ''eligible State'' did not reflect the amendment made by the Balanced Budget Act. Under PRWORA, as enacted, an ''eligible State'' was one that had submitted a complete plan in the two-year period immediately preceding the fiscal year. Under the change, ''an eligible State'' is one that submitted a complete plan in the ''27-month period ending with the close of the first quarter of the fiscal year.'' The final rule incorporates this revised language.

According to the Committee Report (H.R. Rep. No. 78, Part 1, 105th Cong., 1st sess., p. 38), the purpose of the amendment was to give States an additional quarter to submit their plans. However, the meaning of the new statutory language is a little more complicated. If you would like additional information, you may refer to guidance that we sent out on May 15, 1998 (OFA-TANF–PA–98–3). A copy of this document is available through the OFA Web page (at http://www.acf.dhhs.gov/ofa).

Secondly, we have added some cross-references to terms defined in other parts of the TANF rules, including ''Individual Development Accounts'' and ''administrative costs.''

Thirdly, as we have previously discussed, we created a new subpart A in part 260 for the definitions and other general provisions that were in part 270 of the NPRM, and we moved the definition of terms related to domestic violence and welfare reform waivers to new subparts of part 260. We believe this new structure will make our policies in these latter areas clearer and more coherent.

Finally, we added definitions for ''Social Services Block Grant,'' ''SSBG,'' ''State agency,'' ''CCDBG,'' and the ''Discretionary Fund of the Child Care and Development Fund'' because these terms were helpful in describing other provisions of these rules. These definitions are straightforward references, based on existing statutory and regulatory language.

§ 260.31 What Does the Term Assistance Mean? (New Section)

This is a new section in the final rule. The proposed rule contained the definition of assistance in § 270.30, with the other TANF definitions. However, because of the length and significance of this term, we decided to give it its own section.

(a) Background

In the NPRM we advised readers to note the definition of ''assistance'' proposed in this section. We indicated that PRWORA uses the terms ''assistance'' and ''families receiving assistance'' in many critical places, including: (1) most of the prohibitions and requirements at section 408, which limit the provision of assistance; (2) the numerator and denominator of the work participation rates in section 407(b); and (3) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, the definition of ''assistance'' is very important. At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was in the past.

Because TANF is a block grant, and it incorporates three different programs, a State may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that was previously provided under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We proposed to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicated that Congress meant for this term to encompass more than cash assistance, but did not provide much specific guidance (H.R. Rep. No. 725, 104th Cong., 2d sess.). Likewise, our pre-NPRM consultations did not provide clear guidance or direction.

In our January 1997 guidance (TANF–ACF–PA–97–1), we expressed the view that the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition of assistance. In brief, the two exclusions were: (1) services that had no direct monetary value and did not involve explicit or implicit income support; and (2) one-time, short-term assistance.

In the proposed rule, we clarified that child care, work subsidies, and allowances that cover living expenses for individuals in education or training were included within the definition of assistance. For this purpose, child care included payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It did not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies included payments to employers to help cover the costs of employment.

We also proposed to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we had received a number of questions about what the term ''one-time, short-term'' meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that States might try to define as ''short-term'' or ''one-time'' many situations where assistance was of a significant and ongoing nature. Thus, we proposed to limit what was excluded as one-time, short-term assistance to items that were paid no more than one time a year over no more than a 30-day period for needs that did not extend beyond 90 days. We expressed the hope that our proposal would give States the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcomed comments on whether the proposed policy achieved this end.

In drafting the NPRM, we had considered allowing States to include additional kinds of benefits and services as assistance, at their option. However, we were concerned that varying State definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects (e.g., in extending child support assignment to cases where it would not be appropriate). Thus, we did not give States the option to expand the definition.

For those concerned about the inclusion of child care in the definition of assistance, we pointed out that the child care expenditures made under the Child Care and Development Fund (CCDF) are not subject to TANF requirements, and States have the authority to transfer up to 30 percent of their TANF grant to the Discretionary Fund of the CCDF program.

We also proposed to collect data on how much of the program expenditures were being spent on different kinds of ''assistance'' and ''nonassistance.'' We referred readers to the discussion of the TANF Financial Report at part 275 of the NPRM for additional details.

We said that, if the data show that large portions of the program resources are being spent on aid that fell outside the definition of assistance, we would have concerns that the flexibility in our definition of assistance is undermining the goals of the legislation. We would then look more closely at the aid being provided outside the definition and try to assess whether work requirements, time limits, case-record data and child support assignment would be appropriate for those cases. If necessary, we would consider a change to the definition of assistance or other remedies.

Since we issued the NPRM, Congress enacted the Child Support Performance and Incentives Act of 1998. As we discussed earlier in the preamble, section 403 of that legislation included several provisions on the use of Federal TANF funds to help pay for transportation benefits for welfare recipients under the Job Access program. In a new section 404(k)(3) of the Social Security Act, there is a ''rule of interpretation'' indicating that the provision of transportation benefits to an individual who is not otherwise receiving TANF assistance, pursuant to these provisions, would not be considered assistance. We have added a new exclusion to the definition of assistance to reflect this provision. (Also, as we discuss later, the final rule incorporates other changes that exclude transportation benefits for employed families from the definition of assistance.)

(b) Overview of Comments

We received a number of comments supportive of the definition in our January 1997 guidance and the definition in the NPRM (which was derived from this guidance).

At the same time, a wide range of commenters—including States, advocates, and union groups—wanted to see changes to one or both of our proposed exclusions. A significant number of commenters indicated that this was one of the most important issues in the NPRM for them. All these commenters wanted to narrow the scope of benefits that would be considered within the definition of assistance; many expressed a particular concern about the treatment of supports for working families under the definition. Some wanted modest changes to the proposed definition, while a significant number sought significant additional exclusions, such as: (1) child care, transportation, and other work supports; and (2) work-based assistance, such as wage subsidies.

Moreover, subsequent discussions and materials that we have received suggest increasing concern about the proposed definition over time, as individuals have had more time to ponder its implications, States have further explored supports needed by families as they transition from welfare to work, and commenters have shared their concerns with other parties.

As the result of these comments, we have made some significant modifications to the definition of assistance. The modifications address the concerns of commenters both about the treatment of work supports and the exclusion for one-time, short-term assistance. We found substantial merit in the arguments made by commenters in both areas. Also, as States proceed with their implementation of TANF, they continue to explore and develop new, innovative ways to support low-income working families and to address the goals of the TANF program. As a result, their programs are beginning to look less like traditional welfare. TANF program requirements were created with a particular program model in mind. Applying the TANF requirements much more broadly makes limited policy sense.

Under the narrower definition of assistance in the final rule, States will have more flexibility in how they serve families—particularly working families—with their Federal TANF and

State MOE funds. They will also experience a significant reduction in the administrative burden associated with serving working families, providing refundable earned income tax credits, and administering Individual Development Accounts (because they will not have to provide disaggregated data in such circumstances).

With the change in the definition of assistance under the final rule, we will not be collecting disaggregated data on work supports and other types of benefits and services that are not assistance. To compensate for this loss, we have significantly revised the TANF Financial Report by adding a number of new reporting categories. We have also provided for new information on diversion programs to be included in the annual report.

At the same time, we remain concerned about the potential impact of this definition on the achievement of TANF goals. While we believe the revised definition in the final rule is sound, it is difficult to envision all of the consequences. Thus, we will monitor State programs and expenditures and periodically assess whether our definition continues to support the goals of the program. If aspects of the definition become problematic, we will pursue appropriate changes.

A detailed discussion of the comments and our policy decisions follows.

(c) The Appropriateness of a Federal Definition

Comment: A couple of commenters said we should let States create their own definitions of assistance.

Response: We do not believe this is a viable option. The definition is too central to all the accountability provisions in the statute. If we did not define this term, States might define assistance so narrowly as to undermine the key TANF provisions on child support, work requirements, and time limits. Also, wide variations in State definitions would exacerbate issues about the consistency of data collection, program information, work participation rates, time limits, and other penalty provisions.

Readers should understand that the definition of assistance does not substantially impede the flexibility each State has to set eligibility rules or to expend funds on a broad range of benefits, services, and supports for needy families in the State. The major effect of the definition is to determine the applicability of key TANF requirements to the benefits that a State does elect to provide. It does not circumscribe the types of allowable benefits; these may be inside or outside the definition of assistance.

We had indicated in the proposed rule that the definition did not apply to the MOE provisions at subpart A of part 273. We have included similar language in the final rule at § 260.31(c)(1). (We also made a conforming change in that paragraph that references Contingency Fund MOE as part of this exception). In addition, at § 260.31(c)(2), we have added language clarifying that the definition of assistance does not limit the types of benefits and services that States provide to individuals and families under the first statutory goal of TANF. This first statutory goal authorizes the provision of assistance, but does not mention other forms of benefits or services. However, in other places, the statute specifically authorizes expenditures of State and Federal funds that are ''in any manner reasonably calculated to accomplish the purpose'' of the program. Thus, the statute indicates that the word ''assistance'' needs to be interpreted more broadly in the context of this first TANF goal. (The new regulatory text refers only to the first goal of TANF; the other TANF goals do not use the term ''assistance'' and thus did not require clarification.)

Comment: Although one commenter said the proposed rule ''effectively incorporates'' the policy from the guidance (with clarification and elaboration), a number of respondents commented that the proposed definition represented a retreat from the definition provided in the guidance.

Response: We agree that the changes we proposed in the NPRM related to the exclusion for ''one-time, short-term assistance'' had the effect of narrowing what could have been excluded under our policy announcement. As discussed in the next comment, we have decided to ease the proposed restrictions on one-time, short-term assistance.

We do not believe that our proposed definition otherwise deviated from the definition in the guidance. It is our view that benefits such as child care and transportation subsidies, while not directly mentioned, were part of the definition of assistance in the January 1997 policy announcement (TANF–ACF–PA–97–1), as they involved subsidies or other forms of income support. Our intent in inserting the references to child care and transportation in the NPRM was to provide a clearer and more complete definition, not to make a substantive change.

(Nevertheless, as we discuss in the next section, on ''Work Supports,'' the final rule excludes such supports for working families from the definition of assistance.)

Comment: Several commenters suggested that we should exclude assistance that was not cash assistance or financial assistance from our definition.

Response: As we discuss in the following comments, the legislative history does not support this approach. Rather, for both TANF and WtW, it suggests that Congress envisioned inclusion of at least some noncash benefits as assistance. Otherwise, it would have been superfluous to specifically exclude noncash WtW assistance from the time-limit requirement. In addition, wholesale exclusion of noncash benefits from the definition would create some peculiar incentives for States and could substantially distort their decisions about how to provide benefits.

(d) Work Supports

Comment: A significant number of commenters called for additional exclusions from the definition of assistance. While there was a fair amount of diversity in the specific suggestions, a significant number of commenters sought exclusions of: (1) assistance that is not like traditional welfare, but directed at achieving the work objectives of the Act (e.g., child care, transportation, and other work supports); and/or (2) work-based assistance, provided as either work subsidies to employers (especially payments to employers to cover the costs of supervision and training) or as compensation for work. Many commenters expressed specific concerns about the appropriateness of child support assignment and time limits in these cases. A number objected to our standard of ''direct monetary value.''

Some commenters spoke broadly about excluding work subsidies, assistance directed at achieving the work objectives of the Act, or work supports. Others focused on specific items such as child care, transportation, and earned income tax credits. A few commenters suggested that we borrow language from the caseload reduction provisions of the proposed rule and exclude ''cases receiving only State earned income tax credits, transportation subsidies or benefits for working families that are not directed at their basic needs.''

We received more comments in support of excluding child care than for other types of supportive services. Commenters expressed strong objections to the inclusion of child care, in large part due to concerns about the time-

limit implications. They also expressed disagreement with our proposition that States could transfer funds to the Child Care and Development Block Grant in order to avoid time limits for child care benefits; they argued that there were legislative and administrative barriers associated with these transfers. Some commenters argued that child care and transportation are not like cash. Since they are not fungible (i.e., available to meet a family's basic needs), they should be excluded from the definition of assistance on that basis. Other commenters said that it was unclear that Congress intended to extend child support assignment to additional forms of aid, such as child care and JOBS-related benefits; at a minimum, they requested that we clarify that States can take an assignment of less than the amount of assistance.

In addition to some of the prior arguments, the principal arguments that commenters presented for the exclusion of work subsidies (or payments to employers to cover the costs of employment and training) were: (1) such benefits primarily benefit employers, not recipients, and thus do not have direct monetary value to the family; (2) they should be viewed as the equivalent of tax credits or like other expenditures on training; (3) employees may use up their time limit by going through a series of subsidized jobs from which employers benefit, but that give employees no prospect of long-term employment; and (4) their inclusion will create administrative problems and make it difficult to jointly fund work subsidy programs.

Commenters also presented arguments for excluding assistance for which recipients worked. They argued that this assistance represented compensation for work, rather than assistance. Since recipients ''earned'' this assistance, commenters felt that it was inappropriate for the months to accrue against the time limit on assistance and for child support assignment to apply.

Response: We agree that there are good arguments for narrowing the definition of assistance to exclude work supports such as child care and transportation. While neither the statute nor the legislative history directly suggests that a significant subset of benefits should be excluded from the definition, there is also little direct evidence that Congress intended for time limits and data collection to apply to an array of new benefits (such as IDAs and new work supports) or to working families that have not traditionally been part of the welfare system. Rather, in reforming the welfare program, it seems Congress was trying to end dependence on welfare as a way of life for families and to facilitate the ability of families to work and become self-sufficient. Two of the main effects of defining a TANF benefit as assistance are to require that a family work so that it can become self-sufficient and to time limit that assistance. However, a work requirement is unnecessary if the adult is already working and the benefit that the family receives is a work support. Further, the need to time-limit work supports is mitigated since the family is already moving toward self-sufficiency; working families should eventually become independent.

One statutory provision that raised questions about Congressional intent was section 404(k)(3). This provision, which was part of the Child Support Performance and Incentives Act of 1998, provided a ''rule of interpretation'' that specified that transportation benefits provided under Job Access to an individual who was not otherwise receiving assistance under TANF would not be considered assistance. It suggests that Congress envisioned transportation to otherwise be included within the TANF definition of assistance. However, another, equally viable, interpretation of this Congressional action exists. The child support legislation was enacted while our interim guidance was in effect. Thus, Congress could have been providing a clarification of what was excluded from assistance in that context. In fact, the legislative history did not express any opinions about the interim definition in the policy guidance that we had issued (TANF–ACF–PA–97–1).

You will note that we have incorporated an exclusion that reflects this specific statutory provision. We recognize that it is largely duplicative of the general exclusion for work-related supportive services, including transportation, in § 260.31(b)(3). However, it is possible that some Job Access transportation benefits are not covered by the general provisions, and we wanted to ensure that the statutory exclusion received full weight. Under § 260.31(b)(7), therefore, we provide a categorical exclusion for transportation benefits received under Job Access by individuals who are not otherwise receiving TANF assistance.

The definition in these rules is generally consistent with commenter suggestions, but more specific in some areas. It provides that supports for working families (such as child care and transportation) would be excluded. This exclusion covers supportive services needed to cover employment-related needs and time spent by an employed individual in education and training needed for job retention and career advancement. (As discussed below, the education and training is also excluded.)

Except as provided in paragraphs (b), the exclusion does not cover supportive services related to participation in education, training, job search and related employment activities for nonworking families. Supportive services provided in this situation look more like traditional welfare than work supports. Also, the same rationale for excluding these individuals from the TANF program requirements, including work participation and time limits, does not exist for these families as exists for families that are already working.

The education and training activities themselves are generally excluded under paragraph (b)(6). The one exception would be if education or training benefits included allowances or stipends designed to provide income support; these particular types of education and training benefits would be considered assistance. Also, we would remind readers that under sections 401 and 407 of the Act education and training services should be directed at preparing individuals for work and moving them to self-sufficiency; they should not be of a general nature.

Our definition also specifies the types of items that would be considered as part of basic needs. The listed items (food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses) reflect those items that were represented in the majority of the State needs standards under prior law. The term ''incidental expenses'' covers items States included as part of basic needs such as telephones; small allowances for child care or transportation needs associated with keeping appointments, going to the store, or fulfilling other basic responsibilities; basic supplies for the medical cabinet; insurance premiums; and miscellaneous fees and expenses, to the extent consistent with State practice.

The definition excludes contributions to, and distributions from Individual Development Accounts (IDAs). Although the TANF statute includes IDA provisions, commenters did not specifically raise questions about the treatment of IDA benefits under the definition of assistance. However, interest has grown since the passage of the Assets for Independence Act (under title IV of Pub. L. 105–285). Since then, we have received numerous questions from interested parties, including State agencies and potential grantees, about how IDA benefits would be treated

under the TANF rules. We have several reasons for the specific exclusion in the final rule. First, many of the assets in IDA accounts represent deposits from the earnings of low-income families and the interest on those deposits. Thus, many of the assets do not represent assistance from TANF or any other governmental source. Second, when contributions are made into an IDA account from the TANF agency or other third parties, they only represent potential assistance at that point. The individuals whose funds are in the account are potential beneficiaries, but have very limited access to the funds in that account. The funds are not available to meet their basic needs. Furthermore, distributions from IDA accounts would normally be excluded under other provisions of our definition (e.g., as emergency benefits, for education, and as nonrecurrent, short-term benefits). Because the residual cases might be insignificant in terms of the amount of assistance involved and the tracking of such amounts might create very significant administrative burdens, we believed it would be appropriate to provide an umbrella exclusion for IDA benefits.

While we were convinced by the arguments for excluding supportive services for working families from the definition of assistance, we have noted a few consequences of this narrower definition of assistance that were of some concern. For example, many of the funding restrictions in section 408 are restrictions on which families may receive ''assistance,'' section 404(e) of the Act only authorizes States to use the ''rainy day'' funds that they reserve for future years ''for providing assistance,'' many working families will not be included in the TANF work participation rate calculations, and we will receive data on fewer families and types of benefits from the aggregated and disaggregated reporting.

In order to compensate for the loss of reporting, we have added some additional detail to the expenditure information required in the TANF Financial Report (see Appendix D). (See the preamble for § 263.11 and the Instructions for Completion of ACF–196 (the TANF Financial Report) in Appendix D for additional information on the use and reporting of reserved funds.)

Comment: One commenter asked whether expenditures on ''work activities'' were the same as expenditures on ''employment services.''

Response: We assume this commenter wanted to know if all expenditures on work activities, as specified in section 407(d) of the Act, would be excluded from the definition of assistance. The exclusions we provide in the final rules would generally cover the specified work activities, including on-the-job training, subsidized employment, and most education and training activities (i.e, since most do not represent income support). They would also cover payments to employers and third parties for supervision and training and payments under performance-based contracts for success in achieving job placements and job retention. As discussed above, there may be types of education and training benefits (e.g., stipends or allowances) that fall within the definition. Also, the definition does not generally exclude payments to individuals participating in work experience or community service (or any other work activity). Nor does it exclude needs-based payments to individuals in any work activity whose purpose is to supplement the money they receive for participating in the activity.

The distinction we make between work subsidies paid to employers and payments to participants in work experience and community service is similar to distinctions made under tax law. For example, we would refer you to Notice 93–3, issued by the Internal Revenue Service on December 17, 1998. This notice explains that TANF payments that meet certain conditions would not be income, earned income, or wages for Federal income and employment tax purposes. The notice provides that: ''Payments by a governmental unit to an individual under a legislatively provided social benefit for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. * * * Similarly, these payments are not earned income for Earned Income Credit (EIC) purposes.'' It also notes that, under amendments to the Internal Revenue Code under the Taxpayer Relief Act of 1997, Pub. L. 105–34, ''earned income for EIC purposes does not include amounts received for [TANF work experience and community service activities] to which the taxpayer is assigned * * *, but only to the extent such amount is subsidized under [TANF].''

Our definition of assistance distinguishes between work subsidies paid to employers and community service and work experience on a similar basis. We believe that payments to participants in work experience and community service are closely associated with traditional welfare benefits and are designed primarily to meet basic needs rather than as compensation for services performed. This view is also reflected in the Conference Report, H. Rep. 105–217, for Pub. L. 105–34, which added the WtW program. In discussing the treatment of WtW cash assistance for time-limit purposes, it indicates that wage subsidies are indirect cash assistance. We believe the reference to wage subsidies as cash assistance is to such payments as part of work experience and community service where, as in the tax provisions, welfare law determines the size of the payments and limits the hours of work so that it is, in effect, assistance received indirectly. Thus, we generally include such subsidies in the definition of assistance.

We do not believe that the mere fact that the benefits received by recipients in work experience or community service activities are conditional on work is sufficient to view it as nonassistance. The expectation under TANF is that adult recipients will generally participate in work activities as a condition of receiving TANF. This expectation is evident in the work requirement in section 402(a)(1)(A)(ii) and the fact that Congress based the calculation for work participation in section 407 on all families with adults, instead of retaining the numerous exemptions that existed under JOBS.

The regulatory text also indicates that benefits conditioned on other work activities (e.g., job search) are not excluded from the definition of assistance. We do not think that anyone would conclude that such benefits would be excluded, because there would be no historical basis for such a conclusion. However, we decided to include the broader reference to foreclose any future questions.

Comment: One commenter said we should exclude on-site case management services provided by an employer under contract from the definition of assistance.

Response: Our definition already excludes case management services provided under the TANF program. It is irrelevant who provides the case management services.

Comment: One commenter noted that the preamble in the NPRM excluded ''information about child care, child care referral services, child care counseling services and child care provide on an ad hoc basis'' and asked that we add that language to the regulatory text.

Response: We do not believe it is appropriate or even possible to specify all types of excluded services in the regulatory text. However, we have inserted ''child care information and referral'' as an example of an excluded service.

(e) Nonrecurrent, Short-Term Benefits

Comment: We received a significant number of comments from respondents who were concerned about the narrowed exclusion for ''one-time, short-term'' assistance. The major concern of commenters was that the 30 existing State welfare diversion programs, together with their local variations, could not meet such a tight definition because they might provide more than one payment in a year if a family encounters an unforeseen subsequent crisis. They suggested broader language that would exclude short-term, episodic assistance for families in discrete circumstances and encompass nonrecurrent, short-term payments that could occur more than once in 12 months. They questioned the basis for creating restrictions based on the old EA definitions. They raised concerns about the negative effect on State innovation. They also raised concerns about the administrative burdens associated with tracking eligibility, especially when outside providers, such as emergency shelters, deliver emergency services or when a State is operating both diversion and emergency assistance programs and has not administratively connected those programs.

Response: In part, the narrower language in the proposed rule reflected a concern that States could avoid TANF requirements by changing the manner in which they assisted families. We did not believe that it would be appropriate to exempt families that received a substantial amount of assistance, assistance over a significant period of time, or assistance provided on a recurring basis from child support assignment, work requirements, and time limits. Based on prior experience with the Emergency Assistance program, we believed that States could expand the concept of one-time, short-term assistance to cover benefits that extended over time and encompassed substantial expenditures.

At the same time, we did not intend our definition to undermine existing State efforts to divert families from the welfare rolls by providing short-term relief that could resolve discrete family problems. Based on both the comments we received and other sources of information, we realize that diversion activities are an important part of State strategies to reduce dependency and that restrictive Federal rules in this area could stifle the States' ability to respond effectively to discrete family problems. We also understand that subjecting families in diversion programs to all the TANF administrative and programmatic requirements would not represent an effective use of TANF or IV–D resources. For example, it does not necessarily make sense to require that, for a single modest cash payment, the State must open up a TANF case, collect all the case-record data which that entails, require the assignment of rights to child support, open up a IV–D case, and start running a Federal time-limit clock.

Much of the aid provided through these programs is work-focused, and, under our definition, the benefits to these families are nonrecurrent and short-term in nature. Thus, we believe that excluding this aid from the definition of assistance does not undermine the TANF provisions on work, time limits, or self-sufficiency. However, as we proposed in the NPRM, we will be collecting aggregate information on expenditures on aid that is not assistance (i.e., on ''nonassistance''). This information will be valuable in helping us to assess the extent to which benefits being provided with TANF and MOE funds fall under, or outside of, the major TANF program requirements.

Finally, we recognize that this is a policy area where policy and programs are evolving quite rapidly. Within the next year or two, we would expect to have a better knowledge base for assessing diversion programs and making policy judgments. For example, the Office of the Assistant Secretary for Planning and Evaluation and ACF are jointly sponsoring a study by George Washington University to examine the State diversion programs and activities and explore their Medicaid implications.

Thus, the final rules include a revised definition that excludes more than one payment a year, so long as such payments provide only short-term relief to families, are meant to address a discrete crisis situation rather than to meet ongoing or recurrent needs, and will not provide for needs extending beyond four months. The revised definition uses the term ''nonrecurrent'' rather than ''one-time'' because the former term is more consistent with the intended policy. A family may receive such benefits more than once. However, the expectation at the time they are granted is that the situation will not occur again, and such benefits are not to be provided on a regular basis. We believe the revised exclusion is limited enough in nature and scope not to undermine the statutory provisions of the TANF program, while giving States the flexibility to design effective diversion strategies.

The definition also would exclude supports provided to individuals participating in applicant job search. Applicant job search is a common form of diversion that clearly fits within the goals of TANF and within this exclusion's view of a ''short-term'' benefit. (The job search itself would be excluded under the general services exclusion at paragraph (6).)

Similarly, the definition would exclude supports for families that were recently employed, during temporary periods of unemployment, in order to enable them to maintain continuity in their service arrangements. Unnecessary disruptions in these arrangements could negatively affect the family's ability to re-enter the labor force quickly and, in the case of child care, could negatively affect the children in the family.

The four-month limitation reflects our belief that we could not maintain the integrity of the short-term exclusion without providing some regulatory framework. As written, the four-month limitation does not restrict the amount of accrued debts or liabilities (such as overdue rent) that a State may cover or impose a specific monetary limit on the amount of benefits that the State may provide.

You should note that we have added a new requirement at § 265.9(b)(6) for States to report annually on the nature of nonrecurrent, short-term benefits. More specifically, we are asking States to describe the benefits they are providing, including their eligibility criteria (together with any restrictions on the amount, duration, or frequency of payments), any policies they have instituted that limit such payments to families eligible for assistance or that have the effect of delaying or suspending eligibility for assistance, and any procedures or activities developed under the TANF program to ensure that individuals diverted from TANF assistance receive appropriate information about, referrals to, and access to Medicaid, food stamps, and other programs that provide benefits that could help them successfully transition to work.

To the extent that a State provides the required information either in the State plan or in the data it reports under § 265.9(b)(6), it would not have to duplicate this information.

Because of the tremendous importance of food stamp and Medicaid as supports for working families, we

strongly encourage States to maintain critical linkages among these programs because accessing these other program benefits could further the goals of TANF. In addition, diverting individuals from programs where they have an entitlement to benefits or to prompt action on a request for assistance could represent a violation of rules in the other programs.

According to the Health Care Financing Administration (HCFA), section 1931 of the Social Security Act establishes rules for Medicaid eligibility for low-income families based on the income and resources of the family. Under section 1931, States must provide Medicaid coverage at least to families with a dependent child living with them whose income and resources would have qualified them for AFDC benefits under the State plan in effect on July 16, 1996. Therefore, Medicaid eligibility is not tied to or based on eligibility for TANF-financed assistance. Also, States cannot limit Medicaid eligibility to families receiving TANF.

Medicaid regulations (at 42 CFR 435.906) require States to provide the opportunity for families to apply for Medicaid without delay.

In States that use joint TANF-Medicaid applications or utilize the State TANF agency to make Medicaid eligibility determinations, the TANF office is considered a Medicaid office. Therefore, in this situation, a TANF agency, like any Medicaid agency, must immediately furnish a Medicaid application (joint or separate) upon request and act upon that application promptly. If there is a delay in accepting or filing an application for TANF assistance (e.g., because the family is served through a diversion program, is subject to up-front job search requirements, or faces other behavioral or administrative requirements that delay assistance), the agency must make a Medicaid application available immediately. If there is a delay in processing the TANF portion of a joint application, the agency must process the Medicaid portion of the application immediately.

According to the Food and Nutrition Service (FNS), at the Department of Agriculture, in enacting PRWORA, Congress thoroughly reviewed the Food Stamp Act of 1977, as amended, and made changes to many of its provisions. However, it made clear that the Food Stamp Program continued to have a distinct set of nationwide application rights and responsibilities. Section 11(e) of the Food Stamp Act sets forth requirements that a State agency administering the Food Stamp Program must follow. Among other things, it requires that the Agency: (1) provide timely, accurate, and fair service for applicants for, and participants in, the Food Stamp Program; (2) develop an application containing the information necessary to comply with the Act; (3) permit an applicant household to apply to participate in the program on the same day the household first contacts the food stamp office in person during office hours; and (4) consider an application that contains the name, address, and signature of the applicant to be filed on the date the applicant submits the application.

Where PRWORA did not amend the Food Stamp Act, current food stamp regulations remained in effect. The regulations at 7 CFR 273.2(c) provide that: (1) each household has the right to file an application on the same day that it contacts the food stamp office during office hours; (2) the State agency must advise the household that it does not have to be interviewed before filing an application, and it may file an incomplete application as long as the applicant's name and address are recorded on an appropriately signed form; (3) State agencies shall encourage households to file an application form the same day the household contacts the food stamp office and expresses interest in obtaining food stamp assistance. If individuals express interest in the Food Stamp Program, or have concerns about food security, States have a responsibility to inform them about the Food Stamp Program and their right to apply; and (4) the State agency must make application forms readily accessible to potentially eligible households.

Although PRWORA amended section 11(e) of the Food Stamp Act by eliminating the requirement for joint processing of food stamp and TANF applications, State agencies that continue to do so must abide by the food stamp regulations at 7 CFR 273.2(j). These regulations set forth requirements regarding interviews, verification, and application processing procedures for joint applications. Most importantly, the regulations at 7 CFR 273.2(j)(1)(iii) provide that households whose public assistance applications are denied shall not be required to file new food stamp applications, but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for public assistance and food stamp purposes.

We advise you to look for additional guidance on food stamp and Medicaid requirements through the HCFA and FNS web sites (www.hcfa.gov/medicaid/medicaid.htm and www.usda.gov/fcs/, respectively).

We strongly believe that effective procedures to ensure that diverted individuals access Medicaid, food stamps, or other programs are critical to the success of TANF programs in achieving lasting employment for the families they serve. In addition, such procedures might help States avoid compliance and legal problems in the other programs. Given the importance of this issue, the additional information on State practices that we are requiring in the annual report will be extremely helpful in assuring the role TANF agencies are playing with individuals receiving diversion benefits.

While we dropped our proposal for a separate annual program and performance report, we still need information on key aspects of State programs in order to prepare the annual report to Congress required at section 411(b)(3) of the Act. To the maximum extent possible, we will draw upon data available through the State plans and other reports submitted by the States. However, because diversion benefits fall outside of the definition of assistance, and we have chosen not to set standards of completeness for State plan submissions, we may not have adequate information on this major feature of TANF programs to fulfill our responsibilities under section 411(b)(3).

The new reporting focuses on diversion because it is one of the major new tools States are using to achieve the work objectives of the Act and, under section 413(d), Congress has shown an interest in looking at State performance in this specific area. Also, the burden associated with providing this aggregate program information is substantially less than the burden that would be associated with providing disaggregated data; because diversion payments fall outside the definition of assistance, the disaggregated data requirements do not apply.

Comment: Several commenters also expressed concerns about the proposed limits on the amount of assistance and the meaning of the proposed 90-day restriction. Commenters were not sure whether the 90-day restriction represented a limit on the period of needs to be met or a limit on the total monetary value of assistance. They objected to both possible interpretations. While they generally seemed to prefer an interpretation that limited the duration of need that could be met, they also expressed concern about restrictions that would affect the States' ability to deal effectively with past debts or liabilities or meet needs that extended beyond 90 days.

Response: As discussed previously, we have replaced the 90-day limitation

with a more flexible four-month limitation. The new provision is more flexible with respect to past debts or liabilities; it merely limits the extent to which payments for future needs can be excluded from the definition of assistance. We also clarified in the preamble that the four-month limitation does not impose a specific monetary limit on the amount of benefits that may be excluded. Rather, the limitation reflects the period of time for which future needs can be addressed by a single ''nonrecurrent, short-term'' benefit.

When we issued the proposed rule, we did not necessarily envision a single Federal interpretation of the 90-day limitation. Our intent was to keep State payments for needs that were ongoing or extended over a significant period of time within the definition of assistance. We did not want a State to bundle several months' worth of assistance into a single assistance payment in order to avoid TANF requirements for itself or the family.

Our expectation for the language in the final rule is no different. It is appropriate for States to treat short-term assistance that addresses discrete episodes of need as ''nonassistance.'' It is not appropriate for States merely to condense the time period over which they pay assistance to needy families so that they can categorize the benefits as ''nonassistance'' and avoid TANF requirements. Also, if a family's emergency is not resolvable within a reasonably short period of time, the State should not keep the case indefinitely in emergency status, but should convert it to a TANF assistance case.

At the same time, if a family receives aid in one month that falls under the nonrecurrent, short-term exclusion, but suffers a major set-back later in the year, develops a need for ongoing aid, and starts receiving TANF assistance, we would not require the State to re-define the month of initial aid as assistance and retroactively subject the family to TANF requirements.

(f) Benefits and Supports for Noncustodial Parents

Comment: Commenters also expressed some concern about the potential effects on the custodial parent and children (especially under time limits) when a noncustodial parent receives benefits. This issue was of particular concern in light of the focus given to assistance for noncustodial parents under Welfare-to-Work.

Response: Many services and supports that States might provide to noncustodial parents (such as transportation and most work activities) are excluded under the final definition of assistance. Also, as we discuss in the preamble to § 264.1, assistance provided to noncustodial parents does not count against the time limit of the custodial parent or children living in a different household unless the noncustodial parent is receiving assistance as a member of that same family and is the spouse of the head of the TANF household.

Comment: A couple of commenters expressed concern about the effect of assistance that might be paid to a noncustodial parent. For example, a noncustodial father is paying support. However, the noncustodial parent of a second child in the family is receiving assistance. The State takes the support paid by the first noncustodial father and reimburses itself for assistance paid to the noncustodial parent of the second child. The mother and two children are not receiving any assistance for themselves and do not receive any child support because the State is retaining it. Commenters believe that it would be unfair to the custodial parent and children if assistance provided to a noncustodial parent resulted in the custodial parent's losing her right to receive child support and remaining subject to child support cooperation requirements.

Response: We do not believe that the statute intends or requires this absurd result. Rather, the assignment of the rights to support by the custodial parent is only intended to cover assistance paid to the custodial parent and the child(ren) living with the custodial parent. It does not cover assistance that the noncustodial parent receives based on his or her inclusion in the family as a noncustodial parent. Thus, the State may not reimburse itself for assistance given to the noncustodial parent, as a noncustodial parent, from child support paid for the children. However, if noncustodial parents of a TANF child are receiving assistance as the custodial parents or caretakers of another TANF child, they may be subject to separate assignment requirements. They might also have responsibility under individual State law to reimburse the State for assistance provided.

(g) Benefits and Supports From the WtW Program

Comment: A couple of commenters said that we should exclude noncash assistance paid through WtW funds from the definition of assistance. One commenter indicated that we had mentioned this exclusion in the preamble to the NPRM, but did not exclude it in the regulatory text. Another commenter expressed particular concern about child care assistance under WtW because States do not have the same authority to transfer WtW funds to the Discretionary Fund of the Child Care and Development Fund as they do with Federal TANF funds.

Response: Section 408(a)(7)(G) of the Act, which was added by the Balanced Budget Act, provides that noncash assistance paid by WtW funds ''shall not be considered assistance.'' However, this exclusion is only for the purpose of the time limit, and the regulation at § 264.1 provides that we will not count months of receipt of noncash WtW assistance against an individual's Federal clock.

We do not believe that the statutory language supports a broader exclusion of WtW assistance from the definition of assistance. However, the general changes we have made to the definition of assistance in this final rule should help alleviate this concern. Further, we would point out that many of the TANF requirements (such as participation rates) do not apply to WtW because they apply only to the ''State program funded under this part.'' This latter phrase refers to TANF only, not to WtW. (At the same time, the spending restrictions generally do apply to WtW, as they refer to grants under section 403 and WtW grants are provided under section 403(a)(5).)

The Department of Labor has received numerous questions from its grantees about the definition of ''noncash'' assistance and asked us to define the term in our rules. At the new § 260.32, you will find a definition for WtW cash assistance. If a benefit falls within the definition of assistance, but does not meet the definition of ''WtW cash assistance,'' it would be ''noncash'' assistance. Examples of ''noncash'' assistance would include housing vouchers or a State version of food stamps. You will find additional discussion in the preamble for § 260.32.

(h) Transitional Services

Comment: We received a few comments suggesting that we should explicitly exclude ''transitional assistance'' or services in support of continued employment from the definition of assistance.

Response: We do not believe it is possible to exclude ''transitional assistance'' from the definition of assistance without substantially altering the basic time-limited nature of the TANF program, and we find no statutory basis for such an exclusion.

The concept of ''transitional'' services for families that get a job and are no longer eligible for regular benefits is

recognized in the statute at section 411(a)(5), which requires a report on expenditures and a description of the services provided. However, the language there only addresses ''transitional services.'' Thus, it does not indicate that Congress envisioned a full array of transitional benefits, including ongoing needs-based payments, being available to former recipients.

To the extent that States provide only supports for working families, such as child care and transportation or work subsidies, or work-related services such as counseling, coaching, referrals, and job retention and advancement services under their transitional services programs, we already exclude those services from the definition of assistance. Also, we would exclude short-term benefits such as cash assistance to stabilize a housing situation as ''nonrecurrent, short-term'' assistance.

States wanting to provide ongoing transitional payments that meet the definition of assistance to former recipients have three options: (1) fund those programs under TANF as assistance, but use different need standards than they do for other forms of TANF assistance; (2) fund those programs with MOE money under a separate State program; or (3) transfer the funds from TANF under section 404(d). If they fund transitional benefits with State-only money, the Federal time limit will not apply, regardless of whether they provide the benefits within TANF or in separate State programs. States may also provide transitional services without invoking time limits by transferring funds to either the Discretionary Fund of the Child Care and Development Fund or the Social Services Block Grant.

(i) Housing and Related Benefits

Comment: One commenter said the short-term, one-time rules should exclude some of the former EA benefits for arrears and shelter.

Response: The proposed and final language would both exclude certain payments for rent arrears, utility arrears, security deposits and other shelter-related expenses that were previously covered in State EA programs.

However, we cannot categorically state that all former EA benefits would be excludable from the definition of assistance. For example, in some cases, States claimed shelter expenses under EA that addressed long-term, ongoing needs of families.

Comment: One commenter said that we should not consider housing and utilities to be part of ''income support.''

Response: We disagree with the comment. Housing and utilities have traditionally been major components in the definition of basic needs used in determining welfare payments. Further, the TANF statute provides no basis for excluding them from the definition of assistance under TANF. However, certain shelter or utility costs might be excludable under the two general exclusions (i.e., because they are ''nonrecurrent, short-term'' or they entail services such as counseling that do not provide income support).

(j) Foster Care and Child Welfare

Comment: A few commenters asked that we exclude payments for foster care, out-of-home placements, and substitute care from the definition.

Response: With regard to foster care or other out-of-home maintenance payments, we would note that such costs are not allowable TANF costs under section 404(a)(1) of the Act since they are not reasonably calculated to further a TANF purpose. However, in some cases, where a State previously covered such benefits under its IV–A plan, they could be allowable TANF costs under section 404(a)(2).

There are additional costs related to foster care or out-of-home maintenance payments that may be allowable and referred to, in short-hand, as foster care. For example, there are costs for family preservation activities, such as counseling, home visits, and parenting training, that would be allowable TANF costs because they are reasonably calculated to enable a child to be cared for in his or her own home.

There may also be other costs that were authorized under a State's EA program for which Federal TANF funds could be used, under section 402(a)(2). Examples include costs such as administrative costs for activities associated with determining whether an emergency exists and costs for the temporary placement of the child, if determined necessary, while an investigation takes place.

Comment: One commenter asked that we strengthen the definition of assistance to urge States to use this flexibility in order to maintain families intact, where services can achieve that end.

Response: Both the proposed and final definitions exclude certain services directed at family preservation and certain forms of crisis intervention from the definition of assistance. Some commenters would have liked us to go further and exclude foster care, substitute care, and out-of-home placements. As we just discussed, maintenance payments for foster care, substitute care, and out-of-home placements (except perhaps temporary emergency placements during an investigation of abuse) are not eligible TANF expenditures unless allowable under section 404(a)(2).

(k) Emergency Assistance

Comment: In different ways, a few commenters asked that we exclude assistance provided under the prior EA program from the definition of assistance. Among their underlying concerns were assistance that was paid for longer than 90 days, emergency shelter, and certain child welfare services.

Response: We can find no legal justification for categorically excluding prior EA benefits from the definition. The statute authorizes States to use Federal TANF funds for activities that were previously authorized under EA, but otherwise does not give EA special status.

Most assistance that was provided under EA is excludable under one or more of the general exclusions. However, there were EA programs that provided assistance to families for basic needs and extended periods of time. If we categorically excluded all prior EA benefits from the definition of assistance, we could be perpetuating some of the same problems that existed under prior law.

(l) Other Definitional Issues

Comment: One commenter requested exclusion of emergency shelters for victims of domestic violence; of particular concern was the potential running of the time-limit clock when individuals were receiving such assistance.

Response: Depending upon the form and duration of this assistance, it might be excludable under one of the general exclusions we provide. We do not think a special, categorical exclusion is justified for this type of benefit.

However, we would point out that, under section 402(a)(7) of the Act, known as the Family Violence Option, States may waive program requirements, including time limits, for victims of domestic violence. If States exceed the 20-percent cap on time-limit exceptions as the result of granting such waivers, they may be eligible for reasonable cause. You should see the prior discussion entitled ''Treatment of Domestic Violence Victims'' and the regulatory text at subpart B of part 260 for additional information.

Comment: One commenter expressed concern about inclusion of relatively insignificant amounts of assistance and the negative effect of such a policy on

a family's willingness to seek assistance in light of time limits.

Response: While we understand the commenter's concern, we have no basis for protecting families that receive small amounts of assistance from the time limits; nothing in the statute or legislative history suggests that a family would have to be receiving a threshold payment level in order to be considered to be receiving assistance.

We have some early indication that families who have other income and are eligible for smaller amounts of assistance are not necessarily choosing to forego aid in order to reserve their months of assistance. We will be paying attention to this issue over the coming months.

Comment: One commenter expressed concern about a broad definition of assistance because other programs might count any aid in the form of ''assistance'' as income in determining eligibility for benefits.

Response: We must create a definition that conforms with the TANF statute and the statutory intent of the TANF program. In that context, we cannot assure that our definition will have no negative spill-over effects on other programs. However, the additional exclusions from the definition in the final rule should alleviate this concern. Further, if we find out that definition is having adverse effects on other programs, we are willing to work with the other programs in exploring ways to resolve such problems. For example, we have worked with the Office of Child Support Enforcement in revising guidance on the child support distribution rules so that the interim definition of TANF assistance did not inadvertently cause child support collections intended for families to be diverted to government coffers.

Comment: One commenter asked that we explicitly exclude supportive services provided to applicants from the definition of assistance, particularly when the case does not get approved for regular TANF benefits.

Response: We do not believe it is necessary to add this situation as a separate exclusion. We would expect such applicant services to be covered by the exclusion for nonrecurrent, short-term benefits or as supports for working families. Also, if we explicitly excluded applicant benefits, we might create an incentive for States to leave a case open rather than to complete the eligibility determination process. We would not want to create such an incentive; it is important for States to act on applications and provide assistance in a timely manner.

Comment: One commenter said we should clarify the definition of assistance to exclude such items as State tax refunds. A few commenters specifically suggested that we exclude earned income tax credits.

Response: We have excluded refundable earned income credits, but have otherwise not given special consideration to tax refunds in the definition. We had two basic concerns. First, we did not want to suggest that tax refunds were categorically appropriate as either Federal TANF or State MOE expenditures. It would depend on what the nature and purpose of the ''refund'' was. Any payments have to meet at least two tests—be an ''expenditure'' and be consistent with the purposes of the program. In the case of MOE, it would also have to be targeted at needy families. We believe a refundable earned income credit can meet these tests. However, the vast majority of tax refunds probably would not. For example, if a family gets a refund of its income taxes because of over-withholding, that refund check does not represent an allowable expenditure for Federal TANF or State MOE purposes. If there were tax refunds (analogous to refundable tax credits) that were allowable expenditures for TANF-related purposes, they would be included or excluded from the definition of assistance based on the existing principles and language in the definition.

We provide an exclusion for refundable earned income tax credits because we consider them a work support rather than basic income support. They normally serve to compensate low-income working families for some of the tax-related costs of employment. Thus, they more closely resemble work supports than traditional welfare payments.

(m) Tracking of Exclusions

Comment: A number of commenters objected to language in the preamble of the NPRM indicating that we would track State expenditures on assistance and nonassistance and look more closely if we found a large portion of program resources being spent on ''nonassistance.'' We also received a few comments saying that we needed to collect more information on State TANF and MOE expenditures in order to maintain the integrity of the program and protect the interests of needy families.

Response: In the preamble of the proposed rule, we expressed concern that information showing large amounts of expenditures on nonassistance might indicate that the flexibility we provided in the definition of assistance might be undermining the goals of the legislation. We believe this is a valid concern and have not changed either the reporting requirements or our plans to look at this information. In fact, because we have significantly narrowed the definition of assistance (and thereby the categories of benefits and supports on which State must report disaggregated and aggregate data), we have decided to strengthen the fiscal reporting requirements. You will find a discussion of these changes in part 265 and the specific changes in Appendix D.

We are not saying that we will automatically change the definition of assistance or take other action if we find large amounts of resources on ''nonassistance.'' In fact, commenters noted some valid reasons why we might expect to see growth in the amount of ''nonassistance'' as welfare reform progresses. For example, we might see increasing investments in interventions and prevention strategies (such as work supports, case management, mentoring, and job retention services). Thus, we would not presume that growth in ''nonassistance'' was inappropriate. However, we would want to understand and be able to explain the reason for the growth.

At this point, we are not going to prejudge State actions or write rules that unduly limit State flexibility to develop innovative programs that can effectively serve their needy families. However, in light of our responsibility for ensuring program accountability, the evolving and increasingly diverse nature of State TANF and MOE programs, and the flexibility inherent in these rules, we believe it is appropriate to gather information and monitor what is happening.

Section 260.32 What Does the Term ''WtW Cash Assistance'' Mean? (New Section)

This is a new section in the final rule. As we discussed briefly in the last section, the Department of Labor has received numerous questions about the definition of the terms ''cash assistance'' and ''noncash assistance'' because if assistance provided under WtW is noncash, it does not count against the TANF time limit. Therefore, at the request of the Department of Labor, we have added a definition of ''WtW cash assistance'' in this new § 260.32. This definition (in conjunction with the regulation at § 264.1(b)(1)(iii)) clarifies the circumstances under which benefits received by a family under WtW count against the TANF 60-month time limit. By statute (section 408(a)(7)(G) of the

Act), WtW ''noncash assistance'' does not count for this purpose.

In defining ''WtW cash assistance'' (i.e., what does count), we started with the presumption that, to be considered ''WtW cash assistance,'' a benefit must fall within the definition of ''assistance.'' Thus, services, work supports, and nonrecurrent, short-term benefits that are excluded from the definition of assistance at § 260.31(b) are not ''WtW cash assistance.'' Also excluded are supportive services for nonworking families. Although they are assistance, these benefits are services designed to meet specific nonbasic needs and thus are not like cash.

Then, the definition clarifies what types of ''assistance'' under WtW would be considered ''WtW cash assistance.'' First, it includes assistance designed to met a family's ongoing, basic needs. Second, it includes such benefits as cash assistance to the family, even when provided to participants in community service or work experience (or other work activities) and conditioned on work; the Conference Report (H. Rept. 105–217) specifically mentions ''wage subsidies'' as an example of WtW ''cash assistance.'' Finally, our definition incorporates both cash payments and benefits in other forms that can be legally converted to currency (e.g., electronic benefit transfers and checks).

This definition does not limit the types of WtW benefits for which families that have received 60 months of TANF benefits are eligible. Under § 264.1(a)(3), State and local agencies may provide cash and noncash WtW assistance and other benefits to such families beyond the 60-month limit on assistance.

Section 260.33 When Are Expenditures on State or Local Tax Credits Allowable Expenditures for TANF-Related Purposes? (New Section)

As discussed previously, in § 260.30, we have added a definition of ''expenditure'' that helps define what would be a qualified expenditure of Federal TANF funds or State MOE funds. Within this definition of ''expenditure,'' we indicate that refundable tax credits could be an expenditure. The purpose of this section is to clarify how to determine the amount of allowable expenditures in this situation. More specifically, it says that, for an earned income tax credit or other allowable credit, we would count as an expenditure only the State's actual payment to the family for that portion of the credit that the family did not use to offset their tax liability.

The family generally determines its income tax liability by following a number of basic steps. First, the family determines its adjusted gross income (income subject to a State's income tax). Then it applies any allowable exemptions and deductions to reduce the adjusted gross income. The net figure is the total amount of income that is subject to taxation. The taxable income is the basis for determining the amount of taxes owed. Then, the family applies any allowable credits to reduce the amount of taxes that it owes.

For example, a wage earner qualifies for a $200 earned income tax credit. The family's tax liability prior to the application of any credits is $75. When reconciling at the end of the income tax year, the eligible family uses the first $75 of the credit to reduce its State income tax liability to zero. If the State elects to refund any part of the remaining $125 in EITC, then the amount that it actually pays out to the family is a qualified expenditure and counts toward the State's TANF MOE. The $125 represents an actual outlay from State funds to provide extra money to the family. In this regard, the State has spent its own funds to provide a benefit to the family that is consistent with a purpose of TANF.

For emphasis, this section also reiterates that, in order to count as an expenditure of Federal TANF funds or State MOE funds, the purpose of the tax credit program must be reasonably calculated to accomplish one of the four purposes of the TANF program. We recognize that tax credits might be an appropriate and highly efficient method for getting benefits to needy families and want to support those efforts. In particular, State earned income tax credits provide valuable supports and incentives for low-income working families, and we do not want to discourage more States from establishing these policies. At the same time, we want to be sure that our policies support the goals of TANF and promote continued State investments in needy families.

Also, because tax credits represent an area of significant interest to States, the Congress, and fiscal authorities, we have added new lines to the TANF Financial Report that will tell us how many Federal and State dollars are going to refundable earned income tax credits or other refundable State and local credits.

The mere fact that the State issues a tax refund check to a taxpayer does not necessarily indicate that the family has received a refundable tax credit. For example, a TANF-eligible family could receive a refund check simply because the aggregate amount withheld from its paychecks exceeded its tax liability. Such a refund would not meet the definition of a refundable EITC.

For example, assume an individual has a $75 State income tax liability for a year. Yet, through withholding, he or she paid a total of $150 in State income taxes throughout the year. After reconciliation at the end of the income tax year, the amount that the State owes the individual due to tax withholding is not considered a refundable tax credit. Nor is the return of an individual's overpayment of taxes an expenditure of the State.

In determining the amount of MOE that may be claimed, all credits would be subtracted from the amount of the tax liability. The family's tax liability is the amount owed to the State prior to any adjustments for credits or payments. Any excess credit remaining that the State refunds to the family may count as an expenditure if the program for tax credits is reasonably calculated to accomplish a purpose of the TANF program.

Taking another example, suppose the wage earner, who has paid $150 through withholding, actually qualifies for an earned income tax credit of $200. The $125 portion of the credit that exceeds the individual's $75 State income tax liability could qualify as an expenditure if the State pays it out to the family. The $150 withheld is irrelevant to the calculation because this does not represent the family's actual income tax liability. If the family were to receive a $275 refund, $125 (the balance remaining of the EITC after the tax liability is subtracted) would qualify as an expenditure.

Tax relief measures, including nonrefundable tax credits, as well as exemptions, deductions, and tax rate cuts, that serve only to offset a family's income tax liability do not qualify as expenditures.

In addition, tax credits that serve to rebate a portion of another State or local tax, including sales tax credits and property tax credits, are not expenditures under the definition of expenditure at § 260.30. This definition is consistent with longstanding Federal policy on the meaning of expenditure, as reflected in the single definition for outlays and expenditures at 45 CFR 92.3.

Also, if a State administers more than one tax credit program allowable for Federal TANF or State MOE purposes, the State may count as an expenditure the amount by which the combined value of the allowable credits exceeds a TANF-eligible family's State income tax liability prior to application of all allowable credits.

The questions about State tax credits generally arose in the context of what is a ''qualified State expenditure'' for MOE purposes. In particular, the issue principally centered on whether States might count the portion of an earned income credit attributable to revenue loss toward their MOE. To properly address this issue, it is important to note that, in addition to the ''eligible families'' requirement discussed at § 263.2, the statute requires two key criteria to be met for MOE purposes. These criteria are: (1) the State's cost must be an expenditure; and (2) the expenditure must be reasonably calculated to accomplish a purpose of the TANF program. The second criterion is not a difficult standard to meet. States just need to be able to demonstrate that the specific tax benefit program is ''reasonably calculated'' to accomplish a purpose of the TANF program. Because more questions were raised as to what is an expenditure, this issue required more extensive deliberation.

To consider fully the argument that the entire cost of an earned income credit might represent an expenditure, we had to consider this issue within the broader framework of the full range of potential tax relief measures. Since we published the NPRM, we have received several inquiries regarding whether the cost of other tax relief measures were expenditures for MOE purposes.

An earned income credit is but one example of a tax relief measure. Some States also have other credits available to residents. These include, but are not limited to, property tax and homestead credits, child and dependent care credits, sales tax credits, credits for families that purchase a car seat, and credits for individuals with significant medical expenses. Tax relief also takes the form of income tax deductions and exemptions. Some States also offer tax credits to investors and businesses, e.g., credits that help or promote employment of low-income residents such as a rent reduction program credits, neighborhood assistance act credits, an enterprise zone act credits, day-care facility investment tax credits, and major business facility job-tax credits.

Few of these activities result in refunds in excess of any tax liability (whether it be income, sales, property tax liability). But, all of these activities cost the State lost tax revenue. Therefore, we had to consider whether lost revenue equals an expenditure. While the statute under 409(a)(7) uses the term ''expenditures,'' it does not define it. However, since 1988, when the Department issued its common administrative rule at 45 CFR 92.3, the term expenditures has been defined as outlays, for purposes of Federal grant funds. Because Congress did not provide another definition of expenditure in the TANF statute, we have presumed that the existing regulation defining expenditure as an outlay is applicable.

To outlay is to expend, spend, lay out, or pay out. We therefore do not consider that a decrease in a State's revenue associated with a tax credit program or other tax relief measure meets the common rule definition of an ''expenditure.'' Accordingly, we conclude that tax provisions that only serve to provide a family with relief from State taxes such as income taxes, property taxes, or sales tax represent a loss of revenue to the State, but not an expenditure. However, the portion of a tax credit that exceeds a family's income tax liability and is paid to the family is an expenditure. That expenditure would count toward a State's TANF MOE requirement if it is reasonably calculated to meet a purpose of the TANF program.

Arguably, accepting less revenue (taxes) from the income of families (or business), provides a financial benefit to the family (or business) by allowing them to retain a greater share of their own money. As such, tax relief activities in general can serve to complement welfare reform efforts. However, tax relief measures that solely provide a family (or business) with relief from various State taxes are not expenditures.

In determining that the common rule Federal definition of expenditures was appropriate to use in the TANF context, we also examined the broader policy implications. Including nonrefundable credits and other tax relief measures that served solely to reduce tax liability could redirect Federal TANF and State MOE expenditures away from the neediest families (who get no direct benefit from nonrefundable credits) and could allow States to claim as MOE an extremely wide range of tax cuts. We do not think this result would be consistent with the intent of TANF.

At § 263.2, you will find additional discussion about the treatment of tax credits and other tax provisions.

Section 260.35—What Other Federal Laws Apply to TANF? (New Section)

As we indicated in the section of the preamble entitled ''Recipient and Workplace Protections,'' a number of commenters expressed concerns about the NPRM's failure to support the protections available to TANF recipients under Federal nondiscrimination and employment laws. We added this section to the regulations in response to those comments. Please see the earlier preamble section for a more detailed discussion of the commenters' concerns and our response.

Section 260.40—When Are These Provisions in Effect? (§ 270.40 of the NPRM)

Background

This section of the proposed rules provides the general time frames for the effective dates of the TANF provisions. As we noted in the NPRM, many of the penalty and funding provisions had statutorily delayed effective dates. For example, most penalties would not be assessed against States in the first year of the program, and reductions in grants due to penalties would not occur before FY 1998 because reductions take place in the year following the failure. We referred readers to the discussion on the individual regulatory sections for additional information.

We also made the important point that we did not intend to apply the TANF rules retroactively against States. We indicated that, with respect to any actions or behavior that occurred before final rules, we would judge State actions and behavior only against a reasonable interpretation of the statute.

As we reviewed the comments, we noted a discrepancy between this preamble discussion and the proposed regulatory text. The preamble indicated that States would operate under a ''reasonable interpretation of the statute'' until issuance of final rules; the regulatory text said that the ''reasonable interpretation'' standard would apply until the ''effective date'' of the final rules. As you will see in the regulatory text at § 260.40 of this final rule, the correct policy is that the ''reasonable interpretation'' standard applies to all State behavior prior to October 1, 1999, the effective date of these rules.

Also, in the proposed rule, at § 270.40(a), we incorporated language explaining when the statutory requirements went into effect for States implementing their TANF programs. Because States all implemented their TANF programs by July 1, 1997, as required by statute, this language is obsolete, and we deleted it from the final rule.

Comments and Responses

We received several comments on this section of the rule. Commenters' greatest concern was the effective date of the proposed rule.

Comment: A significant number of commenters asked that we delay the effective date of the final rule to allow

States time to implement all the regulatory provisions, e.g., to change their administrative rules, conduct staff training, make necessary computer systems modifications, and ensure data validity. Clearly, the major area of concern was the States' ability to implement new rules on data collection and reporting. We received three dozen comments that specifically asked for a phase-in period for meeting the reporting requirements.

A number of commenters did not offer a specific suggestion as to how long this phase-in period should be. Among the commenters who did make suggestions, the suggested period of time ranged from 9 months to 2 years. The most common suggestion was 12 months. Some commenters noted that States would be simultaneously addressing Year 2000 compliance problems and would need added time for that reason.

Response: In response to those comments, we have decided to make the effective date of the final rule the beginning of the next fiscal year. Our initial inclination was to make the rule generally effective within two to three months of publication, but to lag the data reporting requirements an additional six months. However, we realized that we could not successfully implement some of the general provisions until we had the revised data reporting in place. For example, we could not adjust a State's work participation rates based on the new welfare reform waiver provisions before the new reporting took effect. Also, many of the significant provisions in this rule (including the caseload reduction credit and the administrative cost caps) would be difficult to implement part way into a fiscal year.

To clarify the meaning of this effective date, States will continue program and fiscal reporting under the ''emergency reporting'' provisions for assistance provided, and expenditures made, through September 30, 1999. The last reports under this old system will be due November 14, 1999. States will begin reporting under these rules and the forms in the appendices effective with the first quarter of fiscal year 2000. The first TANF Data and Financial reports under these new requirements will be due February 14, 2000.

The timeframes we have provide in this final rule are fairly rigorous. Also, they are substantially shorter than many States requested. However, we think that States have sufficient resources to meet these deadlines, and they will receive our continued support in doing so. Any further delays could undermine the purposes of the law.

At the same time, we recognize that Y2K compliance and these new TANF requirements may be placing extraordinary, simultaneous demands on State staff and resources. For States that commit significant resources to achieve Y2K compliance in time, we have added a reasonable cause criterion at § 262.5(b)(1). This new provision will provide some penalty relief to States that cannot report one or both of their first two quarters of TANF data on time due to Y2K compliance activities. You will find additional discussion of that decision at §§ 262.5, 265.5, and 265.8.

Comment: Several commenters expressed support for our decision not to apply the rules retroactively. A few commenters expressed concerns about the ''reasonable interpretation'' standard we intended to apply prior to issuance of rules was too strenuous. One said we should exempt States from ''all but the most flagrant program infractions.'' Another expressed concerns about the level of Secretarial discretion in such a standard and the lack of clear criteria about what it meant. Another asked that we accept any behavior that did not ''contradict any provision of the law, court decisions or due process.''

Response: This section of the rule retains our proposal to judge State actions prior to the effective date of these rules under a ''reasonable interpretation of the statute'' standard. We understand the commenters' interest in clearer criteria. However, the standard in the rule is a term of art and does in fact give most parties a very good sense of where one would draw the line. Also, to develop very specific criteria at this point would in fact amount to retroactive rulemaking, which we promised we would not do.

At the same time, we want to assure States that we recognize that this statute is complicated and do not intend to penalize anyone who has exercised reasonable discretion and judgment during the period before final rules take effect.

For example, we understand that there is a broad range of views about the interpretation of section 415 on continuation of waiver policies. Thus, in determining whether a State is liable for a penalty for failing work participation rates for FY 1997, 1998, or 1999, we would give substantial deference to the State's proposal for rate adjustments based on waiver policies that it continued.

Also, we point out that States have the opportunity to dispute any penalty finding through the administrative processes available at part 262. These processes provide a vehicle for addressing and resolving any disagreements about whether a State was operating under a ''reasonable interpretation of the statute.''

We disagree with that the view that the standard we proposed is too strenuous. We do not necessarily want to provide cover to States that pushed the envelope beyond reasonable bounds in terms of interpreting the statute.

Subpart B—Domestic Violence

As we have noted earlier, we decided to consolidate the regulatory provisions on domestic violence in this new subpart to part 260. You can find a discussion of these provisions and the comments received on the proposed rule in the earlier section of the preamble entitled ''Treatment of Domestic Violence Victims.''

Subpart C—Waivers

As we have noted earlier, we decided to consolidate the regulatory provisions on section 1115 waivers in this new subpart to part 260. You can find a discussion of these waiver provisions and the comments received on the proposed rule in the earlier section of the preamble entitled ''Waivers.''

VI. Part 261—Ensuring That Recipients Work

Section 261.1—What Does This Part Cover? (§ 271.1 of the NPRM)

This section identifies the scope of part 261 as the mandatory work requirements of TANF.

We did not receive any comments that relate solely to the scope of this part.

Section 261.2—What Definitions Apply to This Part? (§ 271.2 of the NPRM)

This section cross-references the general definitions for the TANF regulations established under part 260. We did not receive any comments on this section. We have responded to cross-cutting comments under other sections of this part.

Subpart A—What Are the Provisions Addressing Individual Responsibility?

During our extensive consultations, a number of groups and individuals asked how the requirements on individuals relate to the State participation requirements and penalties. To help clarify what the law expects of individuals (as opposed to the requirements that it places on States), we have decided to outline a recipient's statutory responsibilities as part of this regulation. In so doing, we only paraphrase the statute, without interpreting these provisions. Inclusion of these provisions in the regulation does not indicate our intent to enforce these statutory provisions; rather, we

have included the requirements in the regulation for informational and contextual reasons. Nevertheless, our expectation is that States will comply with these requirements.

Section 261.10—What Work Requirements Must an Individual Meet? (§ 271.10 of the NPRM)

PRWORA promotes self-sufficiency and independence by expanding work opportunities for welfare recipients while holding individuals to a high standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988. It espouses the view that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As States and communities assume new responsibilities for helping adults get work and earn paychecks quickly, parents face new, tougher work requirements.

The law imposes a requirement on each parent or caretaker to work (see section 402(a)(1)(A)(ii) of the Act). That requirement applies when the State determines the individual is ready to work, or after he or she has received assistance for 24 months, whichever happens first. For this requirement, the State defines the work activities that meet the requirement.

In addition, there is a requirement that each parent or caretaker participate in community service employment if he or she has received assistance for two months and is neither engaged in work in accordance with section 407(c) of the Act nor exempt from work requirements. The State must establish minimum hours of work and the tasks involved. A State may opt out of this provision if it chooses. A State may impose other work requirements on individuals, but there is no further Federal requirement to work.

Readers should understand that these individual requirements are different from the work requirements described at section 407 of the Act. Section 407 applies a requirement on each State to engage a certain percentage of its total caseload and a certain percentage of its two-parent caseload in specified work activities. For the State requirement, the law lists what activities meet the requirement. A State could choose to use this statutory list for the work requirement on individuals described above, but is not required to do so. Subpart B below explains more fully what the required work participation rates are for States and how we calculate them. Subpart C explains the work activities and the circumstances under which an individual is considered ''engaged in work'' for the purpose of those rates.

We made a minor change to the text of the regulation from the NPRM, removing the reference to the date that the community service employment provision took effect, since that date has already passed.

In addition to the comments discussed below, we received several comments in support of the language that we used in this section.

Comment: A few commenters suggested that this section should reference the fact that these work requirements must be consistent with the provisions of section 407(e)(2) of the Act, exempting a single custodial parent who cannot obtain needed child care from work.

Response: We agree that the work requirements on individuals should more clearly refer to the child care exception and have amended § 261.10(a) and (b) accordingly.

Comment: One commenter urged us to specify that individuals in active military service or participating in a National Community Services Act program be considered to be meeting the individual work requirement.

Response: As we indicated above, it is the State's prerogative and responsibility to define the activities it considers to meet these requirements; therefore, we have not modified the regulations in this area.

Comment: One commenter expressed concern that States will classify recipients prematurely as ''job-ready'' and urged us to ensure that States assess the needs of recipients properly.

Response: The statute vests responsibility for determining when a recipient is ''job-ready'' in the State. It requires each State to assess the skills, prior work experience, and employability of each recipient who is either 18 years of age or who has not completed high school (or equivalent) and is not attending secondary school (see § 261.11).

We agree with the commenter that it is important for States to assess individuals adequately before requiring them to work or engage in any activity; however, as we indicated above, this section of the regulation is intended to paraphrase the statute rather than to interpret it. We have included these provisions to clarify the differing work expectations that the statute imposes on individuals and States.

Section 261.11—Which Recipients Must Have an Assessment Under TANF? (§ 271.11 of the NPRM)

Each State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

With respect to the timing of assessments, the State may make the assessment within 30 days of the date on which the individual is determined to be eligible for assistance, but may opt to increase this period to as much as 90 days.

Several commenters expressed support for the inclusion of this section in the regulations.

Comment: One commenter urged us to define what an appropriate assessment is to ensure that the examination of each recipient is thorough and sensitive to barriers that a recipient may hesitate to identify, such as domestic violence or substance dependence. Another suggested including guidelines or standards for assessments. Others urged us to indicate how we would address a State's noncompliance with this provision or to include a penalty related to this requirement.

Response: Because we have included this provision in the regulations for informational purposes, it would be inappropriate to define its terms or include standards. We expect States to comply with the requirements of this subpart, but including them in the regulations does not indicate our intent to create regulatory expectations or to enforce these statutory provisions. We do not have the authority to add a penalty related to this requirement.

Comment: One commenter suggested that we do not have authority to require assessment of recipients. Others expressed concern about which clients must be assessed and urged us to interpret the requirement to apply only to certain recipients, such as those who are subject to work requirements.

Response: Section 408(b)(1) of the Act requires the State to assess each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school. The regulations reflect this language. Because we have included this provision for informational purpose, we do not think it is appropriate to interpret the statute further in this area.

Comment: One commenter thought that the regulations lacked clarity concerning the timing of assessments for

TANF recipients who had been receiving AFDC compared to the timing for those who become eligible for assistance after the State began its TANF program. Another urged us to allow States more time for conducting assessments.

Response: Because the statute specifies the timeframes in which States may comply with the requirement for an assessment, we do not think it is appropriate to modify those timeframes. However, we agree that it was confusing to describe two different assessment periods for different segments of a State's caseload. Since all States should already have conducted assessments of any recipients that they converted from AFDC to TANF, we have included only the description of the assessment period for new TANF cases in these regulations.

Section 261.12—What Is an Individual Responsibility Plan? (§ 271.12 of the NPRM)

A State may require individuals to adhere to the provisions of an individual responsibility plan. Developed in consultation with the individual on the basis of the initial assessment described above, the plan should set forth the obligations of both the individual and the State. It should include an employment goal for the individual and a plan to move him or her into private-sector employment as quickly as possible. The regulation includes more detailed suggestions for the content of an individual responsibility plan.

Comment: One commenter, acknowledging the ultimate goal of private-sector employment, thought that the individual responsibility plan should recognize and address all barriers to employment, such as mental health or literacy problems. Another commenter suggested that the State's responsibilities to the individual should be more explicit. Another commenter thought that paragraph (d) did not accurately reflect the statute.

Response: We agree that the plan should include whatever activities the State, in consultation with the individual, deems appropriate for overcoming barriers to employment. We reiterated the statute's list of possible plan obligations in paragraph (b) as examples, not as an exhaustive list. We think that paragraph (d) ensures that the plan will describe the State's obligation to the individual. States have the flexibility to draft the plan as explicitly as they find appropriate. We also understand the commenter's concern about the accuracy of paragraph (d) and have amended it to reflect the statute's references to services that enable an individual to obtain and keep employment and to job counseling.

Comment: Some commenters thought that we had overstepped our authority by including anything in the regulations about individual responsibility plans or that our language was too restrictive, preventing States from including plan requirements that do not relate to work. Others commended our inclusion of this section.

Response: As we indicated above, we have included this provision for informational and contextual purposes. In doing so, we paraphrased requirements specified in the statute. For this reason, we do not think we have overstepped our authority or that the language is more restrictive than the statute. Moreover, neither the regulations nor the statute prohibits a State from including in the individual responsibility plan other requirements that it finds appropriate for the individual.

Section 261.13—May an Individual Be Penalized for Not Following an Individual Responsibility Plan? (§ 271.13 of the NPRM)

If the individual does not have good cause, he or she may be penalized for not following the individual responsibility plan that he or she signed. The State has the flexibility to establish good cause criteria, as well as to determine what is an appropriate penalty to impose on the family. This penalty is in addition to any other penalties that the individual may have incurred.

We received comments expressing support for the inclusion of this section in the regulations.

Comment: Several commenters urged us to ensure that the good cause exception referred to in this section protects a recipient from penalty where the individual failed to follow the individual responsibility plan due to a violation of employment laws, such as sexual harassment or other forms of job discrimination. Another suggested we define the term ''good cause'' to give States guidance about the appropriate circumstances for imposing a penalty and urged a broad definition to cover the many barriers to employment that welfare recipients face. Another commenter wanted us to ensure that victims of domestic violence are protected from penalty, i.e., to define good cause to cover these individuals, regardless of whether the State has adopted the Family Violence Option (FVO).

Response: We do not believe it is necessary to define ''good cause'' exceptions. States have substantial experience in this area based on prior law. We encourage States to recognize the special needs of victims of domestic violence elsewhere in the preamble. Although we recognize that it is optional for States, we promote adoption of the FVO. We also encourage States to coordinate their policies on good cause determinations to provide consistent protection for families.

While we have chosen not to regulate ''good cause'' criteria, in order to protect individuals from violations of other employment laws, we have included a new regulatory section at § 260.35 to reference employment protections that exist under other Federal laws. These laws apply equally to welfare beneficiaries and other workers.

Comment: One commenter thought the regulations should explicitly state that a State may define ''good cause'' differently in different subdivisions.

Response: As we indicated above, States have the flexibility to define ''good cause'' as they deem appropriate. Under section 402(a)(1)(A)(i) of the Act, they also have the flexibility to implement their programs differently in different parts of the State. Thus, a State could vary its good cause criteria from one subdivision to another. Since the language of this section tracks that of the statute, we do not think it necessary or appropriate to amend the regulatory text in this regard.

Comment: One commenter urged us to ensure that the individual responsibility plan includes the individual's right to challenge the contents of the plan.

Response: States may design individual responsibility plans as they determine suitable. Because we have included this provision for informational and contextual purposes, we do not think it is appropriate for us to expand upon the provisions of the statute, which we have tracked closely in this section. However, section 402(a)(1)(B)(iii) of the Act requires the State to provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. States should consider when and how to accommodate this recipient right in the development and implementation of individual responsibility plans.

Section 261.14—What Is the Penalty if an Individual Refuses To Engage in Work? (§ 271.14 of the NPRM)

If an individual refuses to engage in work in accordance with section 407 of the Act, the State must reduce the amount of assistance otherwise payable to the family pro rata (or more, at State

option) with respect to any period during the month in which the individual refused, subject to good cause and other exceptions determined by the State. These exceptions include the statutory exception for single custodial parents of children under the age of six who cannot obtain needed child care, which is included in the regulations at § 261.15. The State also has the option to terminate the case.

In addition to the child care exception, each State may establish its own criteria for determining when not to impose a penalty on an individual, that is, when an individual has ''good cause'' for not engaging in work. States may also establish other rules governing penalties as needed.

Under the Family Violence Option, a State may waive work requirements in cases where compliance would make it difficult for an individual to escape domestic violence or would unfairly penalize individuals who are or have been victimized by such violence or individuals who are at risk of abuse. The State must determine that the individual receiving the program waiver has good cause for failing to engage in work.

The final regulations include a cross-reference to the State penalty for failure to impose sanctions in accordance with section 407(e) of the Act (at § 261.54). We added this reference for the convenience of the reader; it does not represent an additional requirement.

Comment: We received many comments urging us to change the language of the regulations concerning the pro rata reduction of a recipient's assistance. The commenters thought that the way in which we paraphrased the statute altered its meaning and excluded certain types of pro rata reductions. Most urged us to clarify that a State can make a pro rata reduction based on any reasonable method; some asked us to indicate that a pro rata reduction is based on the head-of-household's share of assistance or on the share of those refusing to work. A few commenters also noted that States should have the flexibility to define the timeframe for applying a pro rata reduction. Several commenters suggested that the NPRM inappropriately restricted a State's ability to impose a greater penalty.

Response: We recognize that the language we used in the NPRM may have caused confusion concerning the meaning of a pro rata reduction, and we have modified the regulations to reflect the statutory language more closely. It was not our intention to prescribe one method of proration or to proscribe other legitimate methods; a State may make a pro rata reduction based on any reasonable method. With respect to imposing a greater penalty, we think that the NPRM's regulatory text and preamble were very clear that a State could impose a penalty greater than a pro rata reduction, up to and including terminating the case, and thus have not substantially altered the regulations in that regard.

Comment: One commenter, concerned about the burden on caseworkers of tracking an individual's participation, urged us to establish specific, fixed penalties on an individual for certain periods of time for refusal to work. The commenter gave an example of reducing the grant by the individual's share for the first month of refusal and gradually increasing it.

Response: As we indicated above, a State may establish any method of pro rata reduction that it chooses that comports with section 407(e) of the Act. Since we do not intend to dictate one proration method over another, it would not be appropriate to adopt the penalty scheme that the commenter suggests.

Comment: Several commenters expressed the same concern in this section that they did in § 261.13 regarding the applicability of employment protections to welfare recipients. They urged us to ensure that good cause exceptions in this section protect recipients from penalty where the individual refused to work due to a violation of employment laws, such as sexual harassment or other forms of job discrimination. Others urged us to provide guidance about appropriate good cause exceptions.

Response: States have the flexibility to define ''good cause'' as they deem appropriate. Because of the States' extensive experience in this area, we think it is not necessary to provide specific guidance regarding what good cause exceptions a State should acknowledge. However, we have included a new regulatory section at § 260.35 to reference employment protections under other laws that apply to working welfare recipients. We certainly agree that welfare recipients should not have to choose between unsafe or discriminatory working conditions and losing benefits, especially where there are protections under Federal law.

Comment: A commenter urged us to exempt from the work requirements any foster parents with birth children in the home.

Response: The statute does not provide for an exemption from the work requirements for such individuals; however, States may define ''good cause'' as they find appropriate. Since the statute specifically gives States the authority to establish good cause and other exceptions, we do not intend to dictate specific good cause criteria, other than the child care exception provided for at section 407(e)(2).

Section 261.15—Can a Family Be Penalized if a Parent Refuses To Work Because He or She Cannot Find Child Care? (§ 271.15 of the NPRM)

A State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The parent's demonstrated inability must be for one of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

This penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the lack of appropriate, affordable child care can create unacceptable hardships for children and families.

We have substantially modified this section of the regulations, in part by moving much of what constituted § 271.15 under the NPRM to a new section, § 261.56. This new section specifies the State's responsibilities in carrying out the penalty exception, while § 261.15 describes the impact of the provision on the individual. We have also moved the State penalty provision associated with this child care exception (formerly § 274.20) to a newly created § 261.57. Our intent in making these changes is to preserve the informational and contextual nature of subpart A of part 261 and to make the State's responsibilities and the possible penalty associated with them easier to follow. In this section of the rule, we have added cross-references to these two new sections for clarity.

Readers can find all comments associated with this exemption in the preamble discussion for § 261.56.

Section 261.16—Does the Imposition of a Penalty Affect an Individual's Work Requirement? (§ 271.16 of the NPRM)

Section 408(c) of the Act, as amended by section 5001(h) of Pub. L. 105–33,

clarifies that penalties against recipients under TANF ''shall not be construed to be a reduction in any wage paid to the individual.'' In the NPRM, we indicated that imposing such a penalty does not require the State to reduce the number of hours of work required, as it would otherwise do if the individual's wages decreased, due to the provisions of the Fair Labor Standards Act.

In the final rule, we have modified this section of the regulations to reflect the statutory language more precisely. This change does not signify any shift in our interpretation of the provision: we continue to believe that Congress intended to permit a State to sanction an individual who is subject to the Fair Labor Standards Act (FLSA) without also being forced to reduce the individual's required hours of work. FLSA requirements, including the Federal minimum wage, apply to any welfare recipients that meet the broad definition of ''employees'' under that law, which includes participants in many work activities. By indicating that a penalty does not reduce the individual's wages, the State does not need to recalculate hours of work subject to FLSA. A State is, of course, free to decide to reduce the work hours of a sanctioned individual or to reassign the individual to activities that are not subject to FLSA.

In addition to the comments described below, we received several comments expressing support for the inclusion of this provision in the regulations. Others indicated that some readers were confused by the intent of this section; we hope the explanation above and the change in the regulatory text have reduced this confusion.

Comment: Some commenters urged us to delete the last clause in § 271.16 of the NPRM, which indicated that a penalty would not result in a reduction in the number of hours of required work. Others asked us to substitute the word ''participation'' for the word ''work'' in that clause.

Response: We have removed the last clause from the regulation because we did not want to preclude a State from reducing an individual's hours of work.

Comment: Some commenters thought this provision would act as an incentive for States to penalize recipients to avoid the minimum wage requirements and urged us to monitor sanctions under this provision by collecting data on State sanctions. Another commenter inquired whether this provision applied where the penalty is disqualification of the individual from the program, such as for an intentional program violation.

Response: The commenters seem to be suggesting that a State would have an incentive to penalize a recipient because this provision prevents the State from considering the penalty to be a reduction in wages and therefore it could engage the recipient in hours of work for which he or she is not compensated. We do not agree. An individual's hours of work are established in accordance with the FLSA based on the benefits the family receives, long before and independent of the sanctioning process. The State may only impose a work sanction for failure to engage in required work. If an individual thinks that the State has penalized him or her inappropriately, he or she has recourse to appeal the sanction decision; section 402(a)(1)(B)(iii) of the Act requires the State to provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

With respect to monitoring sanctions and application of this provision, readers should understand that no individual is sanctioned ''under this provision''; rather, this provision applies to any recipient who is sanctioned. Thus, no sanctioned recipient is considered to have had a reduction in wages as a result of the penalty.

Readers should also note that we have improved the information we are collecting about sanctions and should refer to Appendix A for further discussion of these data requirements.

Comment: Some commenters urged us to clarify that a penalty against a family is not a reduction in assistance or other payments. They thought the phrase ''reduction in any wage paid to the individual'' raised doubt about this point. One commenter specified that States should be relieved of FLSA liability regardless of whether the individual is in a wage or nonwage work assignment.

Response: We think the language of the provision is clear and does not need further interpretation. As we indicated above, the FLSA requirements apply to any welfare beneficiaries that meet the broad definition of ''employees'' under that law; thus, the term ''wage'' is the appropriate one to use.

Comment: One commenter thought we should specifically state that the FLSA does not apply where the State has sanctioned an individual, so as to protect a State from reducing an individual's hours out of fear of violating the FLSA to the point where he or she would no longer count toward the participation rate. As an alternative, the commenter suggested that we deem an individual's hours of work, as determined by the FLSA, as automatically meeting the work requirement or give States broader authority to include the value of other benefits when calculating an individual's work obligation.

Response: Because the FLSA includes other provisions not affected by this provision, it would not be accurate to state that the FLSA does not apply. We think the regulatory language explains the interaction of the FLSA and this provision adequately. Regarding the commenter's suggested alternative, the statute is very clear about the number of hours an individual must be engaged in work to count toward the participation rate (see subpart B). Regarding the comment suggesting broad authority for a State to include other benefits in calculating an individual's work obligation, this matter is governed by the FLSA and thus is outside the scope of these regulations.

Comment: One commenter urged us to clarify that, although a sanction would not result in a reduction in the number of required hours of work, it might result in a reduction in certain activities, in order to comply with Federal, State and local labor laws.

Response: As we have indicated, this provision is intended to avoid forcing a State to reduce the hours an individual must work because his or her benefits decreased as a result of a penalty imposed under TANF, as it would otherwise have to do in accordance with Federal labor law. If the State chooses to reduce the individual's hours of work, or to shift the individual to other appropriate activities, it has the flexibility to do so. If there are State or local labor laws that restrict the State's actions in this area, it is the State's responsibility to adhere to applicable laws.

Subpart B—What Are the Provisions Addressing State Accountability?

Section 261.20—How Will We Hold a State Accountable for Achieving the Work Objectives of TANF? (§ 271.20 of the NPRM)

Work is the cornerstone of welfare reform. Research has demonstrated that early connection to the labor force helps welfare recipients make important steps toward self-sufficiency. The rigorous work participation requirements embodied in the legislation provide strong incentives to States to concentrate their resources in this crucial area.

This summary section makes the legislation's focus on work and the requirements for work clear, while other sections address each of these areas in more detail.

This section describes what a State must do to meet the overall and two-parent work participation rates. It explains that a State must submit data to allow us to measure each State's success with the work participation rates. It notes that a State meeting the minimum rates will have a reduced MOE requirement, while a State failing to meet them risks a financial penalty.

We received only one comment relating to this section alone.

Comment: Regarding the reference to data that a State must submit for us to calculate the participation rates, the commenter contended that the process for calculating the participation rates is too complicated. As an alternative the commenter suggested that a State should calculate its own participation rate, which we should then review.

Response: Section 411(a) of the Act requires States to report to us various data necessary to calculate the participation rates. Therefore, we think that it is clear that Congress intended us to make the calculations of the participation rates and gives us the authority to specify the data elements we need. As we have done prior to the publication of final regulations, we will continue to work in partnership with States to ensure that data are accurate and correctly portray their participation rates.

Section 261.21—What Overall Work Rate Must a State Meet? (§ 271.21 of the NPRM)

Section 407(a) of the Act establishes two minimum participation rates that a State must meet beginning with FY 1997.

The first, the overall work rate, is the percentage of all families receiving assistance who must participate in work activities by fiscal year. This section lists the statutory overall participation rate that applies to each fiscal year.

The second is the work rate for two-parent families, which we address at §§ 261.23 and 261.24.

We received no comments concerning this section.

Section 261.22—How Will We Determine a State's Overall Work Rate? (§ 271.22 of the NPRM)

This section of the regulation restates in clear terms the participation rate calculation specified in the statute. In particular, without changing its meaning, we have phrased the denominator in a way that we think is easier to understand than the statutory language.

We received many requests for guidance concerning how, for purposes of the participation rates, we treat a family that the State exempts from work requirements.

A State has the flexibility to establish any exemptions it chooses; however, with two exceptions (discussed below), the legislation offers no room to remove categories of recipients from the denominator, as prior law did. PRWORA embodies the views that: (1) Work is the best way to achieve independence; and (2) each individual should participate to his or her greatest ability. As waiver projects have demonstrated, innovative State programs can often find meaningful ways for nearly every recipient to participate in work-related activities. Therefore, the statute and the regulation require nearly all families to be included in the calculation of the participation rates.

The two exceptions to this requirement are certain families that are subject to a penalty and, at State option, families in which a single custodial parent is caring for a child under 12 months of age. When directed by the State's reported data to do so, we will disregard from the calculation for a month—that is, not include in either the numerator or the denominator—families: (1) Receiving assistance that are subject to a penalty for refusing to engage in work required in accordance with section 407 of the Act, but that have not been subject to a penalty for more than three of the last 12 months; and (2) in which a single custodial parent is caring for a child under one year of age. The latter exception is limited by statute to a maximum of 12 months for any parent. Although the first exception is not a State option under the statute, a State may choose to include a sanctioned family in the rate even though it has been subject to a penalty for three or fewer months in the last 12 because the family is nevertheless working enough hours to count toward the participation rate. In such a situation, we would include the family in both the numerator and denominator of the calculation.

The policy described above with respect to families subject to a penalty is slightly different from that of the NPRM. We are removing ''excepted'' families from the entire calculation, rather than just the denominator. We have made this change after reexamining Congressional intent. We think it unlikely that very many individuals would have been subject to a sanction while still working sufficient hours to count in the numerator, but we believe it would not be consistent with Congressional intent to permit inclusion in the numerator but not in the denominator. By creating the exception to inclusion in the denominator, Congress intended to avoid penalizing a State when it tries to get a nonparticipating individual to participate. However, Congress did not intend to create an advantage for such a State by allowing ''excepted'' individuals to be included in the numerator when they were not in the denominator. Therefore, if a State wishes to count a family in the numerator, that family must also appear in the denominator.

The regulation makes clear that a State may count as a month of participation any partial months of assistance, if, in each full week of assistance in that month, an adult in the family is engaged in work for the minimum weekly average number of hours. These families are already included in the denominator since they are recipients of assistance in that month.

This provision ensures that a State receives credit for its efforts in the first and last months that a family receives assistance. Without it, a State would have an inadvertent incentive to start and end assistance as close as possible to the beginning of the month, rather than as families need it. We think that measuring work in full weeks of assistance during a partial month is consistent with the spirit of PRWORA. We have established the same policy for partial months of assistance under the two-parent rate at § 261.24.

In the preamble to the proposed regulation for this section, we included a significant discussion about the relationship among waivers granted under the Family Violence Option (FVO), work participation rates, and a State's access to penalty forgiveness under ''reasonable cause.'' We recognized that there were circumstances under which a State should and would temporarily waive work requirements for domestic violence victims. Two questions we considered were: (1) How such waivers would affect the calculation of the participation rates; and (2) how they would affect a State's penalty liability.

As we discussed earlier in the preamble, instead of changing the basic calculation of the work participation rates, we chose to address this situation through our penalty liability determinations. We chose this targeted approach so as not to provide blanket exemptions for those who have ever suffered domestic violence, but instead to provide appropriate protections and supports for TANF recipients who need them.

Because of the nature of the comments we received on the domestic

violence provisions in the proposed rule, we decided to consolidate the discussion of those comments in the preamble and to consolidate the regulatory provisions in a new subpart B of part 260. You can find the consolidated preamble discussion in the earlier section entitled ''Treatment of Domestic Violence Victims.''

As the result of the comments and the changes we made to part 260 of the rule, we have also revised the language that was proposed at § 271.52(b)(1). Under the revised language, we no longer define the criteria for ''reasonable cause'' related to federally recognized domestic violence waivers in this section, but cross-reference the regulatory provisions in part 260. Also, we have added language to § 261.52 indicating we would take waivers of work requirements granted under subpart B of part 260 into account in deciding if a State is eligible for a penalty reduction based on the degree of its noncompliance. Please see § 261.52 for further discussion of these issues.

We received many comments concerning our proposal to redefine ''family'' to include in the participation rate any families the State has excluded (based on defining a family as ''child-only'') for the purpose of avoiding a penalty. We have removed this provision from this section, as well as from § 261.24 describing the two-parent participation rate. Please refer to the earlier preamble discussion in the section entitled ''Child-Only Cases'' for further discussion of this decision and the comments that relate to it.

Comment: One commenter thought that the overall participation rate as we described it in this section could be interpreted as either having a State average the 12 monthly rates or calculate a weighted average, taking caseload size into account.

Response: The statute does not provide for a weighted average in calculating the participation rates; rather, it specifically states that the annual rate is the average of the State's monthly rates for the fiscal year. Moreover, readers should understand that States are not responsible for calculating the participation rates. We calculate the rates based on the data that States report to us. For further discussion of the required data and reporting provisions, please refer to part 265 of this chapter.

Comment: Several commenters suggested that we exclude certain groups of individuals from the participation rate, in addition to those specified in the regulations. In particular, various commenters urged us to remove from the rate calculation: women in the third trimester of a pregnancy; cases that include a child and a grandparent who is over 60 years of age; families not receiving cash assistance; individuals working for employers that engage in discriminatory conduct; cases engaged in federally mandated administrative reviews prior to a sanction; and individuals who have received assistance for fewer than 60 days and therefore are not required to participate. Another commenter agreed with our statement that States should establish whatever exemptions they choose, but thought those State-exempted individuals should be removed from the rate calculation.

Response: As we indicated in the NPRM and the above discussion, we believe the statute is very clear regarding the calculation of the participation rates and does not give us the flexibility to exclude additional categories of individuals from the calculations. The participation rates are written in terms of ''families receiving assistance'' that include an adult, thus we could not limit the rates to those receiving cash assistance. (For further discussion of the definition of assistance, please refer to § 260.30 of this chapter.)

Concerning individuals in work activities where the employer engages in discriminatory conduct, again, we do not think we have the latitude to remove such families from the denominator; however, we fully expect States to conduct programs that are lawful and uphold employment laws that apply to working welfare recipients. Please refer to the section entitled ''Recipient and Worker Protections'' for a more detailed discussion of this issue.

It is not entirely clear to us what the commenter means by ''federally mandated administrative review process prior to being placed in sanction.'' There is no longer a federally mandated conciliation process, as there was under the JOBS program. It is possible that the commenter is referring to the provision at section 402(a)(1)(B)(iii) of the Act, requiring an explanation in the State plan of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. If so, recipients appealing an adverse action may already be under a sanction and therefore would not be included in the rate, if they have not been subject to one for more than three months in the last 12. Further, there is nothing in the statute to suggest that State administrative or appeal process should be lengthy; on the contrary, we hope States will establish expedited processes, in the interests of both the families and the State. We think there is neither the need nor the authority to remove such families from the participation rates.

Regarding the commenter's concern that individuals are not required to participate in work activities until they have received 60 days of assistance, the commenter is confusing the requirement on individuals to work with the requirement on States to achieve certain participation rates. Although the activities may be the same, they are separate requirements under the law. Please refer to the discussion at § 261.10 for further explanation of this distinction.

The statute is clear in giving a State the flexibility to establish ''such good cause and other exceptions'' as it chooses, but does not remove those with good cause exceptions from the rate calculations. We encourage States to adopt fair and practical good cause exceptions. While we understand the commenter's concern that a State has no incentive to create good cause exceptions if the excepted families remain in the denominator, it is worth noting that the overall participation rate leaves room to grant good cause exceptions under a variety of different circumstances.

Comment: A commenter suggested that there should be follow-up on individuals for three months following employment and that such individuals should be included in the participation rate as an incentive to States to find employment for recipients. The commenter stated that currently individuals are not included in the rate once they become employed.

Response: Neither the statute nor the regulations excludes employed recipients from the participation rate, as long as they are still actually receiving TANF assistance. In fact, unsubsidized employment is the first work activity that permits TANF recipients to be considered ''engaged in work'' and other forms of employment immediately follow it. Moreover, recognizing that the participation rate calculations did not give States credit for those who became employed and left the welfare rolls, Congress created a ''caseload reduction credit'' for that purpose. (See subpart D for discussion of the Caseload Reduction Credit.)

We do require States to collect data on families no longer receiving assistance (please refer to § 265.3), but we believe it is burdensome and impractical to require all States to follow such families for any period of time. We do agree that this is important information in understanding the effect of the TANF program and encourage States to

conduct follow-up studies where possible. Also, we have designed the initial high performance bonus system to give us follow-up information on the employment of recipients without imposing a substantial new burden on State TANF agencies.

Comment: One commenter stated that the denominator of the participation rate changes daily and that we need a standardized formula to allow programs to meet their goals. Another asked whether the rate is calculated based on a sample or the universe of cases, suggesting that the universe was preferable where feasible.

Response: While the denominator of the participation rate can change from month to month, States will have ongoing access to information about their caseloads, which should enable them to adjust for shifts in the number and types of cases. The participation rates are based on monthly data of families receiving assistance that include an adult. Therefore, a family that receives assistance for even one day in a month contributes to the total number of families receiving assistance in that month. We think the participation rate calculations are quite clear. However, we have incorporated some opportunities in the penalty relief provisions to consider a State's special circumstances. For example, in reducing the work participation penalty, the final rule adds a new adjustment factor that could help States that substantially increase the number of participants, but fail the participation rate because they are experiencing significant caseload increases.

Regarding whether a State should report the universe of caseload data, § 265.5 permits a State to report participation and other data for the universe or a sample of cases and outlines acceptable sampling methods. States should weigh the advantages and disadvantages of sampling and make their own decisions about whether to report on a universe or sample basis.

Comment: One commenter urged modifying the regulations to ensure that, if one parent in a two-parent family is subject to a penalty but the other parent continues to work the minimum hours required for the overall participation rate, the family should count toward the overall rate. If the second parent subsequently is subject to a penalty, the commenter thought we should measure the months of sanction in the last 12 months separately for each parent, thus maximizing the time a family would be excluded from one or both participation rates.

Response: First, we think it is clear in both the statute and these regulations that families, and not individuals, are subject to penalties. The State has the flexibility to determine the amount of the penalty, up to and including terminating the case, but must impose a penalty that is at least a pro rata reduction of the family's assistance (see § 261.14 for further discussion of pro rata reductions). Thus, we would look at whether the family, not the individual, is a sanction case.

If the family continues to receive assistance and meets the standard for being ''engaged in work'' under the overall rate while being sanctioned, as it would in the commenter's example, then the State may choose to count that family in the numerator and denominator of the calculation. However, since it is a family and not an individual that is subject to a penalty, should the other parent subsequently refuse to work and the State take action, it would simply be a second sanction for the family and does not call for separate tracking for purposes of calculating the denominator.

Comment: One commenter objected to the fact that two-parent families are counted twice, once in the two-parent participation rate, and once as part of the overall rate. The commenter thought that two-parent families should be counted only in their own rate.

Response: The composition of the overall participation rate is statutory. The two-parent rate measures State success with that sub-population, while the overall rate measures success with the entire caseload of families that include an adult.

Comment: Several commenters expressed support of the provision excluding a single custodial parent caring for a child under 12 months of age from the participation rate calculation. However, some commenters thought that we should not tie the exclusion from the rate to whether the State has adopted the option not to require the parent to engage in work. In essence, they argue that there are two separate decisions: whether to require the parent to work and whether to exclude the parent from the rate. Others questioned whether this provision allows for a one-time exclusion of up to 12 months or whether the parent could be excluded again should he or she be caring for another child under one year old.

Response: Based on the comments and after reexamining the statutory provision, we agree that we need not link the State's option not to require a single custodial parent of a child under 1 to work to the exclusion of such parents from the rate calculations. The State can make separate decisions about exempting and excluding a family from its rate. The statute describes a certain individual, that is, ''a single custodial parent caring for a child who has not attained 12 months of age'' and then separately indicates that ''such an individual'' may be disregarded in calculating the participation rates. We have re-written the regulation to allow disregard of a family with such an individual, since the rates actually measure families and not individuals.

Regarding whether this is a one-time provision or is renewable, the law plainly states that a parent may be disregarded from the rate for not more than 12 months. We interpret this language to mean a cumulative, lifetime limit of 12 months for any single custodial parent, but not necessarily a one-time disregard. Thus, if a parent were disregarded from the rate for four months while caring for one child under a year old, he or she could be disregarded for as much as 8 months with a subsequent baby.

Comment: We received many comments in support of the provision to give a State credit for a month of participation if the individual is engaged in work for the minimum average number of hours in each full week the family receives assistance in a partial month; however, some commenters found the provision too narrow to accommodate States that assign an individual to an activity weeks after the beginning of a benefit period. Some urged us to count an individual's time in assessment toward the participation rate. Another suggestion was that we should only consider a month of assistance (partial or full) to begin from the time the individual is assigned to a countable activity. One commenter thought we should only count families in the denominator from the first full month of assistance. One commenter asserted that we should include only recipients, and no applicants, in the participation rate; thus, this provision would affect only partial months following approval of assistance.

Response: The law and these regulations permit participation in only 12 specific work activities to count toward the participation rates. (Please refer to subpart C.) While we appreciate the time it takes a State to assess an individual and assign him or her to an activity, we do not have the flexibility to add assessment to the list of allowable activities. By the same token, we cannot simply decide that some period of time for which an individual receives assistance—such as time prior to assignment in a work activity or a partial month of assistance—should not

be considered a period of assistance and therefore exclude the individual's family from the participation rate for that month. On the contrary, if a family receives assistance for any portion of a month, then we must include the family in the denominator of the participation rate for that month, subject to the caveat in the paragraph below.

With respect to the assertion that we should not include applicants in the participation rate, we agree that States should not be forced to count individuals in the participation rates while their applications are pending. At the same time, we do not want to deny States that are successful in moving applicants into work activities credit for their efforts. It is for this very reason that we wanted to give States credit in the participation rates for a partial month of assistance where an adult works at a level equivalent to the standard for a full month. Further, under these final rules, we will give States some discretion to decide when a family begins to receive assistance, for the purposes of the participation rates. If a State pays benefits retroactively, i.e., for the period between application and approval, the State would have the option to consider the family to be receiving assistance either during the retroactive period or only during the month of payment.

This comment included an example in which the State ''prorated [benefits] from the date of application,'' even though it did not approve the application until about four weeks later. Each State has some flexibility to decide when benefits begin; in this example, the State chose the date of application. The statute is unclear whether receipt of assistance for a prior period is assistance in that prior month or only during the month of payment. Thus, when a State chooses to pay retroactively back to the date of application, it has the option to choose whether the recipient is receiving assistance during the month or part of the month covered by the retroactive payment. Because many States require applicants to engage in some form of work, such as job search, this partial month provision should prove to be an advantage for States that pay benefits retroactively for the application period.

Section 261.23—What Two-Parent Work Rate Must a State Meet? (§ 271.23 of the NPRM)

As in § 261.21, this section restates the minimum work participation rates for two-parent families established in the statute.

As States are aware, the two-parent participation rate increases sharply. Congress has high expectations that States will help the vast majority of adults in two-parent families find jobs or participate in other work activities. We note that most States had difficulty meeting the less ambitious JOBS participation rates for unemployed parent families (UPs), the primary two-parent cases under AFDC, and about half the States subject to the rates in FY 1997 failed the two-parent TANF participation rate. For several reasons, the new rates under TANF are much more demanding than they were under JOBS. First, the TANF rate is a ''two-parent'' rate, not a rate just for UPs. Secondly, the denominator includes much more of the caseload; it recognizes many fewer exemptions. Finally, PRWORA lifted the restrictions on providing assistance to two-parent families. Thus, in some States, many more two-parent families could be eligible for assistance and subject to the work requirements than under prior law.

We strongly encourage each State to consider carefully what it must do to get two-parent families working. In some cases, States may need to make substantial changes to their program designs. In the first few years of operating TANF, the participation rates are at their lowest and caseload reduction credits may significantly reduce the minimum required rates. We think it is important for States to capitalize on this initial period to invest in program designs that will allow them to achieve the higher participation rates in effect in later years. We intend to assist States in this endeavor through technical assistance and by sharing promising models as they emerge.

We received only one comment relating to this section.

Comment: A commenter urged us to eliminate the two-parent participation rate once the two-parent caseload represents less than five percent of a State's overall caseload.

Response: We do not have the authority to eliminate the participation requirement related to the two-parent caseload. The statue is very clear about the required minimum rates that States must achieve and the penalty associated with failing to meet participation rates. We have tried to give States some relief with respect to the demanding two-parent participation rate through both the structure of the caseload reduction credit and the penalty reduction provisions. Please refer to subparts D and E for further discussion of these areas.

Section 261.24—How Will We Determine a State's Two-Parent Work Rate? (§ 271.24 of the NPRM)

The regulations express the two-parent work participation rate in terms very similar to those we used for the overall rate. Any family that includes a disabled parent is not considered a two-parent family for purposes of the participation rate. Thus, we do not include such a family in the numerator or denominator of the two-parent rate.

It is important to note that, in accordance with the statute, we calculate both participation rates in terms of families, not individuals. Whether we include the family in the numerator depends on the actions of individuals, but an entire family either counts toward the rate or does not. In the case of a two-parent family, whether a family counts may depend on the actions of both parents.

In response to issues raised by the comments, and questions raised by States dealing with interim participation rate calculations, we have added language to the final regulations clarifying what constitutes a two-parent family in the two-parent participation rate calculation. We have found that States had divergent readings of which parents to consider in determining whether a family was a two-parent family. Therefore, we included this provision to ensure greater consistency across States in measuring participation among two-parent families.

The final regulations state that, for the purposes of this calculation, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household.

The preamble to the NPRM indicated that providing a noncustodial parent with TANF services need not cause a State to consider the family a two-parent family for the participation rate. This policy has not changed in the final regulations and is consistent with the new definition of a two-parent family. A State may, but is not required to, treat a family in which a noncustodial parent receives TANF assistance as a two-parent family.

As in § 261.22, where States direct us to, we exclude from the participation rate calculation for a month the families that are subject to a penalty for refusing to engage in work required in accordance with section 407 of the Act, but have not been subject to a penalty for more than three of the last 12 months. This is a change from the NPRM, which only excluded them from

the numerator of the calculation. Please refer to the discussion at § 261.22 for an explanation of this change.

Section 408(a)(7) of the Act limits the receipt of Federal TANF assistance to 60 months for any family, unless the family qualifies for a hardship exception or disregard of a month of assistance. (In our discussion of § 264.1, we explain that months of receipt are disregarded when the assistance was received either: (1) by a minor child who was not the head of a household or married to the head of a household; or (2) while an adult lived in Indian country or in an Alaska Native Village with 50 percent or greater unemployment.) We have received inquiries concerning the effect of a time-limit exception or disregard on the participation rates. In fact, the time limit does not have a bearing on the calculation of the participation rate. All families must be included in the participation rate, unless they have been removed from the rate for one of the two work-related exemptions (i.e., the family is subject to a penalty, but has not been sanctioned for more than three of the last 12 months; or the parent is a single custodial parent of a child under one year of age and the State has opted to remove the family from the rate).

We received many of the same comments about the calculation of the two-parent participation rate that we received in connection with the calculation of the overall participation rate. In particular, please refer to the preamble for § 261.22 for discussion of the comments and our responses about excluding groups of recipients from the participation rate and counting partial months of participation.

As we indicated in § 261.22, we have not kept in the final rules our proposal to redefine families to include in the participation rate any families that the State has excluded (based on its defining a family as a child-only family) for the purpose of avoiding a penalty. Please refer to the earlier preamble section entitled ''Child-Only Cases'' for further discussion of this decision and the comments that relate to it.

Comment: One commenter asked what the definition of a two-parent family is and whether it includes a household in which both parents are not available for work. Another commenter stated a family's status as two-parent or not often changes in the course of a month and that, therefore, a family should not be considered a two-parent family in a month in which its status change.

Response: We believe that Congress did not intend to exclude from the definition of a two-parent family a family with two parents receiving assistance, neither of whom is disabled, even if they are ''not available for work'' or the family's status changed during the month. We interpret the statute to mean that, if a State grants assistance for both parents in a family (and neither is disabled), then it must be considered and reported as a two-parent family. If one parent is coming and going from the family in the month and the State does not provide assistance for that parent, then it seems reasonable not to consider it a two-parent family.

Comment: Several commenters noted that the NPRM did not define the term ''disabled parent,'' thus making it unclear which families should be excluded from the two-parent participation rate. Some urged us to leave the definition to States or to define it broadly to accommodate State policy. Others specifically urged defining it to include people who are temporarily disabled or incapacitated.

Response: We have not defined the term ''disabled parent'' in the final regulations so that each State may define the term as it deems appropriate.

Comment: Commenters urged removing from the denominator all persons exempt from work requirements based on valid State welfare reform waivers in effect prior to enactment of PRWORA.

Response: Please refer to subpart C of part 260 for discussion of how we will treat welfare reform waivers under the participation rates.

Comment: One commenter thought that we should remove families that are subject to a penalty from the calculation for the entire duration of a penalty rather than only if they have been in penalty status for less than three of the last 12 months. Alternatively, the commenter thought we should remove such a family if it has been subject to a penalty for less than three months in a fiscal year instead of the preceding 12 months.

Response: We do not have the authority to make either of the changes the commenter suggested because the statute is very precise about this provision. It specifies that sanctioned families are removed from the rate, but not if the family has been subject to the penalty for more than three months within the preceding 12-month period.

Section 261.25—Does a State Include Tribal Families in Calculating These Rates? (§ 271.25 of the NPRM)

States have the option of including in the participation rates families in the State that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program. If the State opts to include such families, they must be included in the denominator as well as the numerator.

Comment: A commenter urged that any rewards or bonuses a State receives due to including Tribal participants in the calculations should be shared with the Tribes in question.

Response: Nothing in these regulations precludes a State from sharing rewards or bonuses with Tribes; however, we do not have the authority to require a State to do so.

Comment: One commenter was confused by our discussion in the preamble to the NPRM. We said that where the State opts to include families receiving assistance under a Tribal TANF or Tribal NEW program, the families must be in the denominator as well as the numerator ''where appropriate.'' The commenter asked us to clarify whether a State is free to include or exclude such families from the numerator and denominator. The commenter also asked us to clarify the standards of participation and activities that applied for a State to count such a Tribal family.

Response: A State may, at its option, include or exclude families receiving assistance under a Tribal TANF or Tribal NEW program from the denominator of the State TANF participation rates. To be included in a State participation rate numerator for a month, a family must meet the standards for counting a family in that rate, both with respect to hours of participation and allowable activities. These standards apply whether the family receives assistance under a State TANF program, a Tribal TANF program, or a Tribal NEW program. We realize that many Tribal programs will have different standards of work and different activities, but to count toward a State rate, the family must meet the standards associated with that rate.

We wanted to be clear that, if a State did plan to count a family receiving assistance in a Tribal program, that family had to be included in just the same way that a State TANF family would be included, that is, in the denominator of the rate as well as the numerator. But since inclusion in the numerator is not automatic (because the family must meet the hours of participation in allowable activities), we added the phrase ''where appropriate.'' Since this was confusing, we modified the preamble discussion in the final rules.

Subpart C—What Are the Work Activities and How Do They Count?

Section 261.30—What Are the Work Activities? (§ 271.30 of the NPRM)

Section 407(d) of the Act specifies the 12 work, training, and education activities in which individuals may participate in order to be ''engaged in work'' for the purpose of counting toward the work participation rate requirements. Congress did not define these activities further. While some have commonly understood meanings from their use over time or from prior employment and training programs, several of the activities, such as ''vocational educational training'' and ''job readiness assistance,'' are subject to interpretation.

In considering whether to provide greater definition of the activities as part of the NPRM, we examined legislative intent and sought the views of a variety of groups on the matter. Most groups urged us to leave further definition to the States. Some urged us to define work activities in ways that fostered education while promoting work, emphasizing the importance of education and training in empowering many recipients to find meaningful employment, let alone to advance. Ultimately, we chose not to define the individual work activities in the NPRM in favor of giving States greater flexibility; we have not changed that position in the final regulations.

Because this flexibility could also be used in ways that do not further Congressional intent, under the data collection requirements at § 265.9, we are requiring each State to provide us with its definitions of work activities for its TANF program and with a description of work activities for any separate State program that requires them. We are concerned that different TANF definitions could affect the vulnerability of States to penalties for failure to meet the participation rate. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States. Over the next several years, we will carefully assess the types of programs and activities States develop and will share the results of our findings. If necessary at some time in the future, we will initiate further regulatory action.

We would also like to remind States about some key research findings from prior welfare-to-work programs. According to the Manpower Demonstration Research Corporation's publication, Work First, the most successful work first programs have shared some characteristics: a mixed strategy including job search, education and training, and other activities and services; an emphasis on employment in all activities; a strong, consistent message; a commitment of adequate resources to serve the full mandatory population; enforcement of participation requirements; and a cost-conscious management style.

While the most successful programs consistently and strongly emphasize work, the actual program designs recognize and address the critical role education plays in preparing adults for work. As more and more recipients engage in work, State caseloads may reflect higher proportions of the educationally disadvantaged. In combination with other work activities, education may become more important in improving basic communication, analytical, and work-readiness skills of recipients. Thus, States may need to integrate adult basic skills, secondary education, and language training with high-quality, vocational education programs. Such program designs encourage recipients to continue acquiring educational skills necessary for higher-skill, higher-wage jobs.

We encourage States to adopt program designs that take advantage of existing educational opportunities. States may use the statutory flexibility to design programs that promote educational principles by:

- Actively encouraging adults and children to finish high school or its equivalent;
- Expecting family members to attain basic levels of literacy and to supplement their education in order to enhance employment opportunities;
- Encouraging family literacy; and
- Promoting community-based work-related vocational education classes, created in collaboration with employers.

States could also make it easier for individuals to combine school and work. For example, they could develop on-campus community work experience program positions, where child care is also available. They could also encourage schools to use work-study funds for students on welfare and then count the hours worked in those programs toward work requirements.

While we have not regulated the definition of work activities, we want to ensure that recipients and children both experience positive outcomes. This is a particularly significant issue when child care is the work activity. For this to happen, child care arrangements should be well developed, implemented and supported.

Research has found that quality child care is critical to the healthy development of children and that providers who choose to care for children create more nurturing environments than those who feel they have no choice and are providing care only out of necessity. Thus, States should assess whether recipients have an interest in providing child care before assigning them to this activity.

In addition, States should provide training, supervision and other supports to enhance caregiving skills if they wish recipients to attain self-sufficiency. Such supports, including training in health and safety (e.g., first aid and CPR), nutrition, and child development, would assist the development of both the caregivers and the children in care.

Finally, the stability of child care arrangements affects outcomes for both parents and the children in care. When parents feel comfortable with their child care arrangements, their own participation in the work force becomes more stable. This stability, in turn, fosters emotional security for children. Thus, States should take stability into account when assigning participants to child care as a work activity.

The majority of those who commented on this section of the proposed regulations supported our decision not to define work activities beyond the statutory list. We discuss other comments below.

Comment: Several commenters made suggestions about the content of work activities. Some urged us generally to ensure the quality of work activities by establishing minimum standards for the activity and for the provider. Others made suggestions about specific activities, urging us to give guidance or make requirements concerning particular elements of an activity. For example, one commenter thought that vocational educational training should conform to the definition of vocational education in the Carl D. Perkins Vocational Education Act; another suggested discontinuing on-the-job contracts with employers that do not provide long-term employment. In essence, these commenters wanted us to define certain of the activities or ensure that certain activities would be counted as work.

Response: We appreciate and share the commenters' concerns that work activities be designed to meet the needs of recipients and be effective in helping them become self-sufficient. However, we think that the goals and objectives of the legislation will be better served by having each State define the work activities. We believe States will use the flexibility of the statute to formulate a variety of reasonable interpretations leading to greater innovation,

experimentation, and success in helping families become self-sufficient quickly. It is true that States could conceivably include a range of activities that may not enhance work skills or might not be considered valid work experience by potential employers. However, in light of the five-year time limit and the criteria for the high performance bonus, we expect that States will work to establish programs that promote a family's long-term success in the workplace.

Comment: One commenter pointed out that we omitted the statute's limitation of the activity of ''work experience'' to instances where sufficient private-sector employment is not available.

Response: We have amended the regulations to reflect the statute's limitation.

Comment: A couple of commenters urged us to require that work activities comport with Federal employment laws in order to count for participation. One suggested that we require employers to post appropriate nondiscrimination notices. Another stated that Congress failed to include any provision limiting work activities to work at the minimum wage.

Response: We agree fully with the commenters that all TANF work activities should be lawful and should not subject participants to discrimination, unsafe working conditions or other circumstances prohibited by employment law. Nevertheless, we do not think the appropriate way to address the issue is to exclude certain work activities from the participation rate calculation in some States. Adjusting the rates would be administratively cumbersome and not necessarily equitable. As we have discussed earlier in the section of the preamble entitled ''Recipient and Workplace Protections,'' there are other entities, such as the EEOC, DOL and our Office of Civil Rights, that enforce compliance with civil rights and employment laws. Their mechanisms for monitoring and enforcing compliance are not linked to the timing of the participation rate calculation. In other words, a finding of noncompliance that they might issue would not necessarily be available within our timeframes for calculating participation rates. Moreover, even if we did receive timely information about noncompliance with employment requirements, because the participation rates may be based on sample data, it might be very difficult to determine the appropriate adjustments to make to the rates based on such findings.

Given these complications, we have not modified the regulation as the commenters suggest. We think it makes better sense to support the enforcing entities in carrying out their responsibilities. If, over time, we find significant problems that could warrant adjustments within the TANF program, we will consult with States, labor interests, Congress, and other interested parties about the appropriate steps to address these problems.

We have also included a new regulatory section at § 260.35 that addresses employment protections available to TANF recipients. Please refer to the preamble section entitled ''Recipient and Workplace Protections'' for a discussion of additional comments related to this issue.

We have addressed the Fair Labor Standards Act (FLSA) at § 260.35 of the final rule, in the preamble to § 261.16, and in the preamble discussion entitled ''Recipient and Workplace Protections.'' Please refer to those preamble sections for further discussion of the application of FLSA, including the minimum wage requirement, to TANF work activities.

Comment: We received support from a number of commenters for the discussion of the importance of education to TANF recipients that we included in the preamble to the NPRM. In response, we have repeated much of that discussion in this preamble to the final rule. We also received support for our guidance concerning the provision of child care as a work activity.

A couple of commenters urged us to incorporate that discussion, particularly our program design suggestions, into the text of the regulation itself. They argued that States would not create broader activities that combine work and education unless we specifically regulated in this area. Similarly, one commenter urged us to specify that we would not penalize a State for including a range of educational activities, from literacy programs through post-secondary education, in its definitions of work activities.

One commenter thought the proposed rule did not truly support the integration of work and education because it allowed each State to define the work activities. Instead, the commenter urged us to provide definitions that guide States in integrating work and education.

Response: We have not included our discussion of program designs within the text of the regulation. That discussion is intended to spark creative thinking about State choices in implementing TANF, rather than to prescribe a particular design for all States. It is also intended to underscore the important role we think education can play in TANF.

We have not included the kind of blanket statement the commenter suggests absolving States of any potential penalty liability for including a wide array of educational components in its work definitions. There are statutory limits on counting educational activities in the participation rates; a State that exceeded those limits could be subject to a penalty. Readers should refer to § 261.33 for a discussion of the limits on counting participation in educational activities in the participation rates.

As we indicated above, we have opted not to define the work activities to a greater degree than the statute does. We think that the preamble discussion gives States ample suggestions of ways to integrate education with work activities. We are also available to work with any State and its education community to help them design programs that will meet their particular needs.

Comment: One commenter stated that there is no provision to count participants in a GED program, adult basic education or English as a Second Language (ESL) in the participation rates and urged making them countable work activities. Another commenter urged adding a basic skills ''refresher'' course for those already holding a GED. A third commenter encouraged us to include student internships as a work activity.

Response: While we have no authority to add to the list of 12 work activities, a State could provide the education programs described in the first two comments under the existing activities. In particular, we point out that GED is explicitly part of the eleventh activity: ''satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence for a recipient who has not received a high school diploma or a certificate of high school equivalency.'' Similarly, student internships, depending on their content, may well meet a State's definition of one or another of its work activities. We would be glad to provide technical assistance to a State that has questions about incorporating activities such as these into its program design.

Comment: One commenter urged us to require States to include vocational educational training among their work activities.

Response: We understand the commenter's interest in seeing that recipients have the opportunity to enroll in training programs that will give them the skills to qualify for and keep higher paying jobs; however, we do not have

the authority to require a State to provide any specific work component.

Comment: One commenter expressed support for the development of micro-enterprises and other forms of self-employment, particularly in rural settings. The commenter urged increasing flexibility in this area by counting the period necessary to develop a business as participation.

Response: Again, the State has the flexibility to design and define work activities that meet the needs of its caseload, including creating a micro-enterprise development program. It is unclear from the comment precisely what activities the commenter believes should be considered work that are excluded either by statute or by a State's policies. We agree that any legitimate hours of work in the development of a business could contribute to the participation rate; however, for example, if the recipient is waiting for a loan approval, but not otherwise participating, it hardly seems reasonable to count that time as participation. The fact that something has value or is integral to a countable activity does not necessarily mean it can count as participation. We would be happy to work with States that would like technical assistance in this area.

Comment: One commenter expressed support for the requirement that a State provide us with its work definitions, citing its value for research into effective employment-related services. Another commenter objected to this requirement, maintaining that States must already submit this information as part of the State TANF plans.

Response: We think it is important to know how States are defining the activities because of the implications they have for penalties. We want to ensure that we enforce the requirements of TANF in a way that is as equitable to States as possible. We also agree that the definitions will help with research into effective program designs. We think it is reasonable to collect these definitions as an annual addendum to other data collection. Unfortunately, the TANF State plans do not necessarily include a State's work activity definitions. However, we have revised the reporting requirements at § 265.9(d) to allow a State that included such information in its plan to reference the plan or attach the appropriate plan pages.

Comment: One commenter objected to ''such a restricted list of countable work activities'' protesting that low-grant States will not be able to make use of several of the components because recipients will have too much income to continue receiving assistance. The commenter also stated that low-grant States will be adversely affected by the minimum wage requirements of the Fair Labor Standards Act (FLSA).

Response: States must weigh carefully their decisions about grant amounts and earnings disregards as they formulate State policy. The commenter is correct that a State's benefit rules may have implications for its participation rates, as well as for a family's time limit and for State budgets. However, these are largely matters of State discretion; the regulations reflect the statutory work activities. Readers should refer to the preamble at § 261.16 for a more detailed discussion of the FLSA and its effect on TANF work activities.

Section 261.31—How Many Hours Must an Individual Participate To Count in the Numerator of the Overall Rate? (§ 271.31 of the NPRM)

Section 407(c) of the Act specifies the minimum hours an individual must participate to count in the State's overall participation rate calculation. There are two related requirements. First, there is a minimum average number of hours per week for which a recipient must be engaged in work activities. The average weekly hours are reflected in the following table:

If the fiscal year is:	Then the minimum average hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

Second, the law requires that at least an average of 20 hours per week of the minimum average must be attributable to certain specific activities. These activities are:

- Unsubsidized employment;
- Subsidized private-sector employment;
- Subsidized public-sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training not to exceed 12 months;
- Provision of child care services to an individual who is participating in a community service program.

(Note: the limitation that at least 20 hours come from certain activities does not apply to teen heads of households; however, there are other limitations related to teen heads of households. Please refer to § 261.33 below.)

After an individual meets the basic level of participation, the following activities may count toward the total work requirement hours of work:

- Job skills training directly related to employment;
- Education directly related to employment for those without a high school diploma or equivalent;
- Satisfactory attendance at a secondary school or GED course for those without a high school diploma or equivalent.

In our consultations prior to drafting the NPRM, several people asked whether a State may average the hours of participation of different recipients to reach the minimum average hours required by the work participation rate, as they could in the JOBS program. PRWORA does not permit combining and averaging the hours of work of different individuals. However, the regulation and the statute permit averaging an individual's weekly work hours over the month to reach the minimum average number of hours per week required for that individual to be engaged in work.

We have reorganized the regulatory text slightly from the way it appeared in the NPRM for the sake of clarity, but this section still paraphrases the statute in simple, understandable terms.

The final regulations do not contain the chart we included in the NPRM depicting which work activities count in the first 20 hours and which count thereafter. We decided the chart no longer added to readers' understanding of the provision since legislative changes simplified the rules and its inclusion disrupted the regulatory text, making the policy more difficult to follow.

Comment: We received several comments expressing support for our clarification in the NPRM that a State may average an individual's weekly hours of work over a month. One commenter supported averaging, but without reference to an individual's hours in a month.

Response: For clarity, we would like to reiterate that the statute does not permit combining and averaging of hours of work of different individuals in the overall participation rate. Rather, it is an individual's hours of work from different weeks within a month that may be averaged.

Comment: Several commenters expressed concern about the effects of the FLSA in restricting the number of hours a State may require an individual to participate in certain work activities,

particularly work experience and community service. They emphasized the importance of these activities to individuals not ready for unsubsidized employment.

Concerned that the FLSA will impede a State's ability to meet the participation rate requirements, some commenters urged us to exempt these activities from the wage and hour requirements of the FLSA.

Response: We have no authority to exempt an activity from the requirements of the FLSA. We have tried to explain the basic effect of the requirements on TANF work activities in the preamble to § 261.16, but we urge interested parties to consult the Department of Labor's guidance entitled ''How Workplace Laws Apply to Welfare Recipients (May 1997)'' for more information. We would also like to point out that States have the option of increasing the amount of a family's grant and thus permitting an individual to engage in more hours of work in accordance with the FLSA. States should weigh policy decisions in this area very carefully; the interrelated effects on participation rates, a family's remaining months under the Federal time limit, and State spending on the TANF program are crucial aspects of TANF program design.

Comment: A couple of commenters expressed opposition to separating the work activities into those that count for the first 20 hours and those that count thereafter, questioning the regulation's support for educational attainment despite the preamble's discussion of its importance.

Response: The requirement that the three education-based activities can only count for participation after the first 20 hours is a statutory one; thus, we have no authority to alter it. That fact does not change our commitment to education for recipients who need it. We have suggested several possible models for combining education with other activities and stand ready to help States that would like technical assistance in this area.

Comment: A commenter urged us to make GED preparation and English as a Second Language (ESL) ''stand alone, countable'' activities because substantial portions of some State caseloads need basic education and language skills before they can hold even entry-level jobs.

Response: Clearly, both GED preparation and ESL fit within the list of 12 work activities enumerated in the statute.

We presume that the commenter's real concern is that the State cannot receive full participation credit for such educational activities because of the requirement that the first 20 hours of participation be attributable to the noneducational activities. This is a statutory requirement that we have no authority to change in the regulations. We urge States and localities to consider combining work and educational activities where it is appropriate in order to maximize participation credit. Although some individuals will not be able to engage in multiple activities, this could be a viable solution for many recipients.

Comment: One commenter, in stressing the importance of education to permanent self-sufficiency, urged us to include time spent on homework and fieldwork when calculating an individual's hours of participation.

Response: As we have indicated, it is each State's responsibility to define its work activities in a reasonable manner; thus a State could choose to include homework time as part of an activity. However, we encourage States to consider carefully how Congress intended to treat homework in determining ''engaging in work'' to ensure that its interpretation is reasonable.

It is unclear to us exactly what the commenter means by ''fieldwork''; if this refers to practical, career-based experience within the context of an educational activity, it might meet a State work activity definition. We have spoken to this issue in response to a comment about student internships above in the comments to § 261.30.

Comment: A commenter urged us to give partial credit for placing individuals in countable activities for fewer than the minimum average number of hours. For example, if the required hours are 20 and the individual participates for 10 hours per week, the commenter would have us count the case as 0.5 in the participation rate for that month. Another urged us to develop a means of giving a State credit for an individual's participation over a longer period of time than one month.

Response: The statute does not provide for counting a portion of a case in the participation rate and measures participation on a monthly basis; either the adult is engaged in work and the family counts in the rate or it does not and is not in the rate.

Comment: One commenter urged us to modify this section to include the provisions of § 261.35 or to include a cross-reference to it. That section indicates that we will count a single custodial parent caring for a child under the age of six as engaged in work if the parent participates in work activities for an average of at least 20 hours per week.

Response: The language of this section is consistent with the statute and does not need to incorporate the provisions of § 261.35 to take into account the full range of ways in which a family may meet the participation rate. We have tried to make these regulations easy to read. This means, in part, keeping sections reasonably short and separating different ideas into new sections. In this subpart in particular, we have tried to group all the provisions that relate to counting hours of work; it would be simply impractical to include all these provisions in one section.

We have decided not to reference § 261.35 to avoid multiple references to the other sections in subpart C, which we think readers will readily notice due to their proximity.

Comment: A couple of commenters urged us to give a State credit for an individual's ''excused'' absences from work, such as holidays or jury duty, as opposed to counting only actual hours of work. They thought that an absence beyond the individual's control should count as participation. Another commenter suggested that we count at least a portion of an individual's commute time when he or she must travel an extended distance to reach the job.

Response: The statute specifies the standard by which we must measure whether an individual is engaged in work. That standard is that a recipient ''is participating in work activities for at least the minimum average number of hours per week'' specified in the table in this section. Although the JOBS program gave us the discretion to establish a participation standard that considered scheduled hours and actual hours worked, TANF does not provide that flexibility.

However, consistent with ordinary practice for counting work time, a State could base the hours of work it reports on an employer's record of hours for which an employee is paid, thus accounting for paid holidays and jury duty days. Similarly, consistent with the ordinary practice for counting work time, we do not believe that commuting time can reasonably be considered ''engaging in work'' for any activity and therefore will not count it toward the participation rates.

Section 261.32—How Many Hours Must an Individual Participate To Count in the Numerator of the Two-Parent Rate? (§ 271.32 of the NPRM)

For two-parent families, section 407(c) of the Act specifies that the parents must be participating in work activities for a total of at least 35 hours per week and that a specified number of

hours be attributable to specific work activities. A State may have one parent participate for all 35 hours, or both parents may share in the work activities. If the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the parents must be participating for a total of at least 55 hours per week. As before, a specified number of hours must be attributable to certain activities (listed below).

In the first situation (where the weekly total must be at least 35 hours), at least 30 hours must be attributable to the same narrow group of activities that applies to the 20-hour standard in the overall rate. In the second situation (where the weekly total must be at least 55 hours), 50 hours must be attributable to this narrow group of activities. Again, these are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training (for not more than 12 months);
- Provision of child care services to an individual who is participating in a community service program.

Therefore, no more than five of the relevant minimum hours may be attributable to education related to employment, high school (or equivalent), or job skills training activities.

During our consultations prior to developing the NPRM, many thought it was unclear whether the 35-hour requirement was a minimum for each week or a minimum weekly average, as is the case in the overall rate. For example, if a parent participated 40 hours one week and 30 hours the next, the question arose whether he or she would meet the minimum requirement for both weeks. To provide maximum flexibility for States to meet the program goals, we clarified in the proposed rule and have maintained in the final regulations that, as long as the parents' average total hours equal at least 35 hours per week, the individual meets the participation requirement.

Other than this clarification, we have mirrored the statute. As in § 261.31, we have reorganized the regulatory text slightly from the way it appeared in the NPRM to make it clearer, but this section still paraphrases the statute in simple, understandable terms.

The majority of the comments on this section expressed support for our interpretation that the weekly hours requirement was a weekly average within a month and not a fixed number of hours for each week. Commenters emphasized that this will help States work flexibly with families and respond to emergencies or other family needs that affect hours of work in a particular week.

We also received many of the same comments in this section that we received in connection with the hours of work required for the overall participation rate. In particular, please refer to the preamble for § 261.31 for discussion of the comments and our responses about: the requirements of the FLSA; counting ''excused'' absences from work toward the participation rate; giving partial participation credit for participating below the hours of work standard; and reporting requirements for a week that spans two months.

Comment: A commenter noted that this section refers to ''an individual'' counting as engaged in work and urged us to substitute the word ''family'' instead.

Response: We recognize that both parents may actually be participating and contributing to the total number of hours required to be engaged in work, 35 or 55 hours depending on whether they receive federally-funded child care. We used the word ''individual'' because the statute, at section 407(c)(1)(B), uses that term. While this is not necessarily strictly accurate, it is no more accurate to describe the ''family'' as working; a family is counted in the participation rate, but it is one or two individuals who engage in work. We thought that relying on the language of the statute would be less confusing in this case.

Comment: One commenter advised us to modify this section to indicate that a family with a disabled parent should not be considered a two-parent family for the purposes of the participation rate calculations in accordance with the statute.

Response: The commenter is correct that the statute excludes families with a disabled parent from the two-parent participation rate calculation. We included this provision in subpart B where we describe the calculations for the participation rates. Please refer to § 261.24(d).

Section 261.33—What Are the Special Requirements Concerning Educational Activities in Determining Monthly Participation Rates? (§ 271.33 of the NPRM)

Section 407(c)(2)(C) of the Act provides that a teen who is married or the single head-of-household is deemed to be engaged in work for a month if he or she maintains satisfactory attendance at a secondary school or the equivalent or participates in education directly related to employment for an average of at least 20 hours per week. Paragraph (b) of this section paraphrases the language of this statutory provision.

To reinforce the emphasis on work, section 407 of the Act limits educational activities in two ways:

(1) An individual's participation in vocational educational training may count for participation rate purposes for a maximum of 12 months; and

(2) For each participation rate, not more than 30 percent of individuals determined to be engaged in work for a month may count by reason of participation in vocational educational training. In fiscal year 2000 and thereafter, this 30-percent limit also includes the teens deemed to be engaged in work by reason of maintaining satisfactory attendance at secondary school (or the equivalent) or participating in education directly related to employment, whom we described above.

When PRWORA was enacted, there was substantial controversy about precisely how the second limitation would apply. However, Pub. L. 105–33 modified this provision, making the limitation much clearer. The description above and the regulation at § 261.33 reflect the new provision, as amended by Pub. L. 105–33.

Based on some of the comments we received, we have made some minor modifications to the regulatory language as it appeared in the NPRM. The proposed regulatory language inadvertently suggested that only married heads-of-households, as opposed to any married teen, could be deemed to be engaged in work by virtue of this provision. In addition to correcting that error, we have modified the wording of the 30-percent cap to reflect the statute more closely.

We also want to explain the technical details of how we will interpret the provision relating to counting teens in educational activities for the purposes of calculating the participation rates. We are interpreting the deeming of teens as engaged in work based on satisfactory attendance in secondary school (or the equivalent) or 20 hours per week of

education directly related to employment to apply to both participation rates. While the provision might appear at first glance to apply to the overall rate alone, after considering Congressional intent and the legislative history, we think it is appropriate to apply it in the two-parent rate as well.

Because the two-parent rate, as amended by Pub. L. 105–33, permits the hours of the two parents to be combined to achieve the required weekly average, we needed to determine how many, if any, additional hours the parents would need to work in order to count in the two-parent rate when one parent was maintaining satisfactory attendance in high school or the equivalent. It seemed unreasonable and contrary to the spirit of the law to count the family without any additional hours; for example, that would allow a two-parent family to count based solely on the attendance of one parent in a GED class. Such a policy would support neither the educational welfare of the other parent nor the economic self-sufficiency of the family, faced with time-limited benefits.

To address these concerns, our rules incorporate the following policy for two-parent families: (1) we will consider satisfactory attendance at secondary school or the equivalent of a single head-of-household or married recipient under the age of 20 to equate to 20 hours per week of participation; thus, the parents would need a combination of 15 or 35 additional average hours per week (depending on which standard of hours applied to them) to count for the two-parent participation rate; and (2) if both parents in the family are under 20 years of age, we will consider them to be engaged in work if both meet the conditions of § 261.33(b), that is, if both are either satisfactorily attending school or equivalent or participating in education directly related to employment for at least 20 hours per week. Our rationale for equating satisfactory attendance in secondary school with 20 hours of participation is that the statute makes the presumption that such attendance is equivalent to 20 hours in education directly related to employment.

Comment: One commenter, while acknowledging the statutory origin of the 30-percent cap, nevertheless objected to the provision as it relates to teens in secondary education. The commenter stated that a mandated activity cannot have a cap.

Response: The commenter is correct that the 30-percent limitation is required by the statute; however, we would like to address the question of secondary education as a mandated activity. The commenter is referring to section 408(a)(4) of the Act, which prohibits a State from using TANF funds to assist a single parent under the age of 18 who has not completed high school (or equivalent) unless he or she attends high school (or equivalent) or a State-approved alternative education or training program. Both provisions underscore the importance of basic education for teens but are distinct in their effects within TANF. Even if the teen populations and the activities described were identical, which they are not, the central difference between the two provisions is that one mandates what the teens must do and the other restricts what a State receives credit for in the participation rate.

Comment: We received several comments urging us to count post-secondary education toward the participation rate and recommending that the regulations explicitly indicate that it is a TANF work activity.

Response: As we have indicated above, we do not have the authority to create additional work activities beyond the 12 statutory activities. Nevertheless, depending on whether and how the State chose to incorporate it into its TANF structure, post-secondary education could fit within the definition of 1 or more of the 12 activities. The appropriateness of categorizing it as one activity versus another would depend on the nature of the post-secondary program, such as whether it were vocational training.

We would also like to emphasize that States have the flexibility to design programs that allow recipients to combine school and work. We have suggested some possible models for this in the preamble to § 261.30 and are ready to work with States that want help in pursuing such program designs.

Comment: A couple of commenters objected to the limitations on vocational educational training, both an individual's limit to 12 months and the 30-percent cap. They stressed that States should be free to design vocational programs that are effective in moving participants into permanent employment, which may require more than one year of training.

Response: States are free to design and operate vocational programs that take longer than one year to complete; the limitation is strictly about the period of time for which a State could receive credit for a recipient's participation in that program. The limitation, while potentially discouraging States from designing certain long-term programs, is statutory and beyond our authority to modify. Again, we would like to point out that combining vocational training with practical experience that could count as another activity may be a viable approach in many cases. Moreover, States should consider that effective vocational education programs, or other programs that succeed in moving recipients from welfare to work, will contribute to the likelihood that the State will qualify for a high performance bonus or caseload reduction credit. We are awarding the high performance bonuses based on several criteria, including the number of new hires, increases in earnings and job retention. Thus, in spite of the limits on counting vocational educational training as participation, there are other incentives to designing effective vocational education programs.

Comment: A commenter noted that the proposed regulations and preamble did not indicate that a State has discretion to determine how to measure the 12-month limit on counting an individual's participation in vocational educational training.

The commenter also urged us to amend the regulations to indicate that a State that combines education with other activities would necessarily be able to count these activities in the participation rates.

Response: States have limited flexibility in this area. If a family is included in the numerator of a participation rate for a month by virtue of participation in vocational educational training, then that month counts against the 12-month limit for that individual.

If a State reports hours of participation in an activity that meet the requirements of this subpart, then the hours would count in the participation rates, and the month would count as a month or participation in the activity, regardless of whether the individual performed them in combination or separately.

We have stressed the possibility of combining education and work activities in part because of the statutory limits, reflected in these regulations, on how educational activities may count for participation purposes. In addition, we believe that encouraging recipients to acquire new and more advanced skills after they have entered the work world will help them attain and keep higher-paying jobs, leading to more economic security for families.

Section 261.34—Are There Any Limitations in Counting Job Search and Job Readiness Assistance Toward the Participation Rates? (§ 271.34 of the NPRM)

Section 407(c)(2)(A)(i) of the Act limits job search and job readiness assistance in several ways.

First, an individual generally may not count as engaged in work by virtue of participation in job search and job readiness assistance for more than six weeks. No more than four of these weeks may be consecutive. During our consultations prior to drafting the NPRM, we were asked whether these limitations applied for the lifetime of the individual, per spell of assistance, or per fiscal year.

Based on those consultations, after an analysis of the statute, we decided in the NPRM to interpret it as a fiscal-year limit for two policy reasons. First, since the participation rate itself is tied to the fiscal year, it makes sense to apply the limitation to the same timeframe. Second, a different policy could force States to place individuals in other, less appropriate activities just to meet the participation rate. Moreover, research indicates that job search activities are an instrumental component in effective work program designs.

The statutory language supports the fiscal-year interpretation. The job search language at section 407(c)(2)(A)(i) of the Act limiting the weeks of participation states that the limit is ''notwithstanding paragraph (1).'' Paragraph (1) refers to the determination of whether a recipient is engaged in work for a month ''in a fiscal year.'' Thus the reference to paragraph (1) puts the job search limitation in the context of a calculating whether an individual is engaged in work in the fiscal year. Based on these considerations, we clarified in the proposed rules that the six-week limitation applies to each fiscal year and have not changed that interpretation in the final regulations.

The legislation and our rules allow the 6-week limit on job search and job readiness assistance to extend to 12 weeks if the unemployment rate of a State exceeds the national unemployment rate by at least 50 percent, or if the State could qualify as a needy State for the Contingency Fund.

Finally, our rules paraphrase the statute (at section 407(c)(2)(A)(ii) of the Act) in allowing a State to count three or four days of job search and job readiness assistance during a week as a full week of participation on one occasion for the individual.

Comment: We received many comments in support of our interpretation that the job search and job readiness limit applies on a fiscal-year basis. However, one commenter thought we were too specific and should allow States to interpret the limitation.

Response: We have not modified the regulation as the commenter suggests. We think it is reasonable to apply one standard to all States. Given the overwhelming support for the fiscal-year interpretation and the statutory and policy support we provided for it above, the final regulations maintain that policy. This policy only limits the maximum job search and job readiness that count for participation purposes. States still have flexibility in determining how much an individual should actually participate in such activities, including the flexibility to apply the job search and job readiness limit on a lifetime basis for an individual if they so choose.

Comment: A commenter thought that the way in which we paraphrased the statute's limit on job search and job readiness to not more than four consecutive weeks was confusing and urged us to use the statutory wording.

Response: We have modified this section to follow the statute's language more closely. We have left the provision limiting the number of consecutive weeks separate in paragraph (c) because we think it is easier to follow this way, but have changed the wording within the paragraph in response.

Comment: A few commenters objected to limiting job search and job readiness to four consecutive weeks, arguing that there is no rationale for stopping at that point or that it is simply too short a period of time to ensure that recipients will find jobs. A couple of other commenters objected to the six-week total limitation for essentially the same reasons and urged us to create a longer time period.

Response: There is no limit on the amount of job search and job readiness a State may require of an individual. However, the statute imposes limitations on how much the activity counts toward the participation rate. We have no authority to extend the it counts, other than when a State meets the criteria for counting 12 weeks of job search and job readiness assistance instead of 6.

Comment: Two commenters recommended that we separate job search assistance from job readiness assistance and establish separate limits on each activity.

Response: In determining whether an individual is ''engaged in work'' for the participation rates, the statute provides for 12 different work activities. One of those activities is ''job search and job readiness assistance''; the statute does not recognize them as separate components. As we indicated in the discussion at § 261.30, we do not have the discretion to add to those activities or to separate job search from job readiness. If a State has two different activities as part of its TANF program, it would have to count an individual's participation in either one toward the limits described in this section.

Comment: A commenter suggested that we clarify the regulations to allow a State to apply the extended job search and job readiness provision to a ''needy political subdivision'' as it would if the State were a ''needy State.''

Response: The statute is very specific in describing the two conditions under which 12, rather than 6, weeks of job search and job readiness can count toward the participation rates. One of those conditions is when the ''State'' qualifies as ''needy'' under the Contingency fund definition. That definition applies to a State as a whole; therefore, there is no mechanism by which to apply it to a political subdivision.

Comment: One commenter recommended that the regulations ensure that a State has advance notice of whether it qualifies to count individuals for the extended 12 weeks of job search and job readiness in a fiscal year. The commenter argued that this would let the State plan which activities to make available to its recipients in order to meet its work participation rate.

Response: As we indicated above, there is no limit on the amount of job search and job readiness a State may require of an individual; the limitation is on how many hours of the activity count toward the participation rates. We hope that a State would not, as the commenter suggests, withhold access to job search and job readiness—or any activity, if it were the most appropriate for a recipient—and require participation in another activity, solely for the purpose of meeting the participation rate. The participation rates represent a requirement on the State, not a requirement on specific individuals, and the State can inherently meet the participation rates even if every individual is not in a countable activity.

Further, we have no ability to make an advance determination that a State qualifies for a 12-week job search limit because the data are not available in advance and the statute authorizes the 12-week limit based on a State's current situation.

Comment: One commenter objected to the provision permitting a State to count three or four days of job search and job readiness assistance as a full week of participation because the data collection system in the commenter's State does not allow it to count hours of participation on that basis.

Response: This provision is not a requirement. Any State that does not wish to count three or four days of this

activity as a full week of participation is not required to do so. The origin of the provision is statutory; we presume the intent was simply to make it easier for States to receive participation credit for this activity.

Section 261.35—Are There Any Special Work Provisions for Single Custodial Parents? (§ 271.35 of the NPRM)

Section 407(c)(2)(B) of the Act provides a special participation rule for single parents or caretakers with young children. A single parent or caretaker with a child under the age of six will be deemed to be engaged in work for a month if he or she participates in work activities for an average of at least 20 hours per week.

This provision has little relevance in FYs 1997 and 1998, when, for the overall rate, the required number of hours for all individuals is 20 hours per week. But, when the required number of hours rises to 25 hours per week in FY 1999 and to 30 hours per week thereafter, this provision allows single parents or caretakers to spend time with younger children. It also may enable those with young children to fulfill their work obligations while their children are in preschool activities.

The regulations paraphrase this statutory provision.

There were no substantive comments on this section.

Section 261.36—Do Welfare Reform Waivers in a State Affect the Calculation of a State's Participation Rates? (§ 271.36 of the NPRM)

This section is simply a cross-reference to subpart C of part 260, which addresses welfare reform demonstration waivers. We thought it would be helpful to include it so that readers would know to refer to this important exception to the work activities and hours specified in subpart C. We have changed the reference from what it was in the NPRM, in light of our consolidation of the regulatory provisions relating to waivers under part 260.

There were no comments on this section.

Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

Section 261.40—Is There a Way for a State to Reduce the Work Participation Rates? (§ 271.40 of the NPRM)

To ensure that States receive credit for families that have become self-sufficient and left the welfare rolls, Congress created a caseload reduction credit. The credit reduces the required participation rate that a State must meet for a fiscal year. It reflects the reduction in the State's caseload in the prior year compared to its caseload under the title IV–A State plan in effect in FY 1995, excluding reductions due to Federal law or to State changes in eligibility criteria.

This provision enhances the inherent interest of States to help families become independent. As a State reduces its caseload, its risk of incurring a penalty lessens because lower work participation rates are easier to achieve. This provision also increases a State's chance of qualifying for a lower basic MOE requirement, which would reduce its risk of incurring an MOE penalty.

To establish the caseload base for FY 1995, we proposed using the number of AFDC cases and AFDC Unemployed Parents reported on ACF–3637. To avoid artificial reductions in the minimum participation rates, the NPRM included cases in any separate State program used to meet the maintenance-of-effort (MOE) requirement in determining the prior-year caseload. Under the proposed rules, we would not have granted a caseload reduction credit unless the State reported case-record information for its separate State programs.

Comment: Some commenters suggested that allowing States to reduce their work participation rates emphasizes caseload reduction over the goal of self-sufficiency. Others strongly supported the caseload reduction concept.

Response: By including this provision in the statute, Congress sought to recognize State success in moving individuals off assistance. We believe this provision comports closely with both statutory language and intent.

Comment: One commenter asked us to include explicit language to the effect that we would apply the caseload reduction credit to reduce the participation standards before evaluating State performance.

Response: Different groups will evaluate State performance in a variety of ways. For purposes of determining potential penalty liability, we will compare a State's actual participation rates with the rates that apply following any adjustments due to caseload reduction credits.

Comment: A substantial number of comments addressed our proposed method of using reported AFDC data to establish the 1995 caseload baseline. First, several correctly pointed out that the Statistical Report on Recipients Under Public Assistance is ACF–3637, not ACF–3697. In addition, many commenters thought that, to conform to the statute, the base-year calculation should include not only the AFDC population, but also recipients of assistance under the Emergency Assistance program (EA) funded under title IV–A and cases receiving At-Risk and transitional child care benefits.

Other commenters suggested that two-parent families receiving TANF assistance are not comparable to AFDC Unemployed Parent (AFDC–UP) cases because TANF does not restrict two-parent families as AFDC–UP eligibility rules did. They argued that, to be fair, we ought to compare ''apples to apples'' and ''oranges to oranges.'' Most recommended either not counting two-parent cases at all or allowing States to adjust the base-year caseload reports to include any two-parent cases that were not AFDC–UP cases. They also recommended adjusting the reports to correct inaccuracies.

Response: We agree with these commenters that, to some extent, our proposal compared ''apples to oranges.'' In developing the NPRM, we recognized that the calculation should reflect an unduplicated count of cases receiving ''assistance'' under either AFDC or EA. However, from the data reported to us, we could not unduplicate the AFDC and EA case counts or determine which, if any, of the EA benefits constituted ''assistance.'' In our consultations, many State staff told us that they would also not now be able to unduplicate AFDC and EA cases for fiscal years 1995 and 1996. Thus, for consistency, we limited the base-year data to AFDC cases reported on the ACF–3637. Based on the comments and further internal discussion, however, we believe it would be fairer to afford States the opportunity to adjust and correct baseline data if they can do so because adjustments would make the base-year and prior-year caseload figures more comparable. For example, it would not be appropriate to include certain EA cases in the base-year caseload because, as recipients of ''one-time, short-term'' benefits, such cases would not be receiving TANF ''assistance'' and do not show up in the prior-year TANF caseload. However, if there were EA cases in 1995 that received ''assistance'' and that did not receive both EA and AFDC benefits, it would be appropriate to include those cases in the base-year caseload.

To allow for more comparable caseload data, we have modified the final rule. We will adjust the base-year case count for any State that can provide accurate adjustment data or unduplicated case counts, for example, through a computer match of each month's 1995 AFDC and EA caseload and subsequent years. This includes reliable information on the actual

number of two-parent cases in its AFDC caseload for applicable years. However, we will only include EA cases to the extent that the assistance provided under EA would meet the TANF definition of assistance.

Comment: Some commenters suggested that some types of cases from FY 1995, such as State General Assistance (GA) cases, are not included in the baseline, but should be. They argued that analogous cases are served in separate State programs and thus will be included in the comparison year.

Response: We appreciate the commenter's point and agree that, in this regard, we are not comparing like cases. However, we cannot include GA or similar cases in the base-year because the statute specifies that we compare cases ''that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.'' To the extent that such cases are in the prior-year caseload, but not in the 1995 base because the State has expanded its eligibility criteria since 1995, the net caseload decrease calculation will adjust for this difference. Please refer to § 261.42 for additional discussion.

Section 261.41—How Will We Determine the Caseload Reduction Credit? (§ 271.41 of the NPRM)

In the proposed rule, we explained how difficult it was to develop an appropriate methodology to quantify the different types of caseload reductions. We had considered and rejected two alternatives, i.e., the use of Medicaid records to estimate the effect of eligibility changes (since Medicaid eligibility is based on the July 1996 AFDC eligibility rules) and a computer simulation model. Neither alternative could produce reasonably accurate estimates of the effect of eligibility changes on the caseload size. Nor did our extensive consultations provide a straightforward methodology that could be universally applied.

As a result, the NPRM proposed a caseload reduction methodology based on State-submitted information and estimates. These regulations incorporate the same basic approach. Under the final rules, we determine the appropriate caseload reduction for each State using the following process:

Step 1—We compare 1995 AFDC and Unemployed Parent caseload data to State-reported TANF and SSP-MOE caseload data for the prior-year.

Step 2—The State submits a Caseload Reduction Report that provides: a complete listing and implementation dates of State and Federal eligibility changes since FY 1995; a numerical estimate of the impact on the caseload since 1995 of each eligibility change; an overall estimate of the net cases diverted from assistance as a result of eligibility changes; an estimate of the State's caseload reduction credit; the number and distribution of caseload closures and application denials, by reason; a description of the methodology for the estimate, as well as supporting data to document the information in the report; a certification that it incorporated all net reductions, there was an opportunity for public comment on the content of the report, and it considered such comments; and a summary of all public comments. (We have included the Caseload Reduction Report form and instructions at Appendix H.)

Step 3—We compare and analyze each State's methodology, estimates, and data to determine whether they are plausible. We may request that a State submit additional information within 30 days to support the estimates. In addition, we will conduct periodic on-site visits and examine case records to validate the information we have received.

Because eligibility changes often affect two-parent cases differently from the overall caseload and the two-parent rates are distinct, the NPRM required States to submit separate estimates and information for the overall and two-parent rates to receive a caseload reduction credit.

Comment: Many comments noted how difficult it is to measure the impacts of policy changes and achieve comparability or equity among States. One suggested that the only accurate way to determine the caseload impact of a policy change is to use experimental and control groups. A few commenters suggested using a ''quality control'' model or system based on sampling, exception criteria, and audits to establish the estimates of policy changes.

A number claimed that we had shifted the statutory burden and responsibility for calculating the caseload reduction credit from us to the States, with mixed views as to whether this was appropriate. One cited the specific statutory language requiring that the regulations ''shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.'' Some expressed concerns about the standards to which we might hold States seeking caseload reduction credits (i.e., in quantifying the effects of eligibility changes).

Another suggested that the Secretary has an obligation to pay for obtaining such data.

Others, while expressing concern with the proposal, agreed that it would be difficult for us to develop a sounder methodology that could be used in every State. Several commenters noted that the methodology imposed a tremendous burden because States may not have retained or may never have collected the information needed to make estimates. Some urged working with States to find a reasonable or less burdensome method of measuring the caseload reduction. Others suggested that, working in partnership with States, we should provide technical assistance to help States do the required analysis.

Response: We are glad that commenters clearly understood the difficult dilemma posed in developing a caseload reduction methodology, and we are sympathetic to their concerns about the burden our proposed methodology would impose on States. However, we believe that the specific recommendations for methodological alternatives, such as a quality control model, ultimately would impose an even greater information collection burden on States, without a guarantee of more precise estimates. Therefore, in the final rule, we are retaining the same general approach, while adopting some suggested improvements. We have clarified that we will accept State estimates of the impact of eligibility changes and the resultant caseload reduction credit, unless they appear to be implausible, based on the common experience of other States. In these situations, we will ask the State to re-examine its estimate in light of this new or additional information.

At the same time, we have clarified our expectation that States provide aggregate information on the number and distribution of case closures, by reason. At a minimum, States must provide this information for the base year (1995) and prior year. The NPRM asked for a listing of reasons, but did not directly say we were looking for quantitative information that might reveal any significant shifts in the causes of case closures that might be associated with changes in State policies. We also decided to ask for similar data on application denials and added an explicit requirement that States report an overall estimate of the net number of cases diverted due to eligibility changes.

We understand that the caseload closure and application denial information that we are requesting may not directly measure the caseload effects of eligibility changes, especially over time as the effects of changes decay and reporting practices may shift. However, it is useful information for a State to consider in preparing its Report, it will give the public a context for assessing and commenting on the State's methodology and estimates, and it will give us a national set of data that will

enable us to judge the plausibility of individual State determinations.

As suggested, we have consulted—and intend to work in partnership with—States, State groups, and advocates to develop appropriate estimates, complete the caseload reduction analysis, and refine their estimating methodologies.

We thought it would be helpful for States to have all forms related to the rule published together. As a result, we have included, under Appendix H, the Caseload Reduction Report form and instructions for completing it. Although the form itself was not part of the NPRM, we addressed the burden associated with the caseload reduction estimates in our paperwork burden estimate. Anyone wishing to comment on the form or burden should submit comments to the Office of Management and Budget. Please refer to the section of the preamble titled ''Paperwork Reduction Act'' for further information.

Regarding the suggestion that the Secretary pay for obtaining such data, we would say: (1) Congress did not appropriate funding for this purpose; (2) many States can draw upon analyses done for other purposes to reduce the cost burdens associated with these determinations (For example, in proposing changes to eligibility rules, some States will routinely prepare estimates of caseload and budgetary impacts of those changes as part of the State budgetary and legislative process.); (3) if such estimates are not otherwise available, because of caseload reductions and the strong economy, in general, States have substantial funds available to do research and analysis; and (4) we expect the burden of these reports to diminish over time because State program rules should become less subject to change and States will have developed the methodological framework for producing their estimates.

Comment: Several commenters objected to using case closure information as the basis for estimates, because the reason for closure is often unknown and the coded reason is sometimes incorrect. Others suggested that different eligibility rules affect applicants as well as recipients and thus the reason for an application denial is just as important as case closure information in determining the effect of a policy on the caseload.

Response: While we recognize the deficiencies in both case closure information and application denial information, it is generally the most readily available State information that we can use to help assess the impact of policy decisions. Therefore, we have retained the requirement of submitting case closure information in the final rule. Also, we have added a requirement to submit similar application denial information. In addition, we have clarified that we are looking for quantitative information.

While we are not requiring it, a State may conduct surveys or in-depth reviews to establish more accurate estimates of the effect of policy changes and use this information in place of case closure and application denial data from case files.

Comment: Numerous comments noted that the statute does not address whether there should be separate caseload reduction calculations for the overall and two-parent rates. Some thought that, if the State had achieved an overall caseload reduction, it was unfair to penalize it for an increase in two-parent households (especially when it implemented these policies to help keep families together—a purpose of the statute). Some commenters recommended applying an overall caseload reduction credit to both rates. Others liked our proposed approach of two separate calculations, each based on reductions in the applicable caseload. Many suggested that States should be afforded the option to choose whether to use one or two calculations. One commenter suggested that, if we retained the approach of two separate calculations, we should allow a State to request and submit estimates on only one rate, if a reduction credit were not appropriate for the other.

Response: Resolving this issue is critically important because of its impact on preparing families for work and self-sufficiency, the potential penalty liability of States, and the lack of guidance on Congressional intent. We were persuaded by the comments that providing an option would be an appropriate way to ensure that States that adopt policies to promote two-parent families would not be penalized. In particular, we thought it made sense to allow States credit for success with its total population, since the two-parent caseload is a subset of that total, generally a very small subset. It also allows us to give flexibility to States to accommodate differing circumstances. At the same time, we were concerned that allowing an option could reduce the strong Congressional mandate for two-parent families to prepare for and engage in work, because States that were particularly successful in achieving overall caseload reductions could reduce their target two-parent participation rates to minimal levels.

To help us make this decision, we analyzed caseload data for fiscal years 1995, 1996 and 1997, TANF participation rates for FY 1997, and preliminary participation rates for FY 1998. We determined that providing a State option would not nullify the two-parent participation requirements, as we had feared. In fact, our analysis showed that more States derive a greater caseload reduction credit from calculating two separate credits, i.e., applying the two-parent caseload reduction to the two-parent rate.

Based on this analysis and to accommodate State circumstances better, we have decided to allow States an option regarding the caseload reduction credit for the two-parent participation rate. A State may use the overall reduction credit for its two-parent rate or may opt to submit separate caseload reduction information on its two-parent caseload and base the credit for the two-parent rate on reductions in the two-parent caseload alone. States do not have the option of applying to the overall rate a reduction credit based on reductions in the two-parent caseload.

Comment: A commenter asked that the rules clarify that the State's methodology must account for the ongoing effects of an eligibility change beyond the initial year.

Response: We agree with this comment. The final rule requires estimates of the effects of all eligibility changes since FY 1995.

Comment: Many State commenters noted that it would be better to know their caseload reduction credits earlier in the year, but then noted that two weeks might not be enough time to provide any additional information requested by ACF. Several suggested that States need at least one month to provide supplemental information. Others suggested that we negotiate an appropriate deadline with each State, based on the information needed.

Response: We recognize that States may need more than two weeks to provide additional information. Therefore, we have modified the final rule to allow a State to negotiate the information deadline or submit it within 30 days of the request. We believe that it is important to resolve such matters within a short timeframe so that States will know what participation rates they must meet as soon as possible.

Comment: Several commenters suggested that States and the Department would both benefit from making each State's methodology and plan available for public review and comment. That way, other organizations would be able to provide another perspective on eligibility changes and their impacts on the caseload. For the

purpose of public review and comment as well as sharing methodologies and approaches among States, several commenters suggested that we electronically post each State's estimates and methodology.

Response: We agree that both States and the Department would benefit from public input on the estimates and methodology. Therefore, in the final rule, we have required a State to certify that it has provided the public an appropriate opportunity to comment on the estimates, methodology, and reductions. To allow time for public input, we have extended the due date of the Caseload Reduction Report until December 31 of each year. We also require a summary of the public input. To enable us to learn effective estimating techniques from each other, we intend to post electronically useful illustrative estimates, techniques, and comments on the ACF World Wide Web page at http://www.acf.dhhs.gov.

Comment: Several commenters objected to the requirement that the Governor certify the caseload reduction figures, e.g., ''the not-too-subtle implication that States will not be truthful is both offensive and unnecessary.'' One suggested that surely the Governor's designee should be able to ''certify'' that the State had taken into consideration all reductions.

Response: We agree with the suggestion and have made the appropriate change in the rule.

Comment: A number of comments suggested that we strike the provision that requires a State to report disaggregated data on families in separate State programs in order to qualify for a caseload reduction. Some maintained that requirements for disaggregated data on separate State program cases exceed our authority. As an alternative, some suggested that aggregated caseload data should suffice.

Response: If a State moves a family receiving TANF assistance to a separate State program where it receives benefits meeting the definition of assistance, this change in the family's status would represent an eligibility change if we did not include separate State program (SSP) cases in the caseload count. Therefore, unless we require and receive the SSP information, it would be impossible to calculate the appropriate caseload reduction credit. However, we point out that, under the final rule, we have significantly reduced the amount of data we are requesting on SSP cases. Most of this cutback is due to a reduction in the number of programs and types of cases for which States must report data. This is one of the effects of changing the definition of assistance. We have also reduced the burden by changing some data elements and changing the amount of data we expect on other individuals in the family (i.e., those not receiving assistance).

Comment: Some comments suggested reducing the data collection burden by actually treating a transfer to a separate State program as a change in eligibility and estimating the impact on the caseload reduction.

Response: We do not agree with this suggestion. Since we are expecting States to report case-record information on separate State programs, we believe actual caseload numbers will be available and there is no reason to develop or accept estimates.

Also, States and other commenters argued that, to the extent possible, the methodology should compare ''apples'' with ''apples,'' not ''oranges.'' We believe that including the SSP cases in the prior-year caseload best serves that objective. Because SSP cases will be receiving benefits that address their basic needs, we expect that, generally, they will be comparable to AFDC cases.

Section 261.42—Which Reductions Count in Determining the Caseload Reduction Credit? (§ 271.42 of the NPRM)

Congress enacted the caseload reduction provision to give States credit toward participation for families that have achieved self-sufficiency or left the welfare rolls due to work, marriage, child support, or other means of support. The statute does not give caseload reduction credit for Federal or State eligibility changes that deny assistance to vulnerable families.

In the NPRM we gave States full credit for caseload reductions, except when those caseload reductions arose from changes in rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations, time limits, grant reductions, more restrictive residency, age, demographic or categorical factors). States could take credit for the calculable effects of mechanisms or procedural requirements used to enforce eligibility criteria (such as fingerprinting or other verification techniques) only to the extent that they identify or deter ineligible families under the State's rules.

We also proposed that, in order to qualify for a caseload reduction, a State must report data on families in separate State programs. Based on the type of family served or the nature of benefits provided, we proposed that we would exclude some families in separate State programs from this calculation, if a State demonstrated that the cases would not have been included under AFDC or EA, based on specific data on the family.

Comment: In determining the Federal and State eligibility changes that do not count for the caseload reduction credit, a number of commenters recommended using a concept of net caseload change. They suggested that eligibility changes that result in caseload reductions should be offset by the positive policy choices of States that increase the caseload. To illustrate: if a State-imposed time limit resulted in the termination of 1,000 cases in a year, but the elimination of the ''100-hour rule'' and the ''attachment to the workforce'' requirements to encourage two-parent family formation added 300 families, only 700 cases would not count toward the State's caseload reduction credit. These commenters suggest that an alternative reading discourages States from adopting proactive policies that are consistent with the intent of the law, such as making work more attractive and encouraging and supporting the formation of two-parent families.

Response: Like commenters who offered these suggestions, we are very supportive of policies that promote work, enhance family formation and help make work pay. Given our desire to encourage family-supportive policies, we found this proposal to mitigate caseload reduction incentives appealing. We also think that the concept of a net eligibility decrease, taking all eligibility changes into consideration, provides an opportunity to improve the comparability of caseloads, i.e., it would result in comparing ''apples to apples'' rather than ''apples to oranges.'' Many States have dramatically increased their earned income disregards and resource limits and eliminated various categorical requirements. Thus, many current recipients would not have been eligible under the 1995 AFDC criteria. To avoid penalizing States for such positive changes, we have adopted the recommendation of using the net number of cases diverted from TANF due to eligibility changes in determining the caseload reduction credit.

Two examples illustrate how the concept will actually work. Consider a State in which the caseload was 100,000 in FY 1995 and fell to 75,000 in FY 1997. The State estimates a caseload decrease of 15,000 due to time limits and other restrictive eligibility rules and a caseload increase of 10,000 because of increased earnings disregards and resource standards. In this example, the net caseload reduction due to eligibility changes is 5,000. This means that, of the actual decline of 25,000 cases, 20,000 count toward the caseload reduction

credit. Thus, the State's caseload reduction credit for FY 1998 is 20 percent, (because 20,000 is 20 percent of 100,000).

To demonstrate what happens when caseload increases due to eligibility changes exceed eligibility-related decreases, we simply reverse the example above. The State's caseload fell 25 percent, from 100,000 to 75,000 between FYs 1995 and 1997. In this example, the estimated decline attributable to time limits and other restrictions is 10,000. The estimated increase due to higher earnings disregards and resource limits is 15,000. Because the net effect of eligibility changes is a 5,000 increase in the caseload, there would be no net number of cases diverted from TANF as a result of eligibility changes. Since there is no net reduction, we do not disregard any cases from the actual decline of 25,000. Thus, the State would be entitled to the entire 25-percent caseload reduction credit.

Comment: Several commenters suggested that cases analogous to some cases in separate State programs were not included in the FY 95 baseline and therefore would improperly inflate the comparison year caseload, if included. All these commenters asked that we exclude families in separate State programs from the caseload reduction calculation. Others noted that, while the statute does not directly address this issue, there is a legitimate need to look at cases in separate State programs in the calculation. Otherwise, a State could do something like simply move half of its cases to a separate State program and assert a 50-percent caseload reduction.

Response: Congress did not intend to give States credit for caseload reductions resulting from changes in eligibility. We believe that when a State moves a family receiving TANF assistance to a separate State program, it would represent an eligibility change if we did not include it in the caseload count; therefore, we have not modified the regulation as some of the commenters suggest. However, as noted elsewhere, we have modified the reporting for separate State programs. This change has the effect of reducing the number and type of SSP cases reported by the State.

Comment: Commenters objected that we had inappropriately retained discretion (by using the language, ''we will consider excluding cases'') to exclude cases in separate State programs that duplicate TANF cases or were made ineligible for Federal benefits by Pub. L. 104–193. Several found that the three categories of exclusions appear to be more ambiguous and discretionary than appropriate. Some commenters thought the third category—cases receiving tax credits, child care or transportation subsidies or other benefits for working families that are not directed at their basic needs—was particularly confusing. Most recommended that we explicitly exclude from the caseload reduction calculation, cases in separate State programs that: (1) duplicate cases in the TANF caseload; (2) provide assistance to immigrants made ineligible for Federal benefits; and (3) provide income support or services to low-income, working families for whom employment provides the primary source of income.

Response: Generally, we agree with the comments and have made appropriate changes in the final rule. If a State provides documentation on cases in separate State programs that meet either of the following conditions, we will exclude them from the caseload count: (1) cases that duplicate TANF cases; or (2) cases made ineligible for Federal benefits by PRWORA and that are receiving only State-funded cash assistance, nutrition assistance, or other benefits. We did not include the third exception suggested by commenters since these cases are no longer reported as SSP cases under the revised definition of assistance.

However, we note that these are the only circumstances under which we will exclude separate State program cases from the caseload reduction calculations. As we have indicated already, we believe that moving a family receiving TANF assistance to a separate State program where they are receiving assistance would represent a change in eligibility criteria if we did not include such programs in the caseload reduction calculation.

Comment: We had wide-ranging and divergent comments on the methodology and supporting data required of States. Several commenters noted that a State policy that denies assistance when an individual does not comply with work requirements, child support cooperation requirements, or other behavioral requirements is the same as any other eligibility requirement—it defines the categories of families that do or do not qualify for assistance. Some commenters suggested that enforcement mechanisms such as fingerprinting also deter eligible families. They recommended that States receive credit only to the extent that the number of families removed exceeds the number wrongly denied, deterred or removed. Several commenters requested that the final rule explicitly consider full-family sanctions, burdensome verification requirements, and requirements that applicants engage in certain activities to be changes in conditions of eligibility. Most recommended that a State should not receive credit for any such changes in its policy. Others suggested just the opposite, that full caseload reduction credit is appropriate for all denials of assistance for failure to comply with a behavioral requirement.

Response: Under the final rules, we consider behavioral requirements that divert families to be eligibility changes, and we exclude them from assistance from the caseload reduction credit. We believe it is appropriate to treat both full-family sanctions and behavioral requirements as eligibility changes. Based on the comments, we have tried to clarify explicitly that no type of Federal or State eligibility change since FY 1995 that directly affects a family's eligibility for assistance will count in a State's caseload reduction credit. These changes include more stringent income and resource limitations, time limits, full-family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements (e.g., applicant job search), cooperate with child support, or fulfill other behavioral requirements. A State may count the reductions attributable to enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules.

Section 261.43—What Is the Definition of a ''Case Receiving Assistance'' in Calculating the Caseload Reduction Credit? (§ 271.43 of the NPRM)

To determine the caseload reduction credit, we proposed to consider caseloads in both TANF and in any separate State programs that are used to meet the maintenance-of-effort (MOE) requirement. Using the definition of assistance proposed under part 270, we proposed to base the calculation on all cases in the State receiving AFDC in FY 1995 and TANF assistance for all other fiscal years.

Comment: Several commenters asked us not to use the definition of ''assistance'' to calculate caseloads for periods prior to the State's implementation of TANF. They argued that, since there was no definition of assistance similar to the TANF definition, many States granted assistance based on broader criteria. In particular, they pointed out that EA cases often did receive one-time, short-

term assistance. Since they were legitimate IV–A cases, the commenters maintained that the cases should be included in the number of cases receiving assistance in 1995.

Response: In the NPRM, we specified that the definition of ''assistance'' should be applied to the caseload count, but our methodology did not actually allow a State to use the definition until it had implemented the TANF program. The caseload information reported by States on ACF–3637, which applied to a State until it implemented the TANF program, reflected the AFDC and EA definitions. Under the final rule, to get caseload data that are comparable to TANF, we adjust the baseline AFDC and EA data, as appropriate, to estimate the unduplicated cases receiving benefits under State programs in those years that would have met the TANF definition of ''assistance.''

We point out that this final rule does not dictate the determination of caseload reduction credits for fiscal years 1997, 1998, or 1999. Thus, it does not cover the determination of credits for periods when States were still operating AFDC and EA programs. For such earlier periods, it would be appropriate to keep all unduplicated AFDC and EA cases in the calculations because the base-year and prior-year caseload figures would be comparable.

These rules cover caseload reduction credits that apply in FY 2000 and thereafter—after States had converted to TANF. Since the definition of ''assistance'' determines the prior-year caseload numbers, it is appropriate to adjust the 1995 caseload numbers to mirror the TANF definition of assistance, in order to compare ''apples with apples.'' In some instances, that could mean that EA cases should not be part of the 1995 base.

Comment: One commenter recommended that we clarify this section to ensure that, in calculating the caseload reduction credit, we only include a percentage of the separate State program cases that equals the State's MOE requirement (either 75 or 80 percent). Otherwise, the commenter argued, the policy would discourage States from investing more than the required MOE amount.

Response: We agree with the comment and have revised the final rule accordingly.

Section 261.44—When Must a State Report the Required Data on the Caseload Reduction Credit? (§ 271.44 of the NPRM)

Under the NPRM, we required a State to submit its caseload report and estimates for each fiscal year by November 15. We proposed to approve or reject a State's estimated reduction credit within 90 days, that is, by February 15.

Comment: Commenters expressed mixed feelings about the timeframes. On the one hand, nearly everyone wanted States to receive the caseload reduction credit and net participation requirement as early as possible. On the other hand, most commenters, and especially State commenters, suggested that the timeframes for responding to additional information requests from the Department and for resolving issues were not sufficient.

Response: To give the public an opportunity to comment on State estimates and ensure that States have adequate time to provide additional requested information, we have modified the final rule. The caseload reduction report and estimates are now due from States on December 31. States may negotiate the deadline for additional information or submit it within 30 days. As a result, we will provide States with their caseload reduction credits no later than March 31. Any extensions for submitting additional data that we grant to States must be consistent with this deadline.

Subpart E—What Penalties Apply to States Related to Work Requirements?

While PRWORA embodies State flexibility in program design and decision-making, it also embodies the principle of accountability. Where a State does not live up to the minimum standards of performance, it faces serious financial penalties. One of the principal areas of accountability is the State's provision of work and work-related activities to promote employment and self-sufficiency. The work participation rates are demanding, but designed to ensure that recipients move as quickly as possible into work and toward independence. This is especially important given the time-limited nature of Federal TANF benefits.

In structuring this part of the regulations, we have attempted to balance the imperative of State accountability in the work participation rates with the knowledge that each State enters TANF from a different standpoint and with different ideas about the best way to help its recipients.

Section 261.50—What Happens if a State Fails To Meet the Participation Rates? (§ 271.50 of the NPRM)

In accordance with section 409(a)(3) of the Act, as amended by Pub. L. 105–33, if we determine that a State has not achieved either or both of the minimum participation rates in a fiscal year, we must reduce the SFAG payable for the following fiscal year. The initial penalty is five percent of the adjusted SFAG and increases by two percentage points for each successive year that the State does not achieve the participation rates. We reduce the penalty amount based on the degree of noncompliance, as discussed at § 261.51. The total work participation penalty can never exceed 21 percent of the adjusted SFAG. (See § 262.1(d) for a discussion of the total penalty limit under TANF.)

If a State fails to provide complete and accurate data on work participation, as required under section 411(a) of the Act and § 265.8 of the regulations, we may determine that a State has not achieved its participation rates, and the State will be subject to a penalty under this part. We also have the authority to penalize a State that does not report its work participation data for failure to report (under section 409(a)(2) of the Act). However, in this case, we thought it would be more appropriate to penalize the State for failure to meet its work rate. First, this policy is consistent with the approach we are taking when a State fails to report information related to other penalty determinations. Also, we did not want to create a situation where nonreporting States would face lesser penalties than reporting States, and we did not believe duplicate penalties were warranted.

We received some comments regarding the year in which we will impose a penalty. We have addressed these comments at § 262.1 of this chapter.

Comment: We received quite a few comments concerning our preamble language indicating that we would impose a penalty for failure to meet the work participation rates if a State failed to report complete and accurate data on the work participation rates. Some commenters objected to the policy altogether. Others suggested that we should only impose the work participation penalty where, as a result of incomplete or inaccurate data, we are unable to determine whether the State failed the participation rates. Another commenter suggested that we specify what ''complete and accurate'' means for the purposes of calculating the participation rates.

Response: Our intent in including this policy in the preamble was only to impose a work participation penalty based on a State's failure to report complete and accurate data if the lack of data impeded our ability to determine whether the State actually achieved the required rates. In fact, at § 262.3 of this chapter, we indicate that this is our

policy, stating that we will impose the participation rate penalty ''if we find information in the reports * * * to be insufficient or if we determine that the State has not adequately documented actions verifying that it has met the participation rates.'' For clarity, we have changed the wording above to indicate that we ''may'' impose such a penalty, and we will implement the policy as explained in § 262.3.

Comment: One commenter urged us to penalize a State where an entity with jurisdiction or group of people affected finds a systemic violation of any applicable Federal law (e.g., title VI of the Civil Rights Act).

Response: We think it is appropriate to defer to the entity that enforces a given Federal law to penalize a State that violates that law. In general, the laws the commenter alludes to include specific remedies for individuals that are adversely affected. At the same time, we encourage States to make sure recipients are informed of their rights to remedies under Federal, State and local laws.

If, at a later date, we learn of a specific problem in this regard, we will consider further action, but we think it is unnecessary to include such penalties in the regulation at this time.

Section 261.51—Under What Circumstances Will We Reduce the Amount of the Penalty Below the Maximum? (§ 271.51 of the NPRM)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the required participation rate. The required rate for a State is the rate at § 261.23, adjusted for any applicable caseload reduction credit; however, it specifies neither the measures of noncompliance nor the extent of reduction. The statute also gives us the discretion to reduce the penalty if the State's noncompliance resulted from certain specific causes; we address this latter issue separately, in the section entitled ''Discretionary Reductions.''

As we indicated earlier, we have not included in the final regulations the NPRM proposals that would have linked a State's decisions about implementing separate State programs to its eligibility for penalty relief. Thus, we have removed from § 261.51 the provision that would have denied penalty reduction to a State that diverted cases to a separate State program for the purpose of avoiding the work participation requirements. Please refer to the section entitled ''Separate State Programs'' for a discussion of this policy and the comments that we received relating to it.

Required Reduction

We have significantly modified this part of the penalty reduction section after considering the comments we received. In the NPRM, we defined degree of noncompliance first by which of the rates a State missed and second by how far it came from meeting the required rate. Thus, if a State missed only the two-parent participation rate, we proposed imposing a penalty that equaled, as a percentage of the maximum possible penalty, no more than the State's percentage of two-parent cases. Second, if the State missed the overall rate (or both rates), we proposed reducing the penalty only if the State achieved a threshold of 90 percent of the required rate. Above 90 percent, the reduction was to be proportional.

The final regulations use five basic criteria to measure the degree of noncompliance: which participation rate the State failed; the amount by which it failed; how well it succeeded in increasing the number of recipients engaged in work (despite failing the participation rate(s)); the number of consecutive years in which the State failed the rates; and the number of rates that the State failed.

First, as in the NPRM, we will measure noncompliance on the basis of whether the State failed one or both rates for the fiscal year and which participation rate it failed, if only one. We believe that a State that fails the two-parent rate should be subject to a smaller penalty than a State that fails the overall rate or both. In addition, we believe that it is appropriate to consider the size of the two-parent caseload in deciding how much weight to give a failure of only the two-parent rate.

In looking at the data for FY 1996, we noted that the two-parent participation rate, on average, affected a very small percentage of a State's entire caseload—the mean State percentage was about 6.6 percent, but the median was only about 2.4 percent. We think a State that failed with respect to only a small percentage of its cases should not face a huge penalty. At the same time, we want to ensure that States make adequate commitments to achieving the two-parent participation rate and that our policies support State efforts to extend benefits to two-parent families. We have attempted to balance these goals.

Under this rule, the maximum penalty a State could face for failure to meet only the two-parent rate depends directly on how much of the State's total caseload consisted of two-parent families. We have not created a similar proportional reduction for a State that fails only the overall rate because all cases, including two-parent cases, are reflected in the overall rate.

Second, we measure noncompliance on the basis of the severity of a State's failure to achieve the required rate. In drafting the regulation, we wanted to strike the right balance between the importance of work and the requirement to reduce the penalty based on the degree of noncompliance. Although our first inclination was to make reductions in direct proportion to the State's achievement toward the required rate, our experience in the JOBS program led us to consider creating a threshold below which we would grant no reduced penalty. We were concerned that, as in the JOBS Unemployed Parent participation rates, there would be States with negligible levels of achievement, particularly with respect to the two-parent caseload, and thus did not merit a reduced penalty. Given that experience, we thought it was essential to have a threshold.

In the NPRM, we set the participation threshold at 90 percent, in an effort to support the emphasis in the statute on making the work penalty meaningful. In particular, Pub. L. 105–33 amended the work penalty provision so that the amount was fixed, removing the discretion we had under PRWORA to set a lesser penalty amount. We thought (and continue to think) that this shows Congressional intent to provide a work penalty of consequence. To avoid undercutting this intent, our proposed rules required that a State make substantial progress in meeting the target rates before we would consider a reduction. We continue to believe that a threshold is a key part of the penalty structure.

We received extensive comments about the proposed 90-percent threshold. Some commenters accepted our reasoning for creating a threshold, but virtually all found a 90-percent standard to be excessively high. They argued that it bases large fiscal consequences on small and hard-to-measure differences in reported data. While the NPRM maintained that we did not want to give relief to States with negligible levels of achievement, thus leading us to a threshold, commenters asserted that a high threshold treats achievers and nonachievers the same. For example, a State that reaches 2 percent of the required rate and one that reaches 88 percent of that rate are subject to the same penalty. This, they argued, gives States a strong incentive not to serve families with significant barriers. Further, they pointed out that

it would also subject States with similar achievement levels to very different penalties. For example, with a 40-percent participation rate, a State that reaches 35 percent would be subject to a full penalty, but a State that reaches 38 percent would be subject to less than half the penalty. Although most commenters opposed having a threshold at all, believing that any threshold is arbitrary, many suggested that if we found it essential to have one, it should be set significantly lower. Most recommended a threshold of 50 to 75 percent. A few commenters suggested a lower threshold for the two-parent rate than for the overall rate.

After reviewing those comments and analyzing preliminary data, we have set the threshold at 50 percent. We chose this threshold both because it was the most widely recommended alternative level and because we believe it is a logical standard. Requiring States to reach at least half of the target rate draws a clear line between achievers and nonachievers. We think it is reasonable not to grant penalty reduction to States that are closer to a participation rate of zero than they are to achieving the requirement.

Under the final rules, we will reduce the penalty for any qualifying State in direct proportion to the State's level of achievement above a threshold of 50 percent. To achieve this, we will compute a ratio whose numerator is the difference between the participation rate a State actually achieved and the applicable threshold rate and whose denominator is the difference between the applicable required participation rate and the applicable threshold rate.

In the final rule, we have also clarified that the applicable required participation rate and the applicable threshold both reflect any caseload reduction credit that the State receives pursuant to subpart D of part 261. In other words, the standard against which we judge the degree of noncompliance recognizes that Congress wanted States to get credit for the caseload reductions they achieve, as long as they are not due to eligibility changes. If we did not include this clarification, the threshold standard for some States could actually be higher than the target (i.e., full compliance) rate provided under the statute.

For example, assume a State's adjusted target rate (i.e., after applying its caseload reduction credit) equals 30 percent. Further assume the State achieved 18 percent, which exceeds the threshold of 15 percent (one half of 30 percent) by 3 percentage points. The 3 percentage points equal 20 percent of 15 percent, the difference between the required rate and the threshold. Therefore, we would reduce the penalty amount by 20 percent.

Commenters also urged us to consider a wide range of alternative means of measuring noncompliance. On the whole, they urged us to give States credit for their level of effort, rather than looking specifically to a percentage of the participation rate. One commenter offered that, if the purpose of penalties is to give States a strong incentive to take the requirements seriously rather than to punish those that fail, then a broader view of State achievement is in order. In particular, several commenters suggested variations of the following alternative factors for determining penalty reduction:

- An increase in a State's caseload (in either the current year or prior year);
- Improvement in a State's performance over the prior year;
- Increase in the number of participants in countable work activities in a State, or in the number of participants in work activities but below the required number of hours to count for participation; and
- The extent to which a State exceeded the overall rate, even though it missed the two-parent rate.

Some also suggested that we should recognize a combination of alternatives, perhaps without even specifying a comprehensive list in the regulation.

One set of extensive comments on this issue put forward an argument for treating any penalty reduction factors that we adopt in a formulaic way so that a State's penalty liability is clear. Although this can make for a complex provision, we have responded to this concern by adding some detail to the final rule. We believe that this formula will help States foresee the possible fiscal consequences of their policy decisions.

We considered all these alternatives measures from the perspective that our primary interest in the participation rates is to encourage work. As a result, we have modified the regulations to include as our third measure of noncompliance an adjustment factor that reflects a State's success in engaging additional recipients in countable work activities. The factor rewards a State that increases the number of individuals it engages in work by at least 15 percent over the previous fiscal year. If the number of individuals engaged in work decreases, the State would not be eligible for a penalty reduction, beyond the proportional reduction for failing only the two-parent rate. For this calculation, we will use the average monthly participation data, just as we do in calculating the participation rates themselves.

We calculate the adjustment factor by dividing the change in the average number of individuals the State has engaged in work by 15 percent of the number it engaged in work the prior year. For example, if the State engaged an average of 2,000 individuals each month in the prior year, and 2,400 individuals in the current year, we would divide 400 (the change) by 300 (15 percent of 2,000, the prior year's average monthly number engaged in work). This would result in an adjustment factor of 1.33. In other words, in the example, the State's increase in participants exceeded 15 percent of the prior year's level by one third. Thus, under these rules, the State's penalty reduction would increase by one third, compared to the reduction it would have received if it had achieved only a 15-percent increase.

We chose to tie the adjustment factor to a 15-percent increase to approximate the average annual increase in the overall participation rate.

We based the adjustment factor on an increase in the number of participants in work instead of on an increase in the percentage of participants in work for two reasons. First, the proportional reduction above the threshold already takes a percentage of participants into account through the increase in the participation rate. Second, commenters made a persuasive argument that measuring individuals would reward States that actually showed greater success with work, where participation percentages would be affected by caseload changes that might have nothing to do with work or the State's efforts to engage individuals in work.

Readers will note that, in addition to the threshold, the adjustment factor also serves as a trigger for penalty reduction; the State must have an adjustment factor above zero to qualify for penalty reduction beyond the proportional reduction for failing only the two-parent rate. We needed to cut off the adjustment factor at zero because a negative number would actually increase the penalty above the amount described in § 261.50, which we have no authority to do. We then linked the presence of an adjustment factor to further penalty reduction because we did not want to reward a State with a decrease in the number of working recipients more than a State with a small increase (under 15 percent) in the number engaged in work.

Finally, we adjust the penalty reduction on the basis of whether the State failed both participation rates in

the current year and how many consecutive years it failed them. If the State met both participation rates in the previous year and only failed one rate in the penalty year, we will apply the full reduction to the penalty. If it failed both rates, but failed none the previous year, we will decrease the penalty reduction by one half.

For the second consecutive year of penalty liability, we will prorate the penalty reduction by 50 percent if the State failed just one rate; if it failed both rates, it is entitled to a 25 percent reduction.

If the State fails to meet the participation rates for three or more years in a row, we will not reduce the penalty at all. We think that this is a fair and reasonable approach to avoid rewarding a State that has not successfully addressed a persistent problem and that repeated failures is an appropriate indicator of the degree of noncompliance. A State with successive failures could still claim a discretionary work penalty reduction (as discussed below), claim a reasonable cause exception, or enter the corrective compliance process.

We have also added a paragraph indicating that we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers. Based on the comments we received in this area, and given our reasonable cause exception policy with respect to cases with federally recognized good cause domestic violence waivers, we thought these waivers should play a similar part in penalty reduction. For comments about domestic violence waivers, please refer to the preamble section entitled ''Treatment of Domestic Violence Victims.''

To summarize the entire penalty adjustment process, we begin with the proportional reduction based on the amount by which the State exceeded the 50-percent threshold. Second, we calculate the adjustment factor for increasing the number of individuals working and multiply the reduction by the adjustment factor if it is positive, arriving at an adjusted reduction. If the adjustment factor is zero or negative, there is no adjusted reduction. Then we multiply the adjusted reduction by the applicable penalty percentage, derived from whether the State failed just the two-parent rate. Finally, we adjust the penalty based on whether the State failed both rates and on the number of consecutive years of failure.

As we stated earlier, if a State does not qualify for an adjusted reduction, it still may be eligible for the proportional penalty reduction for failing only the two-parent rate.

In spite of our desire to make this regulation as simple as possible, we realize that this process is more complex than the approach we adopted in the NPRM. We have taken very seriously the commenters criticism that the proposed penalty reduction provision did not look broadly enough at State success in work. We think the new provision treats States more fairly and will be more effective at encouraging work. Factoring in multiple ways of looking at such success naturally makes the new methodology more complicated. In fact, we considered several of the other alternatives that commenters suggested, but ultimately decided that additional factors would make the calculation too convoluted, without adding to the balance or the work focus.

Comment: We received a great many comments about linking the size of the penalty for missing only the two-parent participation rate to the proportion that two-parent cases make up of the State's total caseload. Nearly all agreed with our approach; however, commenters put forward two additional ideas. First, one commenter suggested linking the size of the two-parent penalty to the national two-parent proportion, rather than varying the penalty based on each State's two-parent caseload. The second idea was to provide penalty relief for States that have made policy choices that have expanded the 2-parent caseload.

Response: We have not adopted either of these recommendations. While using a national caseload proportion would remove a possible inadvertent incentive for a State to reduce the size of its two-parent caseload, or a disincentive to expand eligibility, two-parent cases are not distributed evenly across the States. Moreover, we think the difference in penalty amounts would not be enough of an incentive to drive State policy regarding two-parent cases.

Regarding the issue of policies that increase the two-parent caseload, we think that our policy of adjusting the penalty base to reflect the two-parent caseload is the appropriate mechanism for helping States with the two-parent participation rate. (We also considered this issue in the context of the caseload reduction factor, as addressed above. Please refer to subpart D of this part for further discussion.)

Comment: As we indicated above, we received many comments suggesting alternative measures to use in penalty reduction. We listed above the ones that were most persuasive or appeared most frequently. The comments included others that we have not listed.

Response: We think the new penalty reduction methodology we have adopted gives States credit fairly for making substantive progress in reaching the participation rates and supports State efforts to engage recipients in work. It should be viewed as a whole because its various components are designed to work in combination to achieve a balanced result. While there are other factors that might also have worked well, we believe that we have selected elements that would achieve these goals and are easily calculable.

Comment: A few commenters urged us to require a State to have a system for monitoring and enforcing compliance with Federal employment laws within its TANF program in order to qualify for a penalty reduction.

Response: As we have indicated earlier, we fully expect States to conduct programs that are lawful and to uphold employment laws that apply to working welfare recipients. We have chosen not to adopt this suggestion out of deference to the enforcement mechanisms already available under Federal law. However, we have created a new regulatory section at § 260.35 to reference existing employment and recipient protections. Please refer to the section entitled ''Recipient and Workplace Protections'' for a more detailed discussion of this issue.

Discretionary Reductions

The final regulations reflect the discretion that we have to reduce the amount of the penalty if the State could qualify as a needy State for the Contingency Fund. The definition of ''needy State'' at § 260.30 is based on especially high unemployment or large numbers of Food Stamp recipients in the State. (See subpart B of part 264 for more discussion of how a State qualifies for the Contingency Fund.)

Pub. L. 105–33 gave us the added discretion to reduce the penalty if the State failed to meet the participation rate due to extraordinary circumstances such as a natural disaster or regional recession. We have modified this provision from the NPRM to include substantial caseload increases among the examples of extraordinary circumstances. Although this criterion is not given as an example in the statute, based on the comments we received, we believe such a condition could constitute an extraordinary circumstance and think it is appropriate to include it.

To ensure that we take any such circumstances into consideration, States should submit information describing

the extraordinary circumstances and their effects on the ability of the State to meet the participation rates. We must provide a written report to Congress to justify any penalty reductions that we grant under this provision.

One criterion for discretionary reductions is similar to the criterion at § 262.5(a)(1) for granting a reasonable cause exception to a penalty due to a natural disaster. We will evaluate any information a State submits concerning the effects of a natural disaster on its ability to achieve the participation rates. If the material does not support granting a reasonable cause exception, we will consider whether it is sufficient for penalty reduction purposes. For example, if the disaster caused a failure in only one small area of the State, but the State missed the required participation rate by a significant amount, we would not grant a reasonable cause exception, but we might reduce the penalty in proportion to the TANF caseload in that area. We intend to use a similar approach to evaluating the effects of a regional recession.

Comment: Some commenters urged us to add other factors to the examples of discretionary reductions. Some suggested an open-ended example such as ''other circumstances beyond the State's control'' while others gave specific suggestions, including: caseload increase; sub-state recessions; widespread economic disruption from the closing of a plant or significant numbers of lay-offs; chronic unemployment; bad weather; and mismatch between available jobs and skills of recipients.

Response: As we indicated above, we have added substantial caseload increases to the list of examples of extraordinary circumstances; however, it is simply a list of examples. We believe the provision leaves the flexibility for a State to make a claim of ''extraordinary circumstances'' based on other factors. The final regulation indicates, as did the NPRM, that we will consider the objective evidence of extraordinary circumstances that a State submits. We have not specified the basis on which we will evaluate that evidence or apply a reduction. We believe this responds to the recommendation of commenters that we should have flexibility under our rules to address situations that we could not foresee at this writing. Since the extraordinary circumstances are likely to be different in each case, we think it is most appropriate to use the discretion available to us to evaluate the materials that a State submits to determine whether its claim warrants a reduction in penalty amount.

Section 261.52—Is There a Way To Waive the State's Penalty for Failing To Achieve Either of the Participation Rates? (§ 271.52 of the NPRM)

Section 409(b) of the Act creates a reasonable cause exception to the requirement for certain penalties, including failure to meet the minimum participation rates. If we determine that a State has reasonable cause, we cannot impose a penalty.

We have included general reasonable cause criteria at § 262.5. These apply to any of the penalties for which there are reasonable cause exceptions. The preamble to § 262.5 discusses how we arrived at these criteria, as well as our general philosophy about the role of reasonable cause exceptions.

For the work participation rate penalty, two additional, specific reasonable cause exceptions apply. Under the regulation at § 261.52, a State may demonstrate that its failure can be attributed to its granting of federally recognized good cause domestic violence waivers under the Family Violence Option. In this case, the State must show that it would have achieved the required work rates if cases with these waivers were removed from both parts of the calculation (i.e., from the numerators described in §§ 261.22(b)(1) and 261.24(b)(1) and the denominators described in §§ 261.22(b)(2) and 261.24(b)(2)). A State must grant domestic violence waivers in accordance with criteria in subpart B of part 260 to be eligible to qualify as federally recognized good cause domestic violence waivers and to receive a reasonable cause exemption on these grounds. We have explained this policy and responded to comments on this subject in subpart B of part 260.

The regulation also provides that a State may receive a good cause exemption if it demonstrates that its failure to achieve the work participation rates can be attributed to the provision of assistance to refugees in a federally-approved alternative project.

Finally, this section of the regulation indicates that States may dispute our findings that they are subject to a penalty.

Comment: Many commenters urged us to expand the reasonable cause exceptions specifically available for failure to meet the work participation rates. They suggested a variety of additional criteria, such as a high incidence of recipients with severe employment barriers, a significant refugee population, correcting unlawful employment discrimination, conflicts with other Federal requirements (including the FLSA) or litigation, and enforcing the nondisplacement provisions. Some commenters, paralleling the domestic violence exception, suggested that the provision of targeted services to other groups of recipients with significant barriers to employment should entitle a State to a reasonable cause exception. Others recommended many of the same criteria suggested for reducing a participation rate penalty, including caseload increases, economic downturns, and increases in the number of recipients the State engages in work or places in countable activities but below the hours standard. Many also suggested granting a reasonable cause exception for a combination of factors. Also, a number of commenters urged us to leave the reasonable cause criteria in this provision open-ended so that a State could present its arguments for an exception as situations arise and each could be evaluated on its own merits.

Response: Although these comments appear in the context of exceptions to the work participation rate penalty, many commenters made the same arguments regarding the general reasonable cause criteria at § 262.5. We have addressed comments that apply broadly to reasonable cause exceptions in that section.

We continue to believe that the best way to address a State's difficulty in meeting a program requirement is through the corrective compliance process. This holds true for the participation rates as much as, if not more than, any other requirement. Families, States, and the Federal government are better served by solving the problem than by forgiving it, or by imposing a penalty. It is for this reason that we have chosen to limit reasonable cause exceptions, particularly those that relate to a specific provision, as in the case of the participation rates, and have not added the criteria suggested. Nevertheless, under § 262.5, a State may present a case for a reasonable cause exception outside the ones specifically listed. We think that the revised language in this section, together with a State's ability to dispute our finding of a penalty, the corrective compliance process, and the opportunities for work penalty reduction, sufficiently recognize the difficulties States may face in meeting the participation rates.

Section 261.53—May a State Correct the Problem Before Incurring a Penalty? (§ 271.53 of the NPRM)

The process for developing a corrective compliance plan does not differ from one penalty to the next,

although the content of the plan naturally would. Thus, the regulation refers to § 262.6, the general section on submittal of a corrective compliance plan for any penalty.

Readers should note that § 262.6(e) establishes a maximum corrective compliance period for failure to meet the work participation requirements. Since we measure participation annually, we will measure compliance based on performance during the fiscal year that ends at least six months after we receive the State's corrective compliance plan.

In this section, we establish a specific threshold that States must achieve in order to be considered for a reduced work penalty under § 262.6(j) for making significant progress toward achieving compliance. A State must increase its participation rate during the compliance period enough to fill at least half the gap between the participation rate it achieved in the penalty year and the required rate for the compliance period. In other words, we will divide the difference between the rate achieved during the compliance period and the rate achieved during the penalty year by the difference between the required rate for the compliance period and the rate achieved during the penalty year; a result of at least 0.50, qualifies the State for a possible reduction.

You should note that, in this final rule, the required rate for the compliance period reflects any caseload reduction credit that the State receives under subpart D of part 261. We believe that this adjusted rate reflects the performance standard that Congress intended would apply to States.

We also believe that making more progress toward the rate than failure—that is, achieving at least 50 percent—is a reasonable standard for significant progress. Thus, at the point at which a State reaches this threshold, we may reduce its work penalty under the corrective compliance provision.

This approach is similar to the one taken in § 261.51, with respect to potential reductions in work penalties based on degree of noncompliance. In both cases, we expect significant compliance in order to merit a reduced penalty. However, we look at performance over different periods in the two provisions.

Comment: Several commenters thought that the 50-percent standard of achievement measured against the ''new'' rate was restrictive and arbitrary. Commenters proposed two basic alternatives. Many urged us to set a threshold of achievement based on a particular State's circumstances or to negotiate a State's threshold in the corrective compliance plan process. Some thought that we should consider a State to be in compliance if it achieves the participation rate associated with the year for which it was subject to the penalty. (Presumably, if we were to use a threshold to reduce the penalty in this scenario, it would be applied against the latter rate.) One commenter thought that we should link the threshold to the average increase among States with corrective compliance plans, and another suggested that States should be able to show significant improvement by means other than reaching the threshold. Another commenter remarked that we made no provision for circumstances arising in the year following the penalty year that prevent a State from reaching the threshold.

Response: We note that this provision applies a second reduction to a State's penalty amount, the first (described at § 261.51) having been significantly expanded over the original proposal. This reduction follows a corrective compliance period in which the State should have been applying the steps of its plan to resolve the participation rate problem. Given these circumstances, we think it is appropriate to maintain a fairly rigorous standard for reducing a penalty still further. Moreover, we do not think that a 50-percent threshold is overly demanding—it simply requires a State to be more successful, rather than less successful, in coming into compliance. We measure progress against the ''new'' rate (i.e., the one that applies for the corrective compliance plan year) because to do otherwise would suggest that the State is not being held to the same standard as all the others for that year. Otherwise, we would effectively give a State an extra year to achieve the minimum participation rate. We expect a corrective compliance plan to allow a State to come into compliance with the applicable rates. Thus, the penalty reduction associated with corrective compliance should use that standard.

If circumstances arise during the corrective compliance plan period that prevent the State from achieving the threshold, it is free to claim a reasonable cause exception or develop a corrective compliance plan for the penalty year, but we do not think it is appropriate to reduce the prior penalty on that basis. In addition, the State might qualify for penalty relief under § 262.6(j)(2), relating to natural disasters or regional recessions during the compliance period.

Section 261.54—Is a State Subject to Any Other Penalty Relating to Its Work Program? (§ 271.54 of the NPRM)

In accordance with section 409(a)(14) of the Act, as amended by Pub. L. 105–33, if we determine that a State has violated 407(e) of the Act in a fiscal year, which relates to when a State must impose penalties on individuals who refuse to engage in required work, we must reduce the SFAG payable for the following fiscal year by between one and five percent of the adjusted SFAG.

Comment: One commenter thought we did not provide adequate guidance concerning the means by which we will judge whether a State has violated the sanctioning requirement. Without such guidance, the commenter thought that States might sanction families more severely than necessary to avoid a potential penalty.

Response: As we indicated at § 262.3, we will use the single audit to assess whether a State is complying with section 407(e) of the Act and thus whether it is liable for a penalty under this provision. We expect that, if there are widespread problems with States' sanctioning practices, our data collection and the audits will help identify them.

While we understand the commenter's concern that States will ''over-sanction'' to avoid this penalty, it is important to understand that this penalty applies both to a State's failure to sanction when it should have and to its imposition of a sanction when it should not have imposed one. Thus, a State that overreacts by sanctioning too readily could be equally liable for a penalty. If the commenter is concerned that States will impose larger sanctions than they would otherwise, we would point out that States have the explicit authority, independent of this penalty provision, to impose sanctions that are greater than pro rata reductions, up to and including terminating assistance to the case.

Comment: One commenter objected to our intention to collect sanction policy information via § 265.9, stating that such information was available in the TANF State plans.

Response: While some States may have included sanctioning policies in their TANF plans, the statute does not require it. Thus, we cannot count on obtaining this information through the plans. Also, at best, the plan information would only tell us about State policy, not State practice (e.g., the nature and scope of sanctions imposed).

Section 261.55—Under What Circumstances Will We Reduce the Amount of the Penalty for Not Properly Imposing Penalties on Individuals? (§ 271.55 of the NPRM)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the section 407(e) of the Act.

In determining the size of any reduction, we will consider two factors. First, we will examine whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work. Second, we will consider the percentage of grants that the State has failed to reduce in accordance with the statute.

As we indicated in the preamble to § 261.14, States have the discretion to define the term pro rata reduction. Under § 265.9, as part of the annual report we require each State to provide us with a description of how it will carry out a pro rata reduction. This information will help us determine whether States are taking sanctions appropriately. Also, these definitions will help us determine whether States face an equitable and level playing field under this penalty provision.

Some commenters noted that the proposed rules incorrectly specified that reasonable cause and corrective compliance did not apply to this penalty. We have deleted the provision that included this inadvertent error.

Comment: One commenter urged us to clarify what we mean by control mechanisms.

Response: We did not want to limit a State's range of possible control mechanisms by creating a single definition. However, one example of a possible control mechanism would be a system that identifies cases in which an individual refused to participate, then cross-checks those cases against information on sanction actions, and corrects any errors in sanctioning.

Although we did not define a control mechanism in the regulation, there are some additional elements that we expect a State to include in a control mechanism to ensure appropriate sanctioning of recipients. Section 402(a)(1)(B)(iii) of the Act provides that a State must set forth objective criteria for fair and equitable treatment of recipients, including an explanation of how the State will provide an opportunity for recipients who have been adversely affected to be heard in a State administrative or appeal process. We think that any State mechanism that controls whether sanctions have been imposed properly should ensure that recipients are informed of their rights to fair hearings and advised of the process for invoking that right. In addition, we encourage States to consider adding procedures to advise recipients of their rights to pursue other remedies that might be available under State and local laws.

Comment: A commenter, citing the fact that States have a right under the regulations at § 262.7 to appeal a finding that it is subject to a penalty, urged us to ensure that individuals are accorded a similar right.

Response: As we explained in the previous comment, section 402(a)(1)(B)(iii) of the Act accords recipients the right to appeal adverse actions. While we are not regulating this provision itself, we do expect that States will address this requirement as part of their sanctioning control mechanisms, and we will take it into consideration in determining any reduction to the amount of this penalty.

Comment: A commenter expressed concern that examining only sanctioning data, without data from cases not sanctioned, as the basis for the penalty would lead to unnecessarily harsh sanctions. The commenter recommended basing the penalty determination solely on whether the State has established control mechanisms.

Response: As we indicated in the previous section, this penalty applies to all violations of the sanctioning requirement, whether failing to sanction inappropriately or imposing sanctions inappropriately. For example, we anticipate sampling sanctioned cases to determine whether a State has imposed sanctions without evidence of a recipient's refusal to participate. Thus, a State has just as much incentive to exercise restraint in sanctioning as to impose sanctions too readily. At the same time, States may impose sanctions that are greater than pro rata reductions without violating section 407(e) of the Act.

Comment: A commenter urged us to base the penalty amount on the amount of the sanctions that should have been imposed, as a percentage of the total amount of grants the State awards, or as a percentage of the total grants that should have been reduced but were not.

Response: This approach seems overly complex to us. We see no advantage to basing the reduction on dollar amounts instead of case percentages.

Comment: A commenter recommended that we allow a tolerance for errors before imposing a penalty under this provision.

Response: We have built a tolerance for errors into the reasonable cause exceptions at § 262.5. In addition, States have the right to dispute our determination that it is subject to a penalty, in accordance with the provision at § 262.4.

Comment: A commenter urged us to deem 80-percent compliance as full compliance with the requirement because the penalty amount must be between 1 and 5 percent.

Response: We have not established a specific formula for determining and reducing the amount of the penalty. We will factor in objective evidence of whether the State has established a control mechanism, as discussed above, and of how many cases have been improperly sanctioned.

Section 261.56—What Happens if a Parent Cannot Obtain Needed Child Care? (§ 271.15 of the NPRM)

Readers will note that we have moved the substance of this section from § 271.15 of the NPRM to § 261.56 of the final rule. The proposed rules contained two sections dealing with the question of sanctions for parents of young children who refuse to work because they cannot find needed child care. The first section specifically addressed the statutory protections from sanctioning available to such individuals who could not obtain child care; the second dealt with the penalties that a State would face if it sanctioned individuals in violation of the exception. Because of the close interrelationship between these two provisions and the number of comments we received on them, we thought that putting the regulatory sections adjacent to one another would make the provisions easier to follow. We have retained § 261.15 to ensure that subpart A, which relates to the responsibilities of individuals under TANF, continues to discuss the child care exception.

To support the intent of the statute to move people to work, section 407(e) of the Act requires that States reduce or terminate assistance to individuals who refuse to engage in work required by section 407 of the Act. However, as we discussed in the preamble to § 261.15, a State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The

parent's demonstrated inability must be for one or more of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

Refusal to work when the State determines an acceptable form of child care is available is not protected from sanctioning.

Because each State has the authority to determine whether the individual has adequately demonstrated an inability to obtain needed child care, we expect the State to define the terms ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements.'' The State must also provide families with the criteria (including the definitions) that it applies in implementing the exception and the means by which a parent can demonstrate an inability to obtain needed child care.

To keep families moving toward self-sufficiency and to promote State compliance with this penalty exception, our rules provide that States must have processes or procedures in place that: (1) enable a family to demonstrate its inability to obtain needed child care; (2) inform parents that the family's benefits cannot be reduced or terminated when they demonstrate that they are unable to work due to the lack of needed child care for a child under the age of six; and (3) advise parents that the time during which they are excepted from the penalty will still count toward the time limit on Federal benefits at section 408(a)(7) of the Act, if applicable.

In response to numerous comments, as discussed below, the language in §§ 261.56 and 261.57 reflects these expectations. In this section, which focuses on the responsibilities of the State to inform parents, we also require that the information States provide must include the definitions or criteria that the State uses in its determination process.

The regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by also requiring the child care lead agency, as part of its consumer education efforts, to inform TANF parents seeking child care in the CCDF system of the existence of the child care exception and how to demonstrate an inability to obtain needed child care.

The CCDF rule requires the lead agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the penalty exception and to include the definitions of the terms or criteria in the CCDF plan.

We took this child care rule into consideration in drafting our proposed rule. Under § 271.15, we required that the definitions and criteria be submitted, but did not specifically require that the TANF agency submit them. Our goal was to ensure that this information was available for audit and penalty purposes and that it be part of the public record, not to create an unnecessary burden for States. We have not altered this policy in these final regulations.

We received many comments on the provisions in this section and made changes as discussed below.

Comment: Most commenters objected to having the responsibility for informing families about the child care exemption in the hands of the child care lead agency and urged that we give the responsibility to the TANF agency.

Response: In the NPRM, we did not specifically require the TANF agency to inform clients about the exception to sanctioning because the CCDF NPRM (now the CCDF final rule) already required it. In the NPRM preamble, we stated our expectation that States would inform clients, but did not name the entity responsible. Our intent was to avoid imposing an additional Federal burden on the States where the CCDF requirement addressed the situation adequately. However, advocates and States alike made a compelling argument that not all TANF clients covered by this protection would necessarily be referred to the child care lead agency. Therefore, we have revised the regulatory language at § 261.56. In the final rule, the TANF agency must inform clients of the existence of the child care exception to sanctions and how to demonstrate an inability to obtain needed child care. This requirement is in addition to the requirement, in the CCDF rules, that the CCDF agency inform TANF parents about the exception.

Comment: Many States objected to our requiring criteria and definitions, arguing that we had shifted the burden of proof from the individual to the State. We also received a few general comments to the effect that our rules did not adequately protect individuals from harsh State policies.

Response: We do not believe that requiring States to inform parents of their rights, including the definition of key terms in those rights, shifts the burden of proof to States. The individual needs to know how the State defines key terms to determine whether the exception applies to his or her case.

Regarding the concern over harsh State policies, States have considerable latitude in implementing the child care protections. We think the final regulations protect families as much as possible, given the regulatory restraints of section 417.

Comment: A few commenters urged us to require States to inform recipients about available child care subsidies and to assist them in obtaining appropriate and affordable child care.

Response: While we agree that assisting recipients locate child care is a reasonable expectation, the statute at section 417 limits our ability to regulate in this area. Given that child care is widely recognized as a fundamental supportive service, necessary for recipients to obtain and maintain employment, we are confident that States will adopt practices that inform recipients about available child care providers. States understand the importance of employment retention and career advancement for recipients. In fact, the publication ''Working Out of Poverty'' by the NGA Center for Best Practices, recognizes the need to inform recipients of the availability of transitional supports such as child care and transportation assistance early, for example, during eligibility determinations and assessments, and as part of job search and job readiness programs.

Comment: Some commenters were concerned that the NPRM left room for a parent who wishes to use a particular type of child care that is not available to refuse appropriate available child care arrangements, without risk of a penalty. For example, they feared that a parent who wants only informal relative care, but has no relative available to provide care, could refuse affordable, suitable center-based care. States argue that this result would be contrary to Congressional intent and the goals of the Act. They urged us to make clear that refusing work under such circumstances is not protected under the child care exception to a sanction.

Response: This issue stems from an interpretation of the wording of the statute, which uses the phrase ''one or more'' in describing the reasons for a parent's demonstrated inability to obtain needed child care. However, we agree with the commenters that such a result would be contrary to Congressional intent, which was to protect individuals from sanction when there was no appropriate child care, not

to give families a loophole to avoid work requirements. Further, such an interpretation would be contrary to the best interest of the family, because the TANF clock continues to run during such a period. Therefore, we have revised the regulatory language at § 261.56 to clarify that refusing to work when an acceptable form of child care is available is not protected from sanctioning.

Comment: One commenter was concerned that the NPRM, as written, might create a larger problem of inadequate child care due to informal, uncertified or unlicensed child care providers. The commenter was concerned that this would result in caregivers with inadequate training in child development or basic life-saving skills, poor or no curriculum, or no health or dental care referrals.

Response: The statute, as reflected in the NPRM, intended to give parents some choice in child care arrangements. Informal care is only one possible type of child care arrangement that families could use. If the State uses CCDF funds to provide child care, the regulations governing the CCDF program require States to have standards for informal providers, as well as those providers who are licensed. Under TANF, we do not have the authority to regulate child care providers. Accordingly, we have not amended the rules in response to the comment.

Section 261.57—What Happens if a State Sanctions a Single Parent of a Child Under Six Who Cannot Obtain Needed Child Care? (§ 274.20 of the NPRM)

As we discussed in the prior section, the statute at section 407(e)(2) protects single custodial parents of children under age six from sanction for refusing to work when they cannot obtain needed child care. They must demonstrate that they could not obtain child care for one or more of the following three reasons: (1) Appropriate child care was not available within a reasonable distance from the parent's home or work site; (2) informal child care, by a relative or under other arrangements, was unavailable or unsuitable; and (3) appropriate and affordable formal child care arrangements were unavailable. However, refusal to work when an acceptable form of child care is available is not protected from sanctioning.

Section 409(a)(11)(A) of the Act directs the Secretary to reduce by no more than five percent of the adjusted SFAG, the SFAG payable to a State that violates this sanctioning protection. To determine that a State is liable for a penalty, we must find that the State reduced or terminated assistance to a parent who qualified for a sanctioning exception under the definitions or criteria that the State developed regarding a parent's ''demonstrated inability'' to obtain needed child care.

We will consider the following factors in determining whether a State has violated the exception to the sanctioning requirement at section 407(e)(2) of the Act:

- Whether the State informs families about the exception to the penalty for refusing to work, including the fact that the exception does not extend the time limit on benefits;
- Whether the State informs families about the process or procedures by which they can demonstrate an inability to obtain needed child care;
- Whether the State has defined ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements,'' and informed parents of these definitions;
- Whether the State notifies the parent of its decision to accept or reject the parent's demonstration in a timely manner;
- Whether the State has developed alternative strategies to minimize the amount of time parents are excepted from work requirements due to their inability to obtain needed child care. For example, a State that uses the services of a child care resource and referral office might grant ''good cause'' based on a statement from that office attesting to the unavailability of appropriate or affordable child care. However, it could implement a system for automatically rechecking the availability of care every few weeks. If the inability to work were due to difficulty in arranging transportation, the State could use bus and rail rates and schedules to help the recipient find appropriate child care within a reasonable distance.

We are not specifying the process or procedures that States should develop or the documents, if any, States should require. However, we suggest that, if States plan to require documents, they select ones that are readily available to families. We recommend that the process or procedures be simple and straight-forward. In addition, we recommend frequent contact with parents, since the penalty exception does not stay the time limit and there may be fluctuations in the availability of child care services.

We will impose the maximum penalty if a State does not have a process or procedure in place that enables families to whom this provision applies to demonstrate that they have met the guidelines provided by the State. Additionally, we will impose the maximum penalty if there is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of the requirement at section 409(a)(11) of the Act. We may impose a reduced penalty if the State demonstrates that the incidents were isolated or that a minimal number of families were affected.

States faced with a penalty under this provision may claim reasonable cause and/or submit a corrective compliance plan as described in part 262.

We expect that, because of the interrelationship between TANF and CCDF, TANF staff will work in close coordination with the lead agency for child care. Our expectation is that TANF staff will provide families with information about the penalty exception and the process and procedures developed by the State to demonstrate an inability to obtain needed child care. Under the CCDF rule, ACF requires that the lead agency for the CCDF program provide the same information to TANF parents who are seeking child care in the CCDF system. In addition, ACF requires the lead agency for child care to include in the CCDF plan the TANF agency's definitions for ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' ''affordable,'' and ''child care arrangements.'' Thus, we expect the State TANF agency to share its definitions of these terms with the child care agency. Both agencies will then be able to share them with families whom they may be assisting with child care arrangements.

We received few comments on this section. They are discussed below. We also made one minor editorial change to § 261.57(c); the word ''will'' was changed to ''may'' in recognition of the variables that we need to consider in a decision to impose a reduced penalty.

Comment: One commenter suggested that we should review a sample of cases of sanctioned individuals to ensure that they were actually informed of their rights and that the State did not disregard a demonstration of the lack of availability of care.

Response: We agree. Since the primary vehicle for monitoring the requirement will be the single State audit, we are developing procedures that include the review of a sample of cases in which benefits have been reduced or terminated due to a parent's failure to comply with the work requirements.

Comment: One commenter disagreed with the proposed regulation because States are threatened with penalties based on isolated instances when they do not follow the procedures they have reported to us. The commenter argued that imposing a penalty for isolated noncompliance would have a chilling effect on enforcing work-related sanctions.

Response: We disagree with the comment. In the proposed rule, we stated that we would impose the maximum penalty of five percent if: (1) The State did not have a statewide process in place that enables families to demonstrate their inability to obtain child care (although the State's process does not need to be uniform statewide, there simply needs to be a process in all areas of the State); and (2) there were a pattern of substantiated complaints that verifies that a State had terminated assistance in violation of the requirement. A ''pattern of substantiated complaints'' does not include isolated cases that affect few families and occur in relatively few jurisdictions. This means that we will not impose a maximum penalty based on a few aberrant situations when it is clear that the State established a statewide procedure. Accordingly, we have not modified the final rules in this regard.

Subpart F—How Do Welfare Reform Waivers Affect State Penalties?

Section 261.60—How Do Existing Welfare Reform Waivers Affect a State's Penalty Liability Under This Part? (§ 271.60 of the NPRM)

Based on our changes to the regulatory provisions relating to waivers, we have modified this section. Under the NPRM, this section described how welfare waivers affected the participation rates. In the final rule, it merely cross-references subpart C of part 260, which addresses welfare reform demonstration waivers comprehensively.

We have responded to all comments relating to waivers in the preamble section entitled ''Waivers.''

Subpart G—What Nondisplacement Rules Apply in TANF?

Section 261.70—What Safeguards Are There To Ensure That Participants in Work Activities Do Not Displace Other Workers? (§ 271.70 of the NPRM)

The regulations incorporate the statutory prohibition against allowing an individual participating in TANF work activities from displacing another employee. A participant in a work activity may not fill a vacancy that exists because another individual is on layoff from the same or equivalent job. Also, a participant may not fill a vacancy created by an involuntary reduction in workforce or by the termination of another employee for the purpose of filling a vacancy with a participant.

The statute and the final rule also require States to establish and maintain grievance procedures for resolving complaints of alleged violations of the restrictions on displacing workers. Readers should note that we have added a new reporting requirement at § 265.9(b)(7), under which each State must provide us with a description of its grievance procedures for resolving complaints of displacement as part of its annual report if it has not included a description in its State TANF plan.

We encourage States to take aggressive steps to ensure that the current work force is not harmed or their employment jeopardized in any way by a State's efforts to place welfare recipients in employment or work-related positions. Our ultimate goal, and that of States, is to increase the ranks of the employed, not to substitute one group of job-seekers for another. Displacing current workers is counter-productive and damages the overall stability of the labor force. We are confident that States will develop procedures for working with employers to protect against displacing other employees.

Comment: A few commenters urged us to establish minimum standards for State grievance procedures and to require that a State notify workers of those procedures and of the remedies available to displaced workers. Similarly, another commenter urged us to create standards for other aspects of this provision. At least one commenter recommended that, if we thought we did not have the authority to impose such requirements, then instead we should deny penalty reduction to States that do not establish effective grievance procedures or ensure widespread notice of their procedures.

Some commenters urged us to reference the WtW interim rules, which included more extensive nondisplacement provisions, and to recommend that States use one set of grievance procedures for both programs.

Response: Section 417 of the Act limits the authority of the Secretary to regulate the conduct of States or enforce TANF provisions, except where specifically provided for in the statute. Thus, it is not consistent with the principle of State flexibility embodied in PRWORA for us to regulate a State's administrative procedures. In particular, in this provision, there is an explicit expectation of deference to State and local laws, which we have reflected in paragraph (c) of this section. Moreover, we do not have penalty authority with respect to the enforcement of the nondisplacement provision and would be reluctant to create a structure that duplicates or conflicts with existing enforcement mechanisms that have a clear foundation under law. For these reasons, we have not modified the regulation to establish minimum standards for grievance procedures or to deny access to penalty reduction.

Using one set of grievance procedures for both programs should prove easier for States, employers, and workers alike. We urge States to consider adopting this approach. However, we note that not all States have established WtW programs, and there may be reasons that a unified grievance procedure would not be appropriate.

Comment: One commenter urged us to add several provisions to the nondisplacement section in order to prevent displacement more broadly. The suggested additions included prohibiting filling a position that: would otherwise be a promotional opportunity for a current employee; did not comply with applicable personnel procedures; was caused by a strike or other labor dispute; or was an established unfilled public agency position, unless unfunded in the budget.

Response: The nondisplacement provisions in the statute are very explicit. Under PRWORA, we do not have the authority through regulations to expand the definition of nondisplacement, even if we support the commenter's suggestions. However, expanded definitions may be available under State law or policy.

Comment: One commenter asked us to explain how we would educate State welfare administrators regarding compliance with the nondisplacement provisions.

Response: The section entitled ''Recipient and Workplace Protections'' describes initiatives by various agencies within our Department and elsewhere in the Federal government to inform State agencies about the requirements of Federal employment laws. Please refer to that section for further information on these efforts.

VII. Part 262—Accountability Provisions—General (Part 272 of the NPRM)

As we noted earlier in the preamble under our discussion of waivers, we moved the waiver provisions of § 272.8 of the NPRM to subpart C of part 260. You will find the comments that we received on § 272.8 there.

Section 262.0—What Definitions Apply to This Part? (§ 272.0 of the NPRM)

This section cross-references the general TANF regulatory definitions established under part 260.

We received no comments on this section.

Section 262.1—What Penalties Apply to States? (§ 272.1 of the NPRM)

Section 409 includes 15 penalties that may be imposed on States. This rule covers 14 of the 15. This rule does not include the specific penalty dealing with substantial noncompliance with requirements under title IV–D (section 409(a)(8)). Our Office of Child Support Enforcement is addressing this penalty in a separate rulemaking. However, since the penalty is one of the TANF penalty provisions, the general procedures and the appeal process in this rulemaking will apply.

The penalties that we are regulating are:

(1) A penalty for using the grant in violation of title IV–A of the Act, as determined by findings from a single State audit and equal to the amount of the misused funds;

(2) An additional penalty of five percent of the adjusted SFAG, based on our determination that such misuse was intentional;

(3) A penalty of four percent of the adjusted SFAG for the failure to submit an accurate, complete and timely required report;

(4) A penalty of up to 21 percent of the adjusted SFAG for the failure to satisfy the minimum participation rates;

(5) A penalty of no more than two percent of the adjusted SFAG for the failure to participate in the Income and Eligibility Verification System (IEVS);

(6) A penalty of no more than five percent of the adjusted SFAG for the failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement agency;

(7) A penalty equal to the outstanding loan amount plus interest for the failure to repay a Federal loan provided for under section 406;

(8) A penalty equal to the amount by which qualified State expenditures fail to meet the appropriate level of historic effort in the operation of the TANF program;

(9) A penalty of five percent of the adjusted SFAG for the failure to comply with the five-year limit on Federal funding of assistance;

(10) A penalty equal to the amount of contingency funds that were received for a fiscal year, but were not remitted by a State, if the State failed to maintain 100 percent of historic effort in the operation of its TANF program in that year;

(11) A penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) A penalty of no more than two percent of the adjusted SFAG, plus the amount a State has failed to expend of its own funds, to replace the reduction to its SFAG due to the assessment of penalties under § 262.1 in the fiscal year that immediately succeeds the year in which the reduction was made;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to maintain the required historic effort during a year in which a State receives this formula grant; and

(14) A penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to impose penalties properly against individuals who refuse to engage in required work in accordance with section 407 of the Act.

If applicable, in calculating the amount of the penalty, we will use the adjusted SFAG as defined in § 260.30. Except for the penalty at § 262.1(a)(12), all penalties are either a percentage of the adjusted SFAG or a fixed amount. In calculating the amount of these penalties, we will add all applicable penalty percentages together, and we will apply the total percentage reduction to the amount of the adjusted SFAG that would have been payable if we had assessed no penalties against the State. As a final step, we will subtract other (fixed) penalty amounts.

The penalty at § 262.1(a)(12) requires that we reduce a State's adjusted SFAG if, in the fiscal year immediately following the fiscal year when we have taken a penalty under this section, a State does not expend its own funds on the State's TANF program in the amount of the penalty (i.e., the amount by which we reduced the adjusted SFAG). Unlike the other penalties, this penalty represents both a percentage of the adjusted SFAG (up to two percent) and a fixed amount (the amount of the reduction a State has failed to expend replace with its own funds). We believe it is appropriate to calculate the amount of this penalty by including the amount of the penalty based on a percentage with other applicable penalty percentages. We will then subtract the fixed amount of this penalty with the other fixed-amount penalties. Finally, we will add the amount based on the percentage for this penalty and the fixed amount for this penalty to determine the total amount of this penalty.

We will not reduce a State's quarterly grant by more than 25 percent. If the 25-percent cap prevents us from recovering the full penalty imposed on a State all at once, we will apply the remaining amount to the SFAG payable for the immediately succeeding quarters until we have finally taken the penalty in full.

In preparing this final document, we noticed a few places where we should revise the regulatory text to be clearer.

- In both the preamble discussion and the regulations of the NPRM, we may not have described the Contingency Fund MOE penalty and the penalty for failure to replace penalty amounts clearly enough. Accordingly, we have clarified the regulation at § 262.1(a)(10) to say that we may penalize a State for failure to remit contingency funds if it does not incur State TANF expenditures (i.e., State expenditures within its TANF program) equal to at least 100 percent of its historical State expenditures. In determining Contingency Fund MOE requirements, historical State expenditures do not include expenditures under the IV–A child care programs.
- At § 262.1(a)(12), we have clarified that States must replace penalty amounts in the year after we actually take the penalties.
- At § 262.1(a)(2), we have clarified that the penalty for intentional misuse is in addition to the penalty for misuse.

We received some comments on the provisions in this section and have made a few changes to the regulations, as noted in our responses to the comments below.

Comment: Some commenters expressed the view that the regulations placed too much emphasis on penalties and included too many penalties. Another commenter mentioned that these provisions will lead to an adversarial relationship reminiscent of the one that previously surrounded quality control penalties under AFDC.

Response: The statute mandates all of the penalties included in these regulations. As we mentioned in the NPRM, it is clear that Congress intended for State flexibility to be balanced with State accountability. To assure that States fulfilled their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409(a). The penalties indicate the areas of State performance that Congress found most significant and for which it gave us clear enforcement authority. While we want to maintain supportive partnerships with States, we cannot avoid our responsibilities under the statute. Although the regulation may seem unduly slanted toward penalties,

this is because we have limited authority to regulate outside the penalty provisions. Most of program policy and design is up to the States and is not the subject of regulations.

Comment: One commenter asserted that only one penalty, the one that will be imposed if a State fails to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six, focuses on protecting and serving families and children.

Response: We do not agree with this observation. All of the penalties have been enacted to assure that States operate programs that promote the goals of the legislation. Many are designed to ensure that States use Federal and State funds appropriately to provide assistance to needy families and end dependence by promoting work and self-sufficiency. Even the penalty for failure to submit an accurate, complete and timely report supports program goals in that it requires States to submit information about what is happening to needy families and whether specific requirements are being met. Also, as we have said elsewhere in this preamble, the penalty system is part of a much broader structure that helps to protect families and promotes positive State responses to the opportunities under TANF.

Comment: A few commenters pointed out that some of the penalties are inter-related and can have an escalating impact on States, i.e., if a State fails one provision, it is likely to fail one or two others. A commenter suggested that instead of imposing penalties and requiring States to replace funds lost due to penalties, we should require States to reduce claims for disallowed costs. Another argued that States should reinvest penalty amounts since withholding funds may have the effect of making it more difficult for the States to achieve the goals of the program.

Response: In establishing this new block grant program, Congress wanted to give States flexibility to design programs that would best serve their families. It enacted the penalty provisions in order to assure that States use funds to achieve TANF program goals. The law requires States to replace penalty amounts with their own funds so that they will continue to serve needy families and meet the requirements of the Act. Congress also enacted a maximum on the total penalty amount that can be taken in any year in order to protect the interests of needy families and children in the State.

Comment: A commenter suggested that we should not design a system that perpetuates failure based upon failure, but, instead, we should design a system that rewards States for excellence.

Response: Although it felt the penalties were necessary to focus State performance, Congress did not rely solely on penalties to ensure that States work towards achieving program goals. As we previously discussed, it also enacted provisions to reward States for excellence when it established bonuses for high performance and for decreases in out-of-wedlock births.

Comment: One commenter noted that the statute specifies that the penalty for failure to meet the basic MOE requirement applies for fiscal years 1998 through 2003 and suggested that we include this limit in our regulations.

Response: Since the TANF program is currently funded only through fiscal year 2002, we did not think it was necessary to include this limitation in our regulations. When Congress re-authorizes TANF, it could well extend this provision in the statute. As the rules are written, we would not need to reissue regulations to keep them current. If the provision were not extended, the penalty would no longer be in effect, and we would consider making conforming changes to the rules.

Comment: A commenter asked if there is a penalty that applies when a State fails to screen applicants and recipients and thus fails to deny assistance to fleeing felons, or parole or probation violators.

Response: The statute, at section 408(a)(9), prohibits States from using their Federal TANF funds to provide assistance to fugitive felons and probation and parole violators. While there is no specific penalty covering this prohibition, the penalty for misuse (or intentional misuse) of funds will apply if States provide TANF assistance to such individuals.

Comment: In the NPRM, we based penalties on the amount of the SFAG minus any reductions due to the implementation of a Tribal TANF program, without consideration of any transfers of funds to the Discretionary Fund of the Child Care and Development Fund (CCDF) and/or the Social Services Block Grant (SSBG). While one commenter expressed appreciation for the fact that we assessed penalties against the adjusted SFAG, other commenters asked that, for the sake of consistency and fairness (since we subtracted transferred amounts before applying the administrative cost cap), we should consider transfers of funds to the CCDF and/or the SSBG in determining the adjusted SFAG.

Response: As we discuss elsewhere, we have revised the definition of the adjusted SFAG to remove any funds transferred to the Discretionary Fund of the CCDF and/or the SSBG. The adjusted SFAG will be the same as the SFAG for States without Tribal grantees and with no transfers of funds to the Discretionary Fund of the CCDF or the SSBG. You can find additional discussion of this issue in the preamble discussions for §§ 260.30 and 263.0.

Comment: We received some comments about our interpretation of the statutory language that requires penalties to be imposed ''for the immediately succeeding fiscal year'' or the ''immediately succeeding fiscal quarter.'' Commenters pointed out that we did not follow the statute precisely, but did not express opposition to our interpretation.

Response: We are applying penalties for the fiscal year (or quarter) immediately following our final decision in order to establish a practical method for implementing the statute. This method allows us to give States the opportunity to plead reasonable cause and to correct violations under corrective compliance plans before we actually take a penalty. Consequently, as one commenter noted, it is possible that a State might incur a violation in FY 1998, be determined to be subject to a penalty in FY 1999, and actually have its funding reduced in FY 2000.

Comment: A commenter pointed out that, rather than limiting penalty reductions to a State's grant to 25 percent during a fiscal year, the statute prohibits us from reducing any quarterly payment by more than 25 percent. Another commenter asked us to clarify this provision.

Response: The commenter is correct that the statute does not permit us to reduce any quarterly payment by more than 25 percent. While on an annual basis, capping each quarter's reduction at 25 percent would be the same as capping the annual reduction at 25 percent, there could be a difference when penalty reductions begin mid-year, as provided under § 262.1(c)(1). We have modified the language at § 262.1(d) slightly to clarify that we will not withhold more than 25 percent of a State's quarterly grant.

Comment: A commenter asked that we assess the penalties in four equal quarterly installments during the year.

Response: The statute requires us to take some penalties by reducing the SFAG payable for the quarter that immediately follows our final decision. In these cases, if the amount exceeds 25 percent of the SFAG payable for that quarter, we will take the remaining amount from the next quarter's SFAG.

The statute requires us to take the majority of penalties by reducing the SFAG payable for the fiscal year that immediately follows our decision. In these cases, if taking the penalty in a single quarter would have an adverse impact on the State's ability to administer the TANF program, the State may ask that we take the penalty in two, three, or four quarterly installments in the fiscal year. However, we must take the full amount during that fiscal year unless we are prevented from doing so by the 25-percent cap. Also, we would take a minimum of the pro-rata share of the penalty amount from each quarter's grant; in other words, we would not allow States to defer a disproportionate share of the penalty amount to the latter part of the fiscal year.

Comment: A couple of commenters noted that, in paragraphs 272.1(c)(1) and (c)(2), we incorrectly categorized when we would take two of the penalties.

Response: The commenters are correct. We made errors in listing when we would take the penalties for failure to repay a Federal loan or to enforce child support penalties. We have corrected paragraphs § 262.1(c)(1) and (c)(2) of the regulations to indicate that we will take penalties for failure to repay a Federal loan by reducing the SFAG payable for the quarter that immediately follows our final decision and penalties for failure to enforce child support penalties by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

Comment: Another commenter argued that, if we take penalties in the quarter following our final decision, it will be difficult for States to fill in with their own funds.

Response: The statute requires us to take any penalties for misuse of funds and failure to repay a Federal loan by reducing the SFAG payable for the quarter that immediately follows our decision. Generally, however, States will have an early indication that these penalties are likely to occur and will be able to plan accordingly.

Section 262.2—When Do the TANF Penalty Provisions Apply? (§ 272.2 of the NPRM)

Congress recognized that, in certain circumstances, States should face the consequences for failing to meet the requirements of the penalty provisions from the first day the State operates the TANF program. It also recognized, however, that States needed some lead time in implementing other TANF requirements.

Section 116(a)(2) of PRWORA delayed the effective date of some of the penalty provisions in title IV–A. For those provisions where it did not delay the effective date, we believe that Congress intended that a State could be subject to a penalty from the first day it began to operate TANF.

During the interim period between publication of the NPRM and the effective date of final rules, we required States to implement the TANF provisions in accordance with their own reasonable interpretations of the statute. In the NPRM we stated that we would not impose a penalty if we were to find that a State's actions were inconsistent with the final regulations, but consistent with a reasonable interpretation of the statute. However, if we were to find that a State operated its TANF program in a manner that was not based on a reasonable interpretation of the statute, we would penalize the State.

We received a few comments in support of these provisions and a couple of other comments as discussed below. We made no changes to this section of the regulations.

Comment: In addition to the supportive comments, one commenter expressed the view that the penalties should not apply until the final regulations are adopted and the States have a reasonable period of time to adjust to the new provisions. Another commenter asked that we give States a hold-harmless period and not subject them to penalties while they implement the regulations.

Response: We have followed the statutory requirements for determining when penalties apply. We do not have the authority to delay the penalties. However, as we discussed in the preamble to § 260.40, prior to the effective date of these final regulations, we will not penalize States if they operated their TANF programs in a manner that is consistent with a reasonable interpretation of the statute. Also, we decided to delay the effective date of these rules so that States have a reasonable period of time to implement the new regulatory provisions. Please refer to § 260.40 for additional discussion of issues related to the effective date.

Section 262.3—How Will We Determine if a State Is Subject to a Penalty? (§ 272.3 of the NPRM)

We have concluded that no one method can be used for monitoring State performance. The following discussion explains the three methods—the single audit, data collection and reporting, and financial reporting—that we will use to determine State noncompliance with requirements that may lead to penalties.

Single Audit

Under the requirements of the Single Audit Act, as of July 1, 1996, States operating Federal grant programs meeting a monetary threshold of $300,000 must conduct an audit under the Act. Most States must audit annually; a few may audit biennially. Because of the substantial funding under TANF, all TANF States meet the audit threshold.

The single audit is an organization-wide audit that reviews State performance in many program areas. We will implement the Single Audit Act through use of Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' Because of amendments to the Act in 1996, OMB recently revised the Circular, merging former Circulars A–128 and A–133. It published the new Circular in the **Federal Register** on June 30, 1997, at 62 FR 35277.

In conducting their audits, auditors use a variety of tools, including the statute and regulations for each program and a compliance supplement issued by OMB. This supplement focuses on certain areas of primary concern to that program. We prepared, and OMB has issued, a TANF program compliance supplement for those penalties for which the single audit will be our primary or secondary compliance instrument. We will update the compliance supplement based on these final regulations.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting additional audits or reviews. In fact, there is specific statutory authority to conduct such additional audits or reviews. In particular, 31 U.S.C. 7503(b) states:

> Notwithstanding subsection (a), a Federal agency may conduct, or arrange for additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or sub-recipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

Additionally, we will conduct quality control reviews of selected State audits to determine whether States conducted their audits in accordance with the Single Audit Act, OMB Circular A–133, and the compliance supplement. Pursuant to OMB Circular A–133, sections ____.400(a)(3) and (5), we will

take appropriate action when we find any audits to be deficient.

We will use the single audit, in conjunction with other reviews, audits, and data sources, as appropriate, to identify noncompliance for which the State may be liable. We will rely heavily on Single Audit Act activities for determining a State's liability for some penalties and will use the single audit to gather and verify information for other penalties. For example, we will use the single audit, supplemented by other reviews, audits, and activities under the Single Audit Act, to identify situations where a State used funds under section 403 in violation of the Act. (See § 263.10 on Misuse of Funds.) The misuse-of-funds penalty is the only penalty for which the statute identifies a specific method (i.e., the Single Audit Act) for determining penalty liability.

We will supplement information from the single audit with our own audits and reviews, and reviews and audits conducted by OIG and its contractors. We may identify a need to conduct such audits as the result of complaints from individuals and organizations, requests by the Congress to review particular areas of interest, information collected by our reporting systems, or other indications of problems in State compliance with TANF program requirements.

When we determine that a State is subject to a penalty for the misuse of funds, we may apply a second penalty if we determine that the State intentionally misused Federal TANF funds. (You will find the criteria for determining ''intentional misuse'' at § 263.12.) The single audit will be the primary vehicle for this penalty because of its link to the determination of misuse of funds.

The single audit will also help us identify noncompliance that could result in imposition of the following four penalties: (1) Failure to participate in the Income and Eligibility Verification System (see § 264.11); (2) Failure to comply with paternity establishment and child support enforcement requirements under title IV–D of the Act (see § 264.31); (3) failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six (see § 261.57); and (4) failure to sanction recipients who refuse to work (see § 261.54). For these process-focused penalties, we determined that we can make appropriate use of the single audit, supplemented by other reviews and audits, to monitor State compliance.

The audit compliance supplement includes guidance to auditors on how to audit these areas. As in the case of the misuse-of-funds penalty, we may conduct other reviews and audits, if necessary. For example, we anticipate that we may receive complaints from individuals and organizations concerning the penalty for a State's failure to maintain assistance to an adult single custodial parent who cannot obtain child care. A number of substantiated complaints might indicate that we need to conduct an additional review.

The single audit might identify a lack of State compliance in other penalty areas, e.g., the five-year limit on Federal assistance. If it does, we will not ignore those findings. Therefore, we will also impose a penalty based on single audit findings in other penalty areas.

For most programs, other than TANF, the Single Audit Act procedures provide for disallowance in cases of substantiated monetary findings. However, in accordance with section 409(a), under TANF, we will be taking penalties, rather than disallowances. When the single audit determines a specific violation, the penalty amount that we will apply is the penalty amount associated with the specific penalty provision or provisions, for example, misuse of funds and failure to end Federal assistance after 60 months of receipt. Likewise, where we, or OIG, conduct an audit or review, the penalty amount that will apply is the penalty amount associated with the specific penalty or penalties specified under section 409 and these rules.

Data Collection and Reporting

We will monitor State compliance with the penalties for failure to satisfy minimum participation rates (see § 261.21) and failure to comply with the five-year limit on Federal assistance (see § 264.1) primarily through the information required to be reported by section 411(a) (i.e., State reporting of disaggregated case-record information). (See part 265 and the Appendices for data collection and reporting requirements.)

We believe that Congress intended that the data elements in section 411(a) be used to gather information for these two penalty areas. Thus, we concluded that the section 411(a) data collection tools would be our primary means for determining these penalties. We may also need to conduct reviews in the future to verify the data submitted by States, particularly in these two areas where a fiscal penalty is applicable. States should maintain records to adequately support any report in accordance with 45 CFR 92.42.

Accurate data are essential if we are to apply penalties fairly. If the State submits insufficient data to verify its compliance with the requirements, or if we determine that a State cannot adequately document the data that it has submitted to show that it has met its participation rates or the five-year time limit, we will enforce the participation rate penalty or five-year time-limit penalty.

In the consultations we held during the development of the NPRM, some participants recommended that we use the single audit as the means for determining all the penalties. However, since States must otherwise report the data that directly speak to their compliance in these two areas, and timely determination of State compliance is necessary, we did not accept that recommendation. Instead, we will rely on the quarterly reports required under part 265 of these regulations.

Financial Reporting

All States are subject to the basic MOE penalty for failure to maintain a certain level (i.e., 80 or 75 percent) of historic effort. Those States that choose to receive contingency funds under section 403(b) are subject to a separate maintenance-of-effort penalty for failure to maintain 100 percent of historic effort. Also, in a year that they receive WtW formula grants, States are subject to an additional penalty for failure to meet the basic MOE requirement.

We have developed a TANF Financial Report (see Appendix D of part 265). We designed this report to gather information required under sections 403(b)(4), 405(c)(1), 409(a)(1), 409(a)(7), 409(a)(10), 409(a)(12), 409(a)(13), 411(a)(2), 411(a)(3), 411(a)(5), including data on administrative costs and types of State expenditures. It will also gather financial information to enable us to award grant funds, close out accounts, and manage other financial aspects of the TANF program. In addition, we will use this report to monitor State compliance with the basic MOE and Contingency Fund requirements and to aid us in determining if Federal TANF funds have been used properly.

Consistent with section 5506(a) of Pub. L. 105–33, the TANF Financial Report is due 45 days after the end of each quarter. Upon receipt of the report for the fourth quarter, i.e., by November 14, we should have State-reported information indicating whether or not the State met its MOE requirements for the prior fiscal year.

On the TANF Financial Report, States will inform us of the amount of expenditures they have made for basic and Contingency Fund MOE purposes. For the basic MOE, States must inform

us of the amount of expenditures made in the State TANF program and in separate State programs. (See part 264, subpart B, for more information on the Contingency Fund MOE requirement.)

In addition, to collect the necessary information on all MOE programs—both those operated within the TANF program and separate State programs—we require supplemental information in an annual report. The annual report, which may be provided as a separate report or as an addendum to the fourth quarter TANF Data Report, requires that States submit for each program for which the State claims MOE expenditures, the total annual State expenditures and the total annual State expenditures claimed as MOE. (See § 265.9(c) for more information on the contents of the annual report.)

If we reduce a State's SFAG as the result of a penalty, the State must expend an equal amount of its own funds in the immediately succeeding fiscal year. If the State fails to replace the funds as required, the State is subject to the penalty at § 262.1(a)(12). The penalty amount is up to two percent of the adjusted SFAG plus the amount not expended to replace the reduction to the SFAG due to the penalty.

We will use the TANF Financial Report (or Territorial Financial Report) to determine if a State has complied with these replacement provisions. Instructions to the TANF Financial Report (see Appendix D) require States to include amounts that they are required to contribute as a result of any penalties taken against the State. (We will include a similar requirement in the Territorial Financial Report.)

As in the case of the penalties for failure to meet the participation rates or comply with the five-year limit on assistance, our program management responsibilities may require us to verify the data submitted by States on the TANF Financial Report and annual report, particularly data on MOE expenditures and ''replacement funds.'' States should maintain records in accordance with 45 CFR 92.42. We will also use the annual report to help us to determine whether a State met its MOE requirements.

If the State submits insufficient MOE data to verify its compliance or if we determine that the State cannot adequately document data that it has submitted showing that it has met its MOE requirements, we will apply the penalties for failure to meet the basic MOE requirements (including the penalty related to WtW funding) and the Contingency Fund MOE requirements. For the basic MOE, we may have to estimate the actual level of qualifying MOE expenditures. We would then base the amount of the penalty on the degree to which the State has not adequately demonstrated that it has met the applicable MOE requirement.

We will penalize States for failing to repay a loan provided under section 406 (see § 264.40). A specific vehicle for determining a State's compliance with these requirements is unnecessary. In our loan agreements with States, we will specify due dates for the repayment of the loans, and we will know if States are not making the required payments.

We will penalize States for failing to submit a report required under section 411(a) by the established due dates (see §§ 265.4 and 265.7). As noted before, we are requiring that the reports must not only be timely, but they must also be complete and accurate. Thus, we may take actions to review the accuracy of data reporting if appropriate. If we determine that the data required under section 411(a) are incomplete or inaccurate, we may apply the penalty for failing to submit a report. As discussed above, if the data that are inaccurate or incomplete pertain to other penalties (i.e., the participation rate, the five-year time limit on assistance, the basic MOE, the WtW MOE penalty, or the Contingency Fund MOE requirements) and their unavailability impedes our ability to determine a State's penalty liability, we will apply the penalties associated with these requirements in lieu of a reporting penalty.

Regardless of how we determine that a State is subject to a penalty, the determination of whether a State has access to a possible reasonable cause exception or corrective compliance depends on the specific penalty provision. States cannot avoid all penalties through the reasonable cause exception or a corrective compliance plan (see § 262.4).

We received a few comments on this section and made some changes to the regulations in response. A discussion of the comments and responses follows.

Also, in preparing the final rules, we noticed that we did not discuss how we will determine that a State is subject to a Welfare-to-Work formula grant penalty. We have added this discussion to the final rule.

Comment: Commenters suggested that we should permit the use of the single audit for uncovering noncompliance with additional requirements beyond those we identified in the NPRM.

Response: Although we discussed the direct and indirect uses of the single audit in determining compliance with a number of requirements, we wrote the regulation itself more narrowly. We agree with these comments and have revised the regulation at § 262.3(a) to indicate that, in addition to using the single audit as the primary method to determine if a State is subject to certain penalties, we will use the single audit, as appropriate, as a secondary method of determining if a State is subject to other penalties.

Comment: A commenter noted that, in paragraph (c), our reference to § 275.6 of the NPRM was incorrect.

Response: We agree and have corrected § 262.3(c) to refer to verification of data in accordance with the provisions of § 265.7 of this chapter.

Comment: Commenters suggested that our standards for determining penalties are vague. Other commenters asked what we mean when we say that information in the data or financial reports is ''insufficient.''

Response: In some cases, our standards are specific, such as for determining work participation rates and compliance with time limits. However, we find that, given that this is a new program, it is impossible to draw sharp lines that fully define all situations, and it is appropriate to leave room for discretion in a block grant environment. Moreover, since States can dispute our determinations and have appeal rights, they have protection from arbitrary decisions.

Obviously, we want strong, clear standards for ''complete and accurate'' because the information reported by States in their data and financial reports is critical in determining States' compliance with TANF requirements and their potential penalty liability. However, our standards have to be fair at the same time.

In the preamble to part 265, you will find a broader discussion of the importance of accurate, complete and timely reporting of information.

Section 262.4—What Happens if We Determine That a State Is Subject to a Penalty? (§ 272.4 of the NPRM)

If we determine that a State is subject to a penalty, we will send the State agency a notice that it has failed to meet a requirement under section 409(a). This notice will: (1) Specify the penalty provision at issue, including the applicable penalty amount; (2) specify our source of information and the reasons for our decision; (3) invite the State to present its arguments if it believes that the information or method we used were in error or were insufficient, or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute; and (4) explain if, how, and

when the State may submit a reasonable cause justification under 409(b) and/or corrective compliance plan under 409(c). States must postmark their responses to our notice within 60 days of their receipt of our notice.

For penalties where the reasonable cause and the corrective compliance plan provisions both apply, we encourage States to submit to us both their justification for reasonable cause and a corrective compliance plan within 60 days of receipt of our notice of failure to comply with a requirement. Our objective is to expedite the resolution of a State's failure to meet a requirement.

A State may choose to submit a reasonable cause justification without a corrective compliance plan. In this case, we will notify the State if we do not accept the State's justification of reasonable cause. Our notice will also inform the State that it has an opportunity to submit a corrective compliance plan. The State will then have 60 days from the date it receives this notice to submit a corrective compliance plan. (Under this scenario, we will send the State two notices—the first will inform the State that it may be subject to a penalty, and the second will inform the State that we determined that it did not have reasonable cause.) We have added a provision to the regulations to clarify this process. A State may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply in a particular case.

The reasonable cause and corrective compliance provisions in the statute do not apply to five penalties: (1) failure to repay a Federal loan on a timely basis; (2) failure to maintain the applicable percentage of historic State expenditures for the basic MOE requirement; (3) failure to maintain 100 percent of historic State expenditures for States receiving contingency funds; (4) failure to expend additional State funds to replace grant reductions due to the imposition of one or more penalties listed in § 262.1; and (5) failure to maintain 80, or 75, percent, as appropriate, of historic State expenditures during a year in which the State receives a Welfare-to-Work grant.

If, upon review of the State's submittal, we request additional information in order to determine reasonable cause, the State must provide this information within 30 days of the date of our request. We have established this deadline to make sure the process is not delayed. However, under unusual circumstances we may give the State an extension of the time to respond to our request for additional information.

We received some comments on this section. One expressed the view that our notification provisions were reasonable; others raised issues about the proposed rule. Below, we address the comments and resulting changes we made to the regulations. In addition to these changes, we reversed the order of sub-paragraphs (e) and (f) so that they follow the logical sequence of actions in the penalty process.

Comment: A commenter recommended that we send our notice that a State is subject to a penalty to the State agency director.

Response: In the NPRM we said we would notify the State. By State, we meant the State agency. We assume the commenter thought we would notify the Governor. We have modified the regulation to say that we will notify the State agency and added a definition of State agency to § 260.30.

Comment: One commenter suggested that we list in the regulation the four components of the initial penalty notice to the State that we included in the preamble to the NPRM.

Response: We agree with this suggestion and have amended the regulation at § 262.4(a) accordingly.

Comment: Another commenter asked that we include, in our penalty notice to a State, a description of the data and method we used to determine that the State is subject to a penalty.

Response: We thought that we covered this in the NPRM when we said we would specify which penalty we would impose and the reasons for the penalty. However, in the final rule at § 262.4(a), we have revised the language to list the source of information as one of the four specific components that we will include in our notice to the State.

Comment: A commenter asserted that States should be able to raise any relevant issue in response to a penalty notice and not be limited to responding on the three grounds of incorrect penalty determination, reasonable cause, or corrective compliance.

Response: Unfortunately, the commenter did not include any examples of issues that would not fit in these three categories. We think that a State will be able to include all relevant considerations under one of these three categories.

Comment: A few commenters noted that the regulation proposed at § 272.4(d) conflicted with § 271.55(c), which said that reasonable cause and corrective compliance were not available when a State was being penalized for failing to impose penalties on individuals.

Response: The proposed regulation at § 272.4(d) was correct. Reasonable cause and corrective compliance are available when a State is being penalized for failing to impose penalties on individuals. The final rules at §§ 262.4(d) and 261.55 reflect this policy.

Comment: A commenter asked that we make reasonable cause and corrective compliance available to States that are being penalized for failing to expend additional State funds to replace penalty amounts.

Response: We do not have the authority to make this change, since the statute specifies that the reasonable cause exception and corrective compliance plan do not apply to this penalty.

Comment: Several commenters asked that we establish a time frame for when we will respond to a State's reply to our penalty notice.

Response: We have added a provision to the regulations at § 262.4(f) to say that, generally, we will respond within 60 days to the State's reasonable cause submittal, and that we will either accept or reject the State's corrective compliance plan within 60 days of our receipt of the plan.

Comment: A commenter asked whether a State may request reconsideration or submit additional information based on our decision, or whether its only recourse at that point is to file a formal appeal.

Response: Although there are no further formal steps available to the State short of a formal appeal, it is our hope that State and Federal staff will engage in an ongoing dialogue in an effort to address any penalty-related issue. This dialogue may begin as soon as the State is working to develop new policies or begins to have trouble meeting a requirement, and well before we notify the State that we intend to penalize it. It may continue until the issue is resolved, but will not extend the time frames States have for responding to our notices. Therefore, we advise States to make their complete and best arguments during the time allotted.

Comment: A number of commenters asserted that two weeks is not long enough for States to respond to our request for further information.

Response: We agree that under some circumstances two weeks may not be long enough, so we are increasing the time States have to respond to 30 days. Also, under unusual circumstances, we may give States an extension of the time that they have to respond to our request for information. We have amended the regulation at § 262.4(e) accordingly.

Comment: Commenters suggested that notices and requests be sent by certified mail so that there is evidence of receipt.

Response: A State may choose to send its responses by certified mail, but we are not convinced that we need to include this as a regulatory requirement.

Comment: A commenter asked that we specify in the regulations that we would not assess any penalties pending the resolution of a State's claim of reasonable cause.

Response: If a State claims reasonable cause and we find against the State, the State may then submit a corrective compliance plan or file an appeal to the HHS Departmental Appeals Board (DAB), as discussed in § 262.7. If the State does not take either action, we will assess the penalty in the quarter or fiscal year that immediately follows our final decision, as appropriate. However, if the State submits a corrective compliance plan, we will not assess a penalty until the corrective compliance process is completed. If the State appeals to the DAB, we will not assess the penalty until the appeals process is completed. If the DAB upholds our decision, we will take the penalty and charge interest back to the date of our final response that formally notifies the Governor of the State of an adverse action.

Section 262.5—Under What General Circumstances Will We Determine That a State Has Reasonable Cause? (§ 272.5 of the NPRM)

Under the provisions of section 409, we will not impose certain of the penalties if a State demonstrates that it had reasonable cause. Also, we will reduce or excuse certain penalties if a State corrects or discontinues the violations under an accepted corrective compliance plan.

After reviewing these statutory provisions, we decided that we should not consider the reasonable cause exception of the statute in isolation. Rather, we would view it in conjunction with the provision for developing corrective compliance plans. In this context, we acknowledge the new Federal and State roles under TANF and commit to working with States to minimize adversarial Federal-State issues. Our primary task is to help each State operate the most effective program it can to meet the needs of its caseload and the goals and provisions of the law. Through these rules, we hope to focus States on positive steps that they should take to correct situations that resulted in a determination that they are subject to a penalty, rather than to let them simply avoid the penalty. As such, we consider it appropriate to emphasize the use of the corrective compliance plan process over the reasonable cause exception. Consequently, we have decided to limit the list of reasonable cause criteria.

In the discussion that follows, we describe: (1) the factors that we will consider in deciding whether or not to excuse a penalty based on a State's claim of reasonable cause; (2) the contents of an acceptable corrective compliance plan; and (3) the process for applying these provisions. Our goal is to treat the reasonable cause and corrective compliance plan provisions as part of an integrated process.

We have included factors that would be applicable to all penalties for which the reasonable cause provision applies. We will find that a State has reasonable cause under the following situations: (1) Natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant as to cause the State's failure to meet a requirement; (2) formally issued Federal guidance that provided incorrect information resulting in the State's failure; and (3) isolated problems of minimal impact that are not indicative of a systemic problem (e.g., although a State's policies and procedures require that Federal TANF assistance be time-limited to five years and include computer safeguards to protect against violations, ten families somehow slip through and receive assistance for longer than five years).

We also have included two separate factors that would apply in cases when the State fails to satisfy the minimum participation rates, and one specific factor that would apply to cases when the State fails to meet the five-year limit. We discuss these specific factors in our preamble discussion of domestic violence and §§ 261.52 and 264.3.

As discussed elsewhere in this preamble, we have also added a factor that will apply if States fail to meet either of the first two deadlines for FY 2000 for submitting complete and accurate reports under the new reporting requirements. We added this factor in response to comments and out of our own concern about the possible concurrent demands of Y2K and TANF reporting requirements. States must be in a position to commit the systems resources necessary to become Y2K compliant in order to ensure that there is no disruption in the benefits to their neediest citizens.

We did not have the latitude under the law merely to extend the reporting deadlines (because they are set in statute). Also, we were unwilling to extend the ''emergency reporting'' into FY 2000 and provide a later effective date for the new reporting provisions because important TANF provisions (e.g., the work participation rates) depend upon consistent data and policies throughout the entire fiscal year. Thus, we have addressed the concern as a reasonable cause issue.

Under the new provision, States that miss the deadlines for submitting complete and accurate data for the first two quarters of FY 2000 will receive reasonable cause if: (1) they can clearly demonstrate that their failure was attributable to Y2K compliance activities; and (2) they submit the required data by July 1, 2000.

In determining reasonable cause under all of these regulatory criteria, we will consider the efforts the State made to meet the requirement. We will also take into consideration the duration and severity of the circumstances that led to the State's failure to achieve the requirement. The burden of proof rests with the State to explain fully the circumstances, events, or occurrences that constitute reasonable cause for its failure to meet a particular requirement. The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause. We have added a provision to the regulations to clarify the factors that we will consider and the State's burden of proof. If we find that the State has reasonable cause, we will not impose the penalty.

We received quite a number of comments on this section. We discuss the comments and the changes we made to the regulations below.

Comment: Virtually all commenters with comments on this section argued that our proposed list of reasonable cause factors was too narrow and that we needed to give ourselves more discretion. Commenters gave a number of examples of factors that we should consider, including good faith effort, circumstances beyond the State's control, inadequate Federal guidance, increases in a State's caseload, characteristics of the caseload, high unemployment rates or other labor market characteristics, changing economic conditions, and other adverse economic factors.

Response: As we noted in the NPRM, PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in deciding whether to grant a reasonable cause exception for a penalty. In our deliberations on reasonable cause factors, we considered the diverse opinions expressed during our consultation process and our NPRM comment period, as well as the need to support the commitment of Congress, the Administration, and States to the work and other objectives of the TANF program. In keeping with these objectives, we are providing reasonable

cause factors for a limited number of circumstances that are beyond a State's control and placing a greater emphasis on corrective solutions for those circumstances a State can control. We strongly believe that States must correct problems that detract from moving families from welfare to self-sufficiency.

At the same time, we agree with the commenters that it would be difficult to foresee all possible circumstances under which we would want to grant reasonable cause. Accordingly, while we have included the same general factors that we included in the NPRM, we no longer limit ourselves to considering only these factors. While we do not anticipate routinely determining that a State had reasonable cause based on other factors, we do not want to preclude a State from presenting other circumstances. Also, we decided that we were more restrictive than we intended when we limited the third reasonable cause factor to isolated, nonrecurring problems. We have amended the regulations to say that we may grant a State reasonable cause when it has encountered isolated problems of minimal impact that are not indicative of a systemic problem.

Comment: A number of commenters were opposed to our provisions precluding reasonable cause if a State diverted families to a separate State program that achieved the effect of avoiding the work participation rates or diverted the Federal share of child support collections.

Response: As we previously discussed in the section of the preamble entitled ''Separate State Programs,'' we have eliminated the proposed connection between a State's decisions on separate State programs and its eligibility for reasonable cause. Therefore, we have deleted the provisions that were at paragraphs § 272.5(c) and (d) of the proposed rule.

Comment: A commenter suggested that the regulations should provide that, as part of the process of determining when we would impose penalties and penalty amounts, we should give consideration to factors such as whether the State has administered its TANF program fairly, whether it has provided services and supports to families to enable them to comply with program requirements, and whether State-imposed requirements on families are reasonable.

Response: The TANF legislation assumed that States are in the best position to determine which families will be served and what assistance they will receive. As we previously discussed, our authority to regulate and judge State policies and actions are limited, and we have decided not to stretch our regulatory authority by incorporating such factors into all our penalty determinations. There are other provisions in the statute (such as the bonus and ranking provisions, the annual reports to Congress, and annual reports on State child poverty rates) that provide an opportunity to look at whether at-risk families are being helped or hurt by State TANF programs. At the same time, there are a couple of penalty provisions (e.g., those dealing with the imposition of sanctions) where the issues of fairness and adequate recipient protections are more germane and we specifically address some of these issues. You should look to the preamble discussion entitled ''Worker and Recipient Protections'' and the preamble for part 261 for other ways we are addressing this concern.

Section 262.6—What Happens if a State Does Not Demonstrate Reasonable Cause? (§ 272.6 of the NPRM)

Section 409(c), as amended by section 5506 of Pub. L. 105–33, provides that, prior to imposing a penalty against a State, we will notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan. If a State does not claim reasonable cause or if it claims reasonable cause simultaneously with submitting a corrective compliance plan, it will have 60 days from the date it receives our notice of a violation to submit its corrective compliance plan. If, in response to our notice of a violation, the State initially submits only a claim of reasonable cause, and if we deny this claim, the State has 60 days from the date it receives our second notice (i.e., denying its reasonable cause claim) to submit its corrective compliance plan. If a State does not submit an acceptable corrective compliance plan on time, we will immediately send the State a formal notice of adverse action and assess the penalty. Outside of the notice(s), we will not remind the State that the corrective compliance plan is due.

The corrective compliance plan must provide a complete analysis of the situation and factors that prevented the State from meeting the requirement. It also must identify the time period in which the State will correct or discontinue the violation, and the milestones, including interim process and outcome goals, the State will achieve to assure that it will fully correct or discontinue the violation within the specified time period. In order to highlight the importance of corrective compliance, the plan must include a certification by the Governor that the State is committed to correcting or discontinuing the violation in accordance with the plan.

We recognize that each plan must be specific to the violation (or penalty) since each State operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. In determining whether or not to accept a plan, we will consider the extent to which the State's plan indicates that it will completely correct or discontinue, as appropriate, the situation leading to the penalty.

The steps that a State takes to correct or discontinue a violation may vary. For example, where we penalize a State for misusing Federal TANF funds, we would expect it to remove this expenditure from its TANF accounting records (charging it to State funds, as allowable) and provide steps to assure that such a problem does not recur. Where a State has reduced or denied assistance improperly to a single custodial parent who could not find child care for a child under six, correcting the violation might require that the State reimburse parents retroactively for the assistance that it improperly denied them. The State's corrective compliance plan also would have to describe the steps to be taken to prevent such problems in the future.

Section 409(c)(3) requires that a violation be corrected or discontinued, as appropriate, ''in a timely manner.'' A State's timely correction of a problem is critical to assuring that the State is not subject to a subsequent penalty. At the same time, we recognize that the causes of violations will vary, and we cannot expect States to rectify all violations in the same time frame. Thus, we do not want to unduly restrict the duration of corrective compliance plans. At the same time, we do not want to allow States to prolong the corrective compliance process indefinitely and leave problems unresolved into future fiscal years. Accordingly, in our NPRM, we proposed that the period covered by a corrective compliance plan end no later than six months after the date we accept a State's corrective compliance plan. We have amended this provision, as discussed below.

We will consult the State on any modifications to the corrective compliance plan that we believe are necessary and seek mutual agreement on a final plan. Such consultation will occur only during the 60-day period for acceptance specified in the law. Any modifications to the State's corrective compliance plan resulting from such consultations will constitute the State's final corrective compliance plan and will obligate the State to take the actions

and meet the time frames specified in the plan.

We will either accept or reject the State's corrective compliance plan, in writing, within the 60-day period that begins on the date that we receive the plan. If a State does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately send a formal notice to the State of the adverse action. The State may appeal our decision to impose the penalty in accordance with the provisions of section 410 of the Act and the regulations at § 262.7.

If we have not rejected a plan in writing by the end of the 60-day period, the plan is deemed to be accepted, as required by the statute at section 409(c)(1)(D).

If a State corrects or discontinues the violation in accordance with its corrective compliance plan, we will not impose the penalty.

The statute permits us to collect some or all of the penalty if the State has failed to correct or discontinue the violation. Therefore, we may reduce the amount of the penalty if a State has not fully rectified the violation in one or more of the following limited situations: (1) The State made significant progress in correcting or discontinuing the violation; or (2) a natural disaster or regional recession prevented the State from coming into full compliance.

We received a number of comments on these provisions that led us to make some changes to the regulations. Also, we made some minor edits to ensure consistency within the parts of this regulation. We discuss the comments and changes below.

Comment: In the NPRM, we asked for comments from States and other interested parties on our proposal to restrict the time period for a corrective compliance plan. Commenters supported the general concept of a corrective compliance plan, and one commenter thought the six-month period was reasonable for most cases. However, most commenters replied that the period we had proposed was unreasonably short, especially since the statute does not require a short time frame. Many suggested that we extend the time period to 9, 12, or 24 months. Others suggested that the State should determine the time frame, or that it be part of the negotiation of the plan by the State and ACF and be determined on a case-by-case basis. Another commenter suggested that the period extend until 90 days after the close of the State's next legislative session. Commenters argued the need for more time based on the possible need to adjust contracts, re-design programs, change policies and procedures, notify recipients, make data system changes, train staff, and get the State legislature to take necessary action.

Response: In responding to these comments, we want to reinforce the importance of achieving compliance with the statute quickly, but we also recognize that we need to consider a State's ability to make the changes necessary to achieve compliance within a fixed time frame. We are not interested in setting a time frame that States cannot meet, but we also do not want to give States more time than they absolutely need. In addition, in the case of the work participation rate and time-limit penalties, where we measure performance over the course of a fiscal year, we thought it was important that corrective compliance also be measured over the course of a fiscal year. Based on this thinking, we have revised the regulations. In general, the final rules provide more flexibility in establishing time frames for corrective compliance plans. For the work participation rate and time-limit penalties, they incorporate a modified six-month corrective compliance period. More specifically, they provide that the State achieve compliance for the first fiscal year that ends at least six months after our receipt of the corrective compliance plan. For example, if a State failed its work participation rate in a prior fiscal year and we received its corrective compliance plan on February 1, the State would have to achieve the participation rates in effect for the current fiscal year. If we received the plan after April 1, the State would have to achieve the participation rates in effect for the following fiscal year.

We made this adjustment to the rules in large part because we calculate liability for work participation and time-limit penalties based on fiscal year data. We also realized that there could be significant delays in the submittal of corrective compliance plans (because participation rate and time-limit information is not available immediately, and we need time both to resolve disputes about the penalty findings and to decide State claims for reasonable cause). Thus, we could not necessarily expect a State to achieve compliance during the first year following a failure.

Nevertheless, we would hope that a State could achieve compliance during that time frame. We would not want to see a State's failure extend into a third fiscal year. If it did, there could be negative consequences for the State. States especially need to work towards increasing their work participation rates as quickly as possible because: (1) the rates increase over time; (2) the base penalty amount increases when a State incurs consecutive penalties; and (3) a State is eligible for a smaller reduction based on degree of noncompliance if it fails to meet the rates in successive fiscal years.

For both the work participation and time-limit penalties, a State will normally have indication that a problem exists during the year for which it is penalty-liable, and it should begin to address the problems well before it submits its corrective compliance plan. For example, by July of a fiscal year, a State should have a good idea of whether it is on track to meet its work participation requirements. If it is not, and does not begin to make changes soon, not only will it fail to meet the requirements for the current fiscal year, but it is unlikely that it will be able to increase its performance enough to meet the required rates for the next fiscal year. Our notice to a State that it is subject to a penalty should serve as confirmation of information the State already has. A corrective compliance plan period does not necessarily have to be lengthy in order to provide the State sufficient time for correcting or discontinuing a violation.

For the remaining penalties that are eligible for corrective compliance, we would permit a State to propose a time frame in its corrective compliance plan. We would expect the State to achieve compliance expeditiously, often in less than six months. States should correct some failures, for example, for failing to comply with IEVS requirements or submitting a data report late, within a month or two.

We expect each State to justify its time frame for each penalty. We will assess the time frame proposed by the State based on the nature of the violation, any unusual circumstances, and other factors that affect the speed with which the State can respond, such as whether it would need to make systems changes or take legislative action.

Comment: A commenter asked that we notify States of our acceptance of a corrective compliance plan and asked us to clarify when the corrective compliance period begins.

Response: We did not address these factors in the NPRM, but have revised the regulations to specify that we will accept or reject the plan in writing and that the time period for the corrective compliance plan begins on the date that the State receives our written acceptance of the plan. If we fail to respond, the time period for the corrective compliance plan begins on

the date that is 60 days after the date we received the State's plan.

Comment: Several commenters stated that 60 days is insufficient for a State to prepare a corrective compliance plan and recommended that we give States 90 days.

Response: We are prevented from making this change by the statute, which specifies that a State has 60 days from the date that it receives our notification to submit a corrective compliance plan.

Comment: A couple of commenters noted that the proposed rules at § 272.6 contained an incorrect citation.

Response: While the commenters were correct that the citation in the NPRM was erroneous, we have made changes to the paragraphs in that section that corrected that problem.

Comment: Some commenters expressed the view that the contents we specified for the corrective compliance plan are reasonable. Other commenters objected to our requiring certification of the plan by the Governor, and one commenter suggested that the certification be made by the director of the State agency.

Response: The Governor is responsible for submitting the State TANF plan and for committing State funds to the program. On this basis, we believe it is also important for the Governor to demonstrate awareness of and support for the corrective compliance plan.

Comment: A commenter asked that we consider a State's good faith effort in determining the amount of a penalty when a State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan. Other commenters asked that we broaden the circumstances under which a penalty is reduced, with some recommending that we consider other factors such as natural disasters, economic circumstances, or other unanticipated or extreme events.

Response: We have said that we will reduce the penalty if the State can demonstrate that it made significant progress toward correcting or discontinuing the violation or that its failure was due to a natural disaster or regional recession. We believe this gives us sufficient latitude to consider mitigating circumstances and the good-faith effort a State has made. For a discussion of the specific standards we will use in deciding to reduce work participation rate penalties, please see the preamble for § 261.51.

Comment: A number of commenters opposed our provisions denying a penalty reduction if a State diverted families to a separate State program that achieved the effect of avoiding the work participation rates or diverted the Federal share of child support collections.

Response: As we previously discussed, we have eliminated the connection between a State's decisions regarding its separate State programs and penalty reductions and have removed the provisions that appeared in § 272.6(i)(2) of the NPRM.

Section 262.7—How Can a State Appeal our Decision To Take a Penalty? (§ 272.7 of the NPRM)

Once we make a final decision to impose a full or partial penalty, we will formally notify the State that we will reduce the State's SFAG payable for the quarter or the fiscal year and inform the State of its right to appeal to the Departmental Appeals Board (the Board).

Section 410, which covers any adverse actions with respect to the State TANF plan or the imposition of a penalty under section 409, provides that the Secretary will notify the Governor of the State of the adverse action within five days. To facilitate the appeal, we will also send a copy of the notice to the State agency.

Within 60 days after the date a State receives this notice, the State may file an appeal of the action, in whole or in part, with the Board. We indicated in the NPRM that the statute allowed only 60 days for the Board to reach a decision after the appeal is filed. A number of commenters believed that the 60 days in the statute indicated a minimum time before a decision could be issued, not a maximum time. The NPRM interpretation was based on the conference report which indicated a Board decision was required ''within 60 days'' (H.R. Rep. No. 725, 104th Cong., 2d sess., p. 302). However, in light of the comments, we have re-examined the language of the statute itself, which states that a decision will be made in ''not less than 60 days'' after the appeal is filed. ''Not less than'' is usually interpreted as a minimum requirement, as the commenters indicated. Therefore, we have revised the regulation to allow a minimum time of 60 days before a decision is made. Nevertheless, we believe that penalties procedures should be handled as expeditiously as possible. We also believe that this is possible in the TANF penalty situation because the opportunity for reasonable cause and corrective compliance before most TANF penalties should have clarified the issues before the penalty decision.

We are requiring that the State submit its brief and the supporting documentation for its case when it files its appeal. To further facilitate this process, we have added a provision to the regulation at § 262.7(a)(1) that ACF's notice must include sufficient factual and legal information on the basis for imposition of the penalty to allow the State to respond in an appeal. In addition, we have allowed the State the opportunity to respond to ACF's reply brief and to submit any additional documentation it considers necessary. A State should send a copy of any appeal documents to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

In the final rule, we have slightly increased the time for us to submit our reply brief and supporting documentation— to 45 days after our receipt of the State's submission. This 45 days, plus the 21 days allowed for the State's reply brief, will ensure that the DAB makes no determination prior to 60 days after a State has filed its appeal. Further, briefing and argument will be at the discretion of the Board, but could include an evidentiary hearing. A State's appeal to the Board will also be subject to the following regulations at part 16 of title 45: §§ 16.2, 16.9, 16.10, and 16.13–16.22, to the extent they are consistent with this section.

Section 410(b)(2) provides that the Board will consider an appeal on the basis of the documentation the State submits, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

Finally, a State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision. States may file either with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia. The district courts will review the final decision of the Board on the record established in the administrative proceeding, to determine if it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence. The court's review will be on the basis of the documents and supporting data submitted to the Board.

We discuss below the comments on this section and our responses.

Comment: A number of commenters believed the time period for the appeal process was too constrained to allow

adequate consideration of the issues. These commenters noted that the statute could be interpreted to require a minimum of 60 days before a determination could be made, rather than the maximum the NPRM proposed.

Response: For the reasons previously discussed, we agree with the commenters and have revised the regulation accordingly.

Comment: One State indicated that the notice should include details on the reasons for the penalty.

Response: We agree with the commenter that the notice should contain sufficient detail on the factual and legal basis for the penalty to allow the State to respond and have revised the regulation. However, we believe the agency should have the opportunity to raise new issues in response to the State's brief and therefore have not specified that reasons not raised in the notice are waived. Since the State now has an opportunity to respond to the ACF brief and to submit additional documentation, we do not believe this policy will disadvantage the State.

Comment: One State noted that the practice of notifying the Governor differed from past practice of notifying the agency and suggested that we also notify the TANF agency.

Response: Although the statute requires notice to the Governor, we agree with the commenter that it would facilitate the process if we also give the TANF agency a copy of the notice and have amended the regulation accordingly.

Comment: A number of commenters suggested the State should be able to submit a reply brief as a matter of right. They also suggested the Board's authority to develop the record be clarified.

Response: The NPRM limited the State's right to submit a reply brief as a matter of right because of the limited time availability under the proposed 60-day maximum. Since we have eliminated this 60-day time issue in the final regulation, we agree with the commenters that the State should be able to submit an appeal as a matter of right and have amended the regulation.

We have also clarified that the Board's discretion to develop the record included the discretion to hold an evidentiary hearing. We would note that §§ 16.9 and 16.10 of this title, which are made applicable by § 262.7(e), contain additional detail on the Board's discretion to develop the record.

Comment: One State expressed concerns about using the Departmental Appeal Board as the forum for hearing appeals.

Response: The statute specifies the Departmental Appeals Board as the entity to hear appeals.

Comment: One commenter believed that we should include all sections of 45 C.F.R. part 16 as part of the appeal process. This commenter also believed that we should not treat failure to file a copy of an appeal with the Office of the General Counsel as a jurisdictional defect.

Response: We selected the provisions of part 16 that fill in the gaps in the TANF statutory framework. We have not added additional sections because we do not think they are necessary.

The failure to file the appeal with the Office of the General Counsel is not a jurisdictional defect. However, we would toll the time period for filing of our reply brief until OGC receives the brief.

Comment: One State noted that the specific provision on when the State's appeal is considered filed, at § 272.7(f)(1) of the NPRM, varied from the time contained in 45 C.F.R. 16.20, which we adopted in the NPRM.

Response: As part of the changes in the timing of an appeal in the final rule, we have deleted this NPRM provision and thus eliminated the conflict. However, we have also added a provision to § 262.7(e) to clarify that the named provisions of part 16 are adopted only to the extent that they are consistent with the specific provisions of this section.

VIII. Part 263—Expenditures of State and Federal TANF Funds (Part 273 of the NPRM)

Section 263.0—What Definitions Apply to This Part? (§ 273.0 of the NPRM)

Administrative Costs

(a) Background

Under the TANF statute, States may not spend more than 15 percent of either their Federal TANF funds or their State MOE dollars on administrative costs. At section 404(b), the statute excludes expenditures for ''information technology and computerization needed for tracking or monitoring'' from the administrative cost cap that applies to Federal TANF funds (i.e., the Federal cap).

The proposed rule addressed the subject of administrative costs in five separate places: (1) the definition of qualified expenditures at § 270.30 provided that, for MOE purposes, administrative costs were subject to a 15-percent cap (i.e., the MOE cap); (2) § 273.0 provided a definition of administrative costs; (3) § 273.2(a)(5) discussed the 15-percent limit on the amount of MOE expenditures that could be spent on administrative costs and reflected our decision to exclude the same information technology and computerization costs from the MOE cap as the Federal cap; (4) the preamble for § 273.11 explained that we would consider expenditures of more than 15 percent of a State's Federal TANF funds on administrative funds to be a misuse of Federal TANF funds; and (5) the preamble and regulation at § 273.13 provided that, in determining the Federal cap, we would use the definition of administrative costs at § 273.0(b) and not count information technology and computerization for tracking and monitoring as administrative costs. The preamble for § 273.13 also explained that we would look to see whether a State's cumulative expenditures on administrative costs from its grant for any fiscal year exceeded 15 percent of the grant amount and that we would consider expenditures above the limit to be a misuse of funds.

The proposed definition at § 273.0(b) provided that: ''Administrative costs means costs necessary for the proper administration of the TANF program or separate State programs. It includes the costs for general administration and coordination of these programs, including indirect (or overhead) costs.'' It also provided examples of eleven types of activities that would be classified as ''administrative costs,'' such as salaries and benefits not associated with providing program services, plan and budget preparation, procurement, accounting, and payroll.

In the preamble, we stated our belief that the proposed definition would not create a significant new administrative burden on States. We hoped that it was flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among State TANF programs. We also said that it had the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

More importantly to commenters, the preamble also indicated that we would consider eligibility determinations to be administrative costs, but allow case management to be treated as a program cost. It also required that portions of a worker's time be allocated based on this distinction. Specifically, the NPRM preamble said:

You will note that the definition we have proposed does not directly address case management or eligibility determination. We understand that, in many instances, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (e.g., traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities will be treated as administrative costs, along with any associated indirect (or overhead) costs. However, to the extent that a worker's time is essentially spent on case-management functions or delivering services to clients, that portion of the worker's time can be charged as program costs, along with associated indirect (or overhead) costs.

In the preamble, we also indicated that we expected administrative costs incurred by subgrantees, contractors, community service providers, and third parties to be part of the administrative cost cap and that we would determine such costs in the same way as agency costs. Specifically, we said:

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the TANF agency and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available ''off-the-shelf'' to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

We welcomed comments on how to deal with this latter dilemma, as well as comments on our overall approach. We had discussed this issue thoroughly during our pre-NPRM consultations, but thought this was a policy area where no single, clear solution existed.

(b) Overview of Comments

About one-third of all respondents to the NPRM submitted comments on our administrative cost provisions. A substantial majority of these comments came from representatives of State or local governments, but we also received comments from unions, community organizations, advocacy groups, national associations, business groups, and Congress. We received comments from a significant majority of the States.

Commenters generally opposed both the breadth of the proposed ''administrative cost'' definition and the scope of its application. To some extent, unions, community organizations, legal aid and advocacy groups were an exception to this general rule. Comments from these groups tended to be more supportive of the proposed rule. However, they expressed concern about the impact of these policies on the amount of resources that would be available for direct benefits to needy families and the potential impacts of the proposed rules on a State's decisions about program administration, staffing, and contracting. One argued for more specific exclusions from the definition (including costs associated with the delivery of program services and overhead) out of concern about the effect of a tight cap on case manager pay.

To deal with the number and complexity of responses on this issue, we have decided to cluster the comments into the following five general categories: (1) the actual definition (including issues about the appropriateness of a Federal definition, adopting definitions from other programs, the treatment of eligibility determination and case management costs, and the treatment of automated data processing costs); (2) the treatment of costs incurred on contracted services; (3) general questions about the calculation of the two caps; (4) specific issues related to how we determine whether a State has exceeded the MOE cap on expenditures of State MOE funds; and (5) specific issues related to how we determine whether a State has exceeded the Federal cap (including whether the appropriate base for computing the Federal cap is the pre-transfer or post-transfer grant amount).

As you will notice from the discussion that follows, regardless of where they appear in the rule, the administrative cost issues are closely connected to each other. For example, if we have a prescriptive definition of administrative cost, this policy would exacerbate concerns about the negative effects of requirements for subcontractors to track such costs in the same way as TANF agencies.

Although few commenters directly addressed the combined effects of the proposed policies, we considered the combined effect of all these provisions in drafting our responses.

The subject area that received the most attention from commenters was the proposed definition. Commenters disagreed about whether there should be a Federal definition, suggested alternative definitions that we could adopt, argued for exclusion of case management and eligibility determination costs, raised some issues about the treatment of automated data processing costs, and posed a few miscellaneous questions.

(c) Federal Definition

Comment: A relatively small number of commenters spoke directly to the question of whether there should be a Federal definition of administrative costs. The commenters' views were mixed, although more argued against a Federal definition than for one.

Among the arguments put forth in support of a definition were: the value of having comparable approaches among TANF jurisdictions; the importance of protecting benefits for needy families especially in light of the elimination of constraints that had existed under the former AFDC program; and the importance of having a meaningful and real Federal limitation on administrative costs.

Those opposed to a Federal definition argued that: (1) it should be the State's prerogative to define administrative costs; (2) we had no authority to define ''administrative costs''; or (3) we could defer to State definitions and choose to regulate at some subsequent date if we found that States were not adhering to the statutory limits.

Response: While we do believe in granting States broad flexibility to design their programs and have left key definitions up to the discretion of the States, we also believe that there is a need for Federal guidance on the definition of ''administrative costs.'' The approach in this rule is a compromise between a Federal and State definition. It sets a Federal framework that specifies some items that must be considered ''administrative costs,'' but does not attempt to fully define the term.

We believe this framework is important. First, as the comments we received demonstrate, there is no common view of the meaning of this term. If we left this matter entirely to State discretion, we could expect a diversity of approaches, and States might be subject to widely different penalty standards. Also, the fear of a penalty might lead some States to define the term so narrowly as to substantially undermine the intent of the administrative cost cap provisions.

We disagree with the comment that we lack the authority to define ''administrative costs.'' We have

responsibility for four penalty provisions—two on use of Federal funds and two on MOE requirements—where the level of State expenditures on administrative costs is a key issue. On many occasions, we have heard statements about the importance of having clear Federal standards for any penalty decisions that we make. In that context, we have both the authority and the responsibility to provide standards in this area.

As we indicated in the preamble to the proposed rule, we considered not proposing a Federal definition. While that option had some appeal, we were not disposed to deferring totally to State definitions. The philosophy underlying the administrative cost caps is very important; in order to protect needy families and children, it is critical that the substantial majority of Federal TANF funds and State MOE funds go towards helping needy families.

We also indicated that we thought that, by providing a general framework to States, we could avoid numerous disputes with individual States about whether their definitions represented a ''reasonable interpretation of the statute.''

(d) Applying Other Federal Definitions

Comment: A substantial number of commenters suggested that the TANF program adopt the definition proposed for the Child Care and Development Fund. A much smaller number suggested that we adopt the definition in effect under the Job Training and Partnership Act (JTPA) program. Commenters argued that adoption of these other definitions would improve program consistency and simplify program operations at the local level. They also endorsed CCDF's exclusion of ''eligibility determination'' as an administrative cost. One argued that the different definition could put local agencies in the untenable position of not being able to hire staff.

Response: In terms of program coordination, we do not believe that there is a strong advantage to selecting the CCDF definition over JTPA's. Where TANF programs work extensively with local providers of employment and training services, compatibility with JTPA may be more important; where TANF and child care programs are administered by a single agency or use a common set of service providers, compatibility with child care providers may be more important.

In the NPRM, we noted that our proposed definition was closely related to the JTPA definition and thus should facilitate the coordination of WtW and TANF activities and support the transition of hard-to-employ TANF recipients into the workforce. As caseloads decline and the proportion of hard-to-serve clients rises, coordination between these two programs may become even more critical.

While adopting the CCDF definition might facilitate TANF and CCDF coordination, we do not believe that this coordination depends upon a uniform definition. Also, given the differences in the caps of the two programs (15 percent versus 5 percent) and the different legislative histories, there is little reason to believe that Congress intended a uniform definition.

(e) Treatment of Eligibility Determinations

Comment: Many of those commenting on this issue objected to our proposed inclusion of eligibility determination within the administrative costs definition. Some argued that eligibility determination was not an administrative activity and was not easily or logically separable from case management. Still others commented on the burden associated with our proposal, the general need for State flexibility in this area, and the potential negative effects on a State's ability to fund critical staff who work directly with clients.

One State agency indicated that the distinction in our proposal was not burdensome and would require only a slight change in its Random Moment Study.

Many commenters took strong exception to our characterization of any portion of the eligibility determination process as administrative. Among other things, they were concerned that: (1) it was inconsistent with existing State practice; (2) the nature of work with families is undergoing significant change, and application of the traditional AFDC approach is no longer appropriate; (3) because eligibility determination is part of the case management function, it should be categorized as a program or service function than administration; (4) the administrative responsibilities of staff performing functions such as screening and assessment are integral to providing services; (5) front-line eligibility determination is arguably a direct service, under the first statutory goal of the TANF program; and (6) as workers assume new roles, differentiating between eligibility and service delivery is becoming increasingly difficult and less useful.

A couple of commenters indicated that our regulations needed to draw a clearer line between administrative and program costs. One commenter provided several specific examples of situations where the line between administrative and program costs that we drew in the proposed rule was unclear, such as in diversion and sanction activities and in determining hardship exceptions and compliance with behavioral requirements.

A significant number of commenters spoke to the burden of the proposed requirement on TANF agencies. They argued that State and local systems are not geared towards allocating expenses this way. They do not want to divert resources to this activity.

Commenters also made a general plea for flexibility, saying that States need flexibility in order ''for the role of front line staff to continue to evolve to best meet the goals of welfare reform'' and to enable States to build partnerships with local service providers.

Finally, several commenters noted that we presented this policy only in the preamble, not in the regulation itself.

Response: While we do not want our rules to distort State choices about how to deliver services or to divert State resources to cost accounting activities unnecessarily, we have a responsibility to uphold the intent of the statutory administrative cost cap provisions by ensuring that States are not spending large amounts of money on eligibility determinations rather than program benefits or services.

Also, we do not agree that States must incur a significant administrative burden in order to identify the costs associated with eligibility determination activities. We recognize that the nature of staff responsibilities is changing and the line between case management and eligibility determination is blurring. Thus, it may be more difficult to develop rules for allocating the time of workers between administrative and program activities. However, once a State develops its allocation rules, the process of allocating staff time is straightforward and no more difficult than the current cost allocation process.

We also recognize that the TANF program offers the possibility for States to administer programs in new ways. We understand that States are moving towards blended functions, and we support such efforts. These final rules do not in any sense require States to have separate administrative and program staff. They merely require that States provide a reasonable method for determining and allocating administrative and program costs.

Welfare agencies have a long history of identifying the costs of eligibility determinations and allocating these costs as administrative activities. A variety of other significant, related programs—such as Medicaid, the Child

Health Insurance Program (CHIP), and Food Stamps—continue to follow this practice. Thus, this kind of cost allocation has been standard operating procedure in a number of programs and has been accepted as a normal part of doing business.

We also believe that a clear policy on eligibility determinations might produce more consistent penalty determinations and reduce audit disputes, appeals, and litigation regarding application of the misuse of funds and MOE penalties.

Based on these considerations, we have decided to add eligibility determinations to the list of administrative activities at § 263.0(b)(2). More specifically, this rule reflects the basic definition that was in the proposed regulation at § 273.0(b) (with the same basic examples of administrative cost activities), but adds the NPRM preamble policy that required eligibility determination to be treated as an administrative cost. We recognize that this is a significant policy decision that merits inclusion directly in the regulatory text; we agree with commenters that it should not be relegated to the preamble.

Under the final rule, States may develop their own definitions of administrative costs and cost allocation plans, consistent with this regulatory framework.

Also, as we discuss later, we provide States some flexibility in the methods they use to determine the administrative costs associated with contracts. However, we want to reiterate a point we made in the preamble for § 273.13 of the proposed rule: States must properly allocate costs. They must attribute administrative, program, and systems costs to benefiting programs and appropriate cost categories, in accordance with an approved cost allocation plan and the cost principles in part 92.

(f) Other Miscellaneous Suggestions for Inclusions and Exclusions

Comment: A couple of commenters suggested that our definition make a distinction between general overhead or indirect costs (which would be considered administrative costs) and overhead and indirect costs related to the provision of program services (which would be excluded). A couple of commenters made the broader suggestion that our definition should indicate that administrative costs do not include items such as diversion activities, assessments, development of employability plans, work activities, post-employment services and supports, and case management.

Response: The comments identified an area where the language in the proposed rule was unclear. To address this problem, we have revised the regulatory text. The revised language at § 263.0(b)(1) excludes costs of providing services and the associated *direct* administrative costs from the definition of administrative costs. The revised language at § 263.0(b)(2) clearly treats indirect (or overhead) costs as administrative costs. We included these costs as administrative costs in the final rule because we believe this approach is most consistent with the intent of the administrative cost caps and is the simplest and most straightforward approach for States to implement.

Comment: One commenter suggested that we specify that diversion assessments are program costs and not administrative costs.

Response: We believe the changes that we have made to § 263.0(b), and just discussed, adequately address this concern. The rule at § 263.0(b) now indicates that diversion and assessment activities are both program service costs and not considered administrative costs. (Note: Here, we would make a distinction between assessment activities designed to identify needs and develop appropriate service strategies versus assessing income, resources, and documentation for eligibility determination purposes; the latter are administrative costs.)

Comment: One commenter said we should specifically define case management.

Response: We do not believe there is a need for a Federal definition of this term.

Comment: One commenter asked that we clarify that ''public relations'' activities would not include State expenditures on providing information to clients.

Response: While we believe that the common meaning of ''public relations'' would not include providing client information, at the new § 263.0(b)(1), we have added ''providing program information to clients'' as one example of providing program service. Thus, this activity would not be classified as an administrative cost under our rules.

Comment: One commenter asked that we clarify that domestic violence and substance abuse services are not considered administrative costs.

Response: We believe the new language at § 263.0(b)(1) adequately addresses this concern. It more directly states that costs of providing services are outside the definition of administrative costs, and it explicitly provides that screening and assessments are examples of program services.

(g) Computer-Related Costs

Comment: Several commenters had concerns that the definition of the exclusion for computer-related costs was not sufficiently clear in the NPRM. Their reasons were mixed. A couple of commenters wanted to make sure that States did not have ''unfettered discretion'' in this area; they saw this provision as a major loophole and did not want to see money diverted from meeting the needs of poor families. Other commenters felt that the regulations did not adequately address the information technology exclusion.

Response: We received a variety of comments on the exclusions of information technology and computerization costs from the 15-percent caps. Based on these comments, we have made some clarifying changes to the regulatory language (which appear in §§ 263.2(a)(5) and 263.13) and are providing some guidance in the preamble. However, we do not believe it is necessary or appropriate to develop detailed Federal regulations on this issue. While the new regulatory language makes the regulation more consistent with the statutory language and makes the language for the Federal and MOE caps more consistent, it also reflects our willingness to defer to State policies, as long as those policies reflect a reasonable interpretation of the statutory language.

We believe that the revised regulatory language represents the best reading of the statutory language at section 404(b). The statute provides for exclusion of certain systems costs in determining whether a State has exceeded the Federal cap on administrative expenditures. It does not exclude such systems costs from the definition of administrative costs. Thus, in this rule, you will note that the systems exclusion is not part of the definition of administrative costs at § 263.0(b). Rather, it appears in the sections where we explain how we determine if a State has excess expenditures on administrative costs.

Comment: We received several comments asking us to clarify that personnel costs necessary to comply with reporting requirements and for tracking and monitoring computer systems are covered by the exclusion. Likewise, we received a few comments asking us to clarify that the following items would be excluded: (1) data collection and reporting activities (such as hardware, personnel and supply costs they incur in meeting the TANF disaggregated data reporting requirements); (2) activities such as rental and purchase of computer

equipment and systems procurement; and (3) preparation of reports required under the Act.

Response: Under the final rules, we exclude from the 15-percent cap all costs associated with the portions of information technology and computer systems that are used for tracking or monitoring required by or under part IV-A of the Act. The excludable costs are the full range of costs directly associated with the development, maintenance, and support of the relevant systems or the relevant portions of larger systems. Nonsystems costs related to monitoring and tracking (e.g., for the salaries and benefits of data entry clerks, evaluation staffs, statisticians, and report writers) are not covered by this exclusion.

Based on the comments, we have made some modest changes to the definition of administrative cost at § 263.0(b) and the descriptions of the administrative cost caps at §§ 263.2(a)(5) and 263.13. Under the language in the proposed rule, we had not generally recognized that some activities that would otherwise be ''administrative'' in nature could be part of the systems exclusion. The one exception we mentioned was ''management information systems,'' proposed at § 273.0(b)(10).

To provide the clarification commenters requested, we have revised the language at §§ 263.2(a)(5) and 263.13 to specify that the systems exclusion covers items that ''would fall within the definition of administrative costs at § 263.0(b).'' In other words, items that would normally be administrative costs, but are systems-related and needed for monitoring or tracking purposes under TANF, fall under the systems exclusion. Thus, we would not consider them in determining whether a State has exceeded either of the 15-percent caps.

We also added language at §§ 263.2(a)(5) and 263.13 to specify that the systems exclusion covers the salaries and benefits costs of personnel who develop, maintain, support, or operate information technology or computer systems used for tracking and monitoring. Under the revised language, it is clearer that States may exclude personnel and other costs associated with the automation activities needed for TANF monitoring and tracking purposes. For example, they may exclude expenditures related to computerization of both the fiscal and program data collection and reporting requirements in part 265 and computer charges related to generating required data and reports. However, they do not exclude nonsystems costs related to monitoring and tracking (such as personnel costs for data entry clerks, statisticians, and report writers).

Also, we made a minor change to the last example in our list of examples of administrative costs. The revised language refers generically to ''preparing reports and other documents'' rather than ''reports and documents related to program requirements.'' We revised the language to avoid confusion; the NPRM language was too similar to the statutory exclusion at section 404(b).

Comment: One commenter said the regulation should address the permissibility, within the exclusion, of electronic benefit transfer (EBT), Fingerprint Imaging Projects, or other automated fraud prevention activities.

Response: While all these activities might be commendable, the statutory exclusion is only for expenditures ''needed for tracking or monitoring required by or under this part.'' EBT would not fit within the exclusion because it is neither a tracking nor a monitoring activity; as the statute at section 404(g) indicates, EBT systems are ''for providing assistance.''

Fingerprint imaging and other anti-fraud activities might fall under the systems exclusion. For example, expenditures to develop a computerized fingerprint imaging system to identify fugitive felons or individuals who have fraudulently misrepresented their residence would clearly qualify as monitoring under the exclusion.

Since we are not regulating the definition of this exclusion, we are not attempting to draw fine lines between what systems costs should be included versus excluded. We expect States to implement policies that are consistent with a reasonable interpretation of the statute and these regulations.

(h) Costs Incurred by Contractors

Comment: Another area receiving a significant number of comments was our proposal to apply the definition of administrative costs to contractors and other agencies. The vast majority of commenters opposed this proposal.

One State indirectly argued that the policy was unnecessary, pointing to the State's own cost consciousness and cognizance of the need to limit administrative expenditures in contracts.

A few commenters noted that we had included this policy proposal only in the preamble, but not in the proposed regulatory text. At least one asked that we add the preamble language to the regulation.

One TANF agency requested that we provide more guidance on how States should segregate the administrative costs associated with subcontracted services.

We organized most of the comments on this issue into four broad categories: (1) suggestions that the 15-percent administrative cost cap apply solely to costs incurred by the TANF agency; (2) the potential effects of applying the administrative cost cap limitation to contractor agencies; (3) the possible negation of existing performance-based contracts; and (4) functionality considerations.

A few commenters recommended that the administrative cost cap apply solely to the expenditures of the TANF agency or that we should treat State and local agencies alike, but not contractors.

A much larger number of commenters expressed general concerns about requiring the tracking of administrative costs to contractors. They objected to: (1) the increased administrative burden on the TANF agency and difficulties associated with tracking administrative costs of contractors; (2) diversion of resources away from needy families to tracking; and (3) inconsistencies between our policy and the policies of other programs (e.g., JOBS and JTPA). Commenters also claimed that our proposed policy would increase the administrative costs of the program, hamper State and local efforts to improve program administration and services, discourage collaborations with community-based organizations and other service providers, violate Congressional intent in limiting our regulatory authority, and impede State procurement activities. For example, contractors might choose not to compete because they would be reluctant to provide detailed itemizations of their expenses, and States might refrain from contracting for fear that unknown contractor costs might cause them to exceed the cap on administrative expenditures. Several commenters expressed concerns that our proposed policy would discourage the development of performance-based contracts and similar funding arrangements.

A subset of commenters said we should base the treatment of subcontractor costs on functionality considerations, looking at the function performed by the contractor or subcontractor, not whether contractors incur administrative costs. A few argued that direct program services provided by contractors were not administrative in nature. Commenters did not want the treatment of contract costs to be based on ''an extremely difficult differentiation between administrative and programmatic costs.''

Response: We have decided that States should be able to determine the administrative costs associated with contracts and subcontracts based on the function or nature of the contract. For example, if a State contracts for case management or job placement services, which meet our definition of program services, the cost of the contracts would be treated as program costs, not as administrative costs. Further, as we discuss later, the entire costs of a contract for payroll services would be treated as an administrative cost subject to the 15-percent cap. If the State had a contract that included a mix of administrative and programmatic activities, it would need to develop a method for attributing an appropriate share of the contract costs to administrative costs. We have revised the regulatory language to reflect that decision.

The approach in the proposed rule reflected some genuine concerns about weakening the administrative cost caps and distorting State decisions about whether to contract. Some commenters expressed similar concerns. However, after reflecting on the totality of comments received, we are convinced that the costs of our proposed approach would have outweighed the benefits. The approach also might have significantly undermined one of our regulatory objectives, i.e., to give States the flexibility they need to serve low-income families.

In administering and operating its TANF Program, each State should make a determination of the most cost-effective and efficient method of performing each of the necessary administrative and programmatic functions. It may use in-house staff and resources, engage other State or local government agencies, or solicit services from outside contractors. Presumably, with each State's procurement procedures requiring free and open competition, and oversight by auditors and State legislative and regulatory bodies, the result of any solicitation will be a high-quality service delivered at a reasonable and acceptable cost.

We believe that, once a particular function is determined to be either administrative or programmatic, that characterization does not vary based on the nature or identity of the service provider. Therefore, if a contract is for a singular administrative or programmatic service, the final rules would treat the entire contract price as an administrative or programmatic cost, respectively. A State would not need to further itemize the contract costs or consider the individual cost components used to support the contract price.

For example, payroll services is a traditional administrative function. If a State opts to contract out the payroll responsibilities for its TANF program, a State would treat the entire cost of that contract as an administrative cost within the 15-percent cap. It would be unnecessary to further define the contractor's own administrative costs.

On the other hand, if the State contracted with a third party to perform a variety of functions that included a mix of administrative and programmatic activities, the State would need to develop a method for attributing an appropriate share of the contract costs for administrative activities as administrative costs. Likewise, if another agency (State, local, or private) were administering a piece of the TANF program, the State would need to have a method for attributing an appropriate share of the other agency's costs to administrative activities.

Presumably, in developing its individual cost proposals, each contractor includes an allocated portion of their own administrative costs or overhead. However, the matter of interest here is the extent to which Federal and State expenditures are going to administrative activities, not the individual cost components of contracted services.

Our approach is consistent with the regulations at 45 CFR part 92 and should maintain the integrity of the 15-percent administrative cap provisions.

We do not believe this policy will necessarily bias State decisions about how to deliver TANF services, e.g., towards contracting out, or privatization, of program operations. First, the initial expenditure reports we have received from States suggest that their administrative costs are running well within the 15-percent caps; thus, they do not appear to have a strong incentive to change any of their administrative practices. Second, many other very important considerations go into State contracting decisions—including the State agency's internal capacity and expertise and larger political and budgetary considerations. Third, we would expect the State agency, State legislature, and other interested parties to consider the impact on public employees as part of their deliberations. Lastly, because there is a limited difference in the treatment of administrative costs incurred by TANF agencies and third parties, the potential incentive effects of this policy (towards privatization) are limited.

(i) Consolidated Caps

Comment: A couple of commenters suggested that we should have a single administrative cost cap that covers both Federal and MOE expenditures.

Response: The statute clearly requires a separate cap for each. Also, it would not be feasible to apply the 15-percent limitation across the total Federal TANF and State MOE dollars. The MOE cap applies to the total amount of qualified State expenditures for the fiscal year, i.e., per fiscal year. The Federal cap applies to the adjusted SFAG. If a State reserves amounts from its fiscal year grant, then the Federal cap could reflect expenditures over a number of fiscal years.

(j) Compliance Periods

Comment: One commenter questioned the requirement for quarterly compliance with both the Federal and MOE caps. The commenter suggested annual evaluation as an alternative.

Response: We assume this comment reflects a reaction both to the information required on the quarterly TANF Financial Report and some unclear regulatory language in the proposed rule. First, while we do require quarterly reporting of Federal and State administrative and systems costs, we never intended to make quarterly determinations whether the expenditure of State funds violated the MOE cap. The statute at section 409(a)(7) clearly provides that this would be an annual determination. Also, in reflecting on this comment we realized that our regulatory text did not clearly state that compliance with the MOE cap would be determined on an annual basis. Therefore, we have added the phrase ''for the fiscal year'' to § 263.2(a)(5)(i) to clarify that this is an annual determination.

The Federal administrative cost cap works somewhat differently. For the purpose of the Federal cap, we would look at the total cumulative amount spent on administrative activities from each annual Federal TANF grant. Unless and until the total amount expended as administrative expenditures (exclusive of appropriate systems costs) exceeded 15 percent of the Federal TANF grants (except WtW grants) for any fiscal year, we would not identify a violation of the Federal administrative cost cap. The Department of Labor administers the WtW administrative cost limit. This policy is consistent with the discussion in the preamble to the proposed rule for § 273.13.

(k) Base for Computing the Cap

Comment: A significant number of commenters (particularly those

representing States or State interests) argued that we should calculate the 15-percent administrative cost cap based on the SFAG amount before any State transfers to title XX or CCDBG (i.e., the adjusted SFAG).

Several of these commenters maintained that, in defining the Federal cap, section 404(b)(1) refers specifically to 15 percent of the ''grant.'' They interpret this language to mean that total SFAG amount would be the appropriate number to use in determining the maximum amount for administrative costs. A few made the additional comment that we did not have the authority to reduce the amount of 15-percent administrative funds available to the State under the statute by applying the 15-percent limitation to a smaller base amount than the adjusted SFAG.

Commenters also expressed concerns that our proposed policy would result in disincentives to the States to transfer funds to CCDBG or title XX.

Finally, a few commenters noted that our proposed rules used a different base amount for computing the administrative cost cap and for computing penalties. More specifically, we proposed to determine penalties based on the adjusted SFAG (i.e., the SFAG amount minus Tribal adjustments, but prior to any transfer), but we computed the administrative cap for TANF based on the adjusted SFAG minus transfers. This inconsistency seemed unjustified.

Response: As we noted briefly in the discussion for § 260.30, we made a change to the definition of ''adjusted SFAG'' that addresses the consistency concerns of commenters. The revised definition, which is used for determining both the Federal administrative cost cap and penalty amounts, excludes monies transferred to either the SSBG or CCDBG programs. Like the proposed definition, it also excludes funds removed from the State's grant because Tribes in the State elected to operate their own TANF programs.

Although the language of the administrative cost limit refers to ''the grant,'' we do not believe what is ''the grant'' is clear in this context. We did not base the Federal administrative cap on the pre-transfer amount because we believe that proposal would produce a peculiar and undesirable policy result. In effect, it would allow States to double-dip on their administrative expenditures. The transferred funds would be part of the base that we would use to determine how much Federal TANF money was available for administrative costs within the TANF program. It would also be part of the base for determining how much money was available in CCDBG or SSBG for capped administrative expenditures within these programs, since the statute provides that transferred funds are subject to the requirements of these programs.

We understand the concern that our policy in this area might create modest disincentives for States to transfer Federal TANF funds to CCDF and SSBG. However, we would point out a few factors that should mitigate those concerns: (1) the initial TANF expenditure reports suggest that administrative costs are generally running substantially below the 15-percent caps; thus, States that transfer funds should be able to live within the post-transfer cap amount; (2) this policy affects the Federal cap only, not the MOE cap; (3) States that elect to transfer funds might enjoy some reductions in their administrative costs because they can operate more streamlined child care and social services programs; (4) some of the costs associated with the new TANF data rules are excludable from the cost caps under the information technology and computerization exclusion; and (5) in several places, these final rules reduce the data reporting and administrative burdens to which States would have been subject under the proposed rules.

You will find the discussion of the issues related specifically to the MOE cap in the preamble for § 263.2 and the discussion of issues related specifically to the Federal cap in the preamble for § 263.13.

Subpart A—What Rules Apply to a State's Maintenance of Effort?

Section 263.1—How Much State Money Must a State Expend Annually to Meet the Basic MOE Requirement? (§ 273.1 of the NPRM)

Overview

To ensure that States would continue to contribute their own money towards meeting the needs of low-income families, section 409(a)(7) requires States to maintain a certain level of spending on programs on behalf of eligible families. If a State does not meet the ''basic MOE'' requirements in any fiscal year, then it faces a penalty for the following fiscal year. The penalty consists of a dollar-for-dollar reduction in a State's adjusted SFAG.

In the NPRM and in the discussion that follows, we address each of the terms used in the basic MOE requirement.

(a) Historic State Expenditures

Each State's basic MOE requirement reflects its historic spending on welfare programs. We calculated the historic State expenditures based on the State's FY 1994 share of expenditures for the AFDC, EA, AFDC-related child care, transitional child care, At-Risk Child Care and JOBS programs (including expenditures for administration and systems operations).

(b) Adjusting a State's Basic MOE Level

The statute authorizes an adjustment to a State's basic MOE level when a Tribe or a consortium of Tribes residing in the State submits a plan to operate its own TANF program, and we approve this plan. We will reduce the State's basic MOE requirement beginning with the effective date of the approved Tribal plan.

Section 409(a)(7)(B)(iii) excludes from the basic MOE calculation any IV–A expenditures made by the State for FY 1994 on behalf of individuals covered by an approved Tribal TANF plan. Because TANF funding for Tribes may also reflect a State's IV–F (JOBS) expenditures, we also concluded that it was appropriate to reduce a State's basic MOE levels for IV–A and IV–F expenditures. In summary, we proposed to determine the percentage reduction in the SFAG due to Tribal programs and apply the same percentage reduction to the State's basic MOE requirement. The State's revised basic MOE level would apply for each fiscal year covered by the approved Tribal TANF plan(s).

For example, if the amount of the Tribal Family Assistance Grant represents ten percent of the State's SFAG, then we would reduce the State's basic MOE requirement by ten percent. This approach provides a consistent method for determining both the reduction in the State's SFAG and its required basic MOE level.

(c) Applicable Percentage

Under section 409(a)(7)(B)(ii), if any State fails to meet the minimum work program participation rate requirements in the fiscal year, then it must spend at least 80 percent of its FY 1994 spending level. If a State meets the minimum work participation rate requirements, then the ''applicable percentage'' is 75 percent of its FY 1994 spending level for the year. We refer to the dollar amount representing 75 percent or 80 percent of the FY 1994 State expenditures as the basic MOE level.

We calculated each State's total FY 1994 expenditures and basic MOE levels by using data on the State share of expenditures for AFDC benefits and

administration, EA, FAMIS, AFDC/JOBS Child Care, and Transitional and At-Risk Child Care programs reported by States on form ACF–231 as of April 28, 1995, as well as the State share of JOBS expenditures reported by each State on form ACF–331 as of April 28, 1995.

We transmitted tables showing FY 1994 spending amounts and basic MOE levels to the States via Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. On October 31, 1997, we issued TANF Program Instruction Number TANF–ACF–PI–97–9 informing States of revised basic MOE levels. The revised basic MOE levels reflected a correction in the calculation of the State share of FY 1994 At-Risk Child Care (ARCC) expenditures. Although the data sources remained the same for all States, some of the reported ARCC expenditure amounts used were revised after the original calculation. As a result, the basic MOE levels for some States increased. As TANF–ACF–PI–97–9 was issued so close to the NPRM publication date, we were not able to include information on it in the NPRM.

We also determined FY 1994 spending and basic MOE levels for each of the Territories. For IV–A expenditures for Puerto Rico, we used the Financial Report Form ACF–231 as of April 28, 1995. For Guam and the Virgin Islands, we used the share of expenditures that corresponded to the amount on the Federal grant awards for FY 1994, i.e., the Territories' share of AFDC benefit payments (25 percent), EA (50 percent), administration (50 percent), and Child Care (25 percent). For JOBS, the Territories' basic MOE levels reflect expenditures reported on the ACF–331 as of April 28, 1995.

In addition, for both IV–A (AFDC, EA, and child care) and JOBS, Guam and the Virgin Islands (but not Puerto Rico) benefit from Pub. L. 96–205, as amended (48 U.S.C. 1469a). This law permits waiver of the first $200,000 of the Territories' share of expenditures. Therefore, for Guam and the Virgin Islands, we reduced the share that they were required to contribute, and thus their basic MOE amount, by $200,000.

(d) FY 1997 Basic MOE Level

Under the proposed rules, we indicated that the State could prorate its basic MOE level for FY 1997 by taking the total FY 1994 State expenditures provided to the State in Program Instruction Number TANF–ACF–PI–96–2, multiplying that number by the number of days during FY 1997 that the State operated a TANF program and dividing by 365. The State's TANF implementation date is the date given in the Department's completion letter to the State. The State had to meet 80 (or 75) percent of the resulting amount.

Comments and Responses

We received a few comments on this section. Two commenters commended our proposal to reduce a State's basic MOE proportionately when the State's TANF grant is reduced once a Tribe or a consortium of Tribes residing in a State has received approval to operate its own TANF program. Most of the other comments focused on the applicable basic MOE level relative to a State's work participation rates. We have made no substantive changes to the provisions in this section as a result of the comments we received. However, as the result of some of the comments we received, we have clarified the regulation. A discussion of the comments follows.

(a) Applicable Percentage

Comment: A few commenters requested that we amend the regulations to provide that a State's failure to meet the two-parent minimum work participation rate for a year does not automatically require the State to meet 80 percent of its historic State expenditures. Instead, the commenters recommended that, where the State fails only the two-parent rate, the State must increase its spending level between 75 percent and 80 percent based on the ratio of the State's two-parent caseload to the State's entire caseload. Associations representing States pointed out that such an adjustment would be consistent with the proposed regulation under § 271.51 to reduce the maximum penalty amount for failure to meet the work participation rate if the State fails only the two-parent rate.

Response: We recognize that the size of a State's two-parent caseload may be small in comparison to the State's total caseload. However, we do not have any discretion under the statute to adjust a State's basic MOE in this way. Section 409(a)(7)(B)(ii) explicitly provides that a State must meet 80 percent of its FY 1994 spending level unless it meets the ''requirements'' of section 407(a) of the Act for the fiscal year. Section 407(a) includes the minimum participation rate requirements for both all families and two-parent families.

In contrast, section 409(a)(3) requiring a penalty for failing to satisfy minimum participation rates expressly provides for a reduction in the penalty with respect to a fiscal year based on the degree of noncompliance.

Comment: Two commenters thought we should modify the final rule to provide that the 75-percent spending level applies for every fiscal year in which a State meets only the all-family participation rate. They contended that the two-parent participation rate should not affect the required spending level, particularly for a State that has a very low two-parent caseload relative to its total caseload. One of the commenters also believed that the 75-percent spending level should apply immediately unless it can be shown after the fact that a State has not met the work participation rate requirements.

Response: We found no statutory basis for excluding the two-parent rate from a State's applicable spending requirement. The 75-percent spending standard, in the parenthetical at section 409(a)(7)(B)(ii), requires that States meet both rates.

We also disagree with the commenter's assertion that the 75-percent spending level should apply immediately. To the contrary, the statute requires that all States maintain an 80-percent spending level for each fiscal year. The reduction is a parenthetical addition if the State meets both participation rates for the fiscal year. Thus, a State would need to demonstrate that it actually meets both rates for the fiscal year for the 75-percent spending level to apply. This language suggests that, to avoid the chance of penalty, it would be most prudent for a State to plan to spend at the 80-percent level every year.

Comment: One commenter indicated that we must be clear in the regulations that a State qualifies for the 75-percent MOE standard if it meets the Federal requirement for the year following application of the caseload reduction credit.

Response: We have revised the final rule to clarify that a State's basic MOE will be reduced to 75 percent of FY 1994 expenditures if it meets both the all-family and the two-parent participation rate that applies following application of the caseload reduction credit.

Comment: Two commenters suggested that we clarify the basic MOE requirement for FY 1997. The commenters noted that the work participation rate requirements apply no earlier than the fourth quarter of FY 1997 for any State. As a result, the basic MOE requirement for FY 1997 should only be based on whether a State met the work participation rate requirements for the fourth quarter of FY 1997. If a State achieves the required work participation rate for the July–September 1997 quarter, the State's basic MOE requirement should be 75 percent of its historic expenditures.

Response: We agree that the earliest period States must report information

necessary to calculate participation rates under section 407 is the fourth quarter of FY 1997. The penalty for failure to submit a required quarterly report in a timely manner is one of several penalties that has a delayed effective date. Section 116(a)(2) of PRWORA provides that certain penalty provisions do not take effect until July 1, 1997, or six months after we receive the State's complete TANF plan. We consider the State's TANF implementation date to be the date that we received its complete plan. Most States had to submit a report for all or part of the fourth quarter of FY 1997.

However, there is no delay in the penalty for failure to meet the basic MOE requirement. This is one of several penalty provisions that apply immediately, i.e., from the date a State implements its TANF program. Thus, each State must maintain 80 percent of its historic expenditures for FY 1997 unless it meets the work participation rate requirements both for all families and two-parent families. (The penalty for failure to satisfy the minimum participation rates requirement also has a delayed effective date; however, that penalty is separate from the basic MOE requirement.)

The participation rates for a fiscal year are an average monthly rate. For the States that had to submit a report for all or part of the last quarter of FY 1997, we will calculate the average monthly rate for all families and for two-parent families based on the number of months that must be covered in the required quarterly report.

The remaining States must meet 80 percent of their historic spending levels unless they choose to submit data demonstrating that they actually met both participation rates either for the period during which they were operating their TANF program or for the last quarter of FY 1997, whichever they choose. We decided to give these remaining States this option because we did not think it would be fair to judge their performance over a longer period of time than States that implemented TANF at an earlier date. Also, we have more flexibility with respect to these States since the statute does not specify a precise time frame for measuring their performance.

Comment: One commenter wrote that a State should not have to meet the 80-percent level of effort if we waive the State's penalty for failing to achieve either of the required work participation rates due to reasonable cause. Another commenter requested clarification in this area.

Response: Under section 409(a)(7)(B)(ii) of the Act, the 75-percent standard only applies if a State meets the minimum work participation rates, not when a State has reasonable cause for failing to satisfy the rates. Granting reasonable cause does not mean that the State met the rates. States that fail to satisfy the minimum work participation rates, but receive partial or full penalty relief, must still meet the 80-percent MOE requirement.

(b) FY 1997 Basic MOE Level

Comment: One commenter asked that the final rule clarify how we will calculate the FY 1997 basic MOE level.

Response: We calculated the prorated basic MOE levels by first determining the number of days in FY 1997 that a State operated the TANF program. We then multiplied the resulting number of days by the State's basic MOE level for the year, then divided by 365 (the number of days in FY 1997).

We originally published the States' basic MOE levels in Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. We also sent letters dated January 7, 1997, to TANF program directors explaining that we would prorate basic MOE levels for FY 1997 only. As explained earlier, we have since recalculated basic MOE levels for States to correct for the revised State ARCC expenditure figures for FY 1994. As a result, the basic MOE levels for some States increased. We transmitted the revised basic MOE levels for States via TANF Program Instruction Number TANF–ACF–PI–97–9 dated October 31, 1997. This instruction also included each State's prorated FY 1997 basic MOE levels.

However, for States whose revised basic MOE level increased, we did not apply the revised rate retroactively. Rather, we are determining State compliance with the FY 1997 basic MOE level requirements based on the original numbers published in TANF–ACF–PI–96–2, prorated as applicable. All revised State basic MOE levels published in TANF–ACF–PI–97–9 apply beginning FY 1998.

Section 263.2—What Kinds of State Expenditures Count Toward Meeting a State's Basic MOE Expenditure Requirement? (§ 273.2 of the NPRM)

Overview

(a) Qualified State Expenditures

Section 409(a)(7)(B)(i) establishes the criteria for the expenditure of State funds to count toward a State's basic MOE level. Congress wanted States to be active partners in the welfare reform process. Thus, States must spend a substantial amount of their own money on aid to needy families. While Congress gave States significant flexibility in this area, it did establish a number of important statutory restrictions on which State expenditures qualify towards the basic MOE requirements.

Section 409(a)(7)(B)(i) defines ''qualified State expenditures'' to include certain expenditures by the State under all State programs. We interpret ''all State programs'' to mean the State's family assistance (TANF) program plus any other separate State program that assists ''eligible families'' and provides appropriate services or benefits. Thus, States could expend State funds for MOE purposes in three ways.

In addition to expending State funds in separate State programs, States may expend funds within the TANF program in two different ways. They may commingle their State funds with Federal grant funds, or they may use State funds that have been segregated from their Federal grant funds.

We remind States that there are specific statutory requirements that affect the use of State funds under a State's TANF program. States need to be mindful of the TANF requirements to help avert penalties under section 409 of the Act. The specific TANF requirements that apply depend upon which of various programmatic terms is used in the language describing the requirement.

States may also expend State funds in a State program separate from TANF to provide the benefits and services listed under section 409(a)(7)(B)(i)(I) of the Act, e.g., cash assistance, child care assistance, and education activities. None of the TANF program requirements directly apply to eligible families served in separate State programs.

Requirements in the statute that use the terms ''under the program,'' ''under the program funded under this part,'' and ''under the State program funded under this part'' apply to the State's TANF program, regardless of the funding source. That is, they apply to segregated Federal programs, commingled State/Federal programs, and segregated State programs. Thus, all families receiving TANF assistance (whether funded with State or Federal TANF funds) must meet work participation and child support requirements.

Conversely, some Federal requirements derive from the provisions in the statute that use the term ''grant,'' or ''amounts attributable to funds provided by the Federal government.'' These terms refer to the Federal TANF funds provided to the State under

section 403. Therefore, they only affect the use of Federal TANF funds, unless the State commingles its money with Federal TANF funds. If a State commingles its funds, the Federal and State funds become subject to the same rules. Thus, commingling of State and Federal TANF funds can reduce the total amount of flexibility available to the State in its use of Federal and State funds.

Requirements pertaining solely to the use of Federal TANF funds do not apply to families assisted under TANF with State-only funds. Consequently, if a State segregates its TANF State funds from its Federal TANF funds, State expenditures on assistance must comply only with all of the rules that generally pertain to the TANF program, e.g., work and child support requirements. They are not subject to requirements that pertain only to the use of Federal TANF funds.

A State might choose to operate a ''segregated'' TANF program because certain limitations, e.g., time limitations and certain alien restrictions, apply to the program funded with Federal TANF funds that would not apply to a TANF program funded wholly with State funds.

Whether the expenditure of State funds is within the TANF program or separate from the TANF program, to count toward meeting the State's basic MOE, all expenditures must: (1) be made to or on behalf of an eligible family; (2) provide ''assistance'' to eligible families in one or more of the forms listed in the statute under section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations set forth in this part of the regulations, including those set forth in §§ 263.5 and 263.6.

(b) Eligible Families

Section 409(a)(7)(B)(i)(I) provides that State funds under all State programs must be spent with respect to eligible families to count toward the State's basic MOE. Section 409(a)(7)(B)(i)(IV) further clarifies that an eligible family means a family eligible for assistance ''under the State program funded under this part.'' The ''State program funded under this part'' is the State's TANF program.

Thus, we proposed that, in order to be considered an ''eligible family'' for MOE purposes, a family must have a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual) and be financially needy under the TANF income and resource standards established by the State under its TANF plan. This definition includes two categories of families. It includes all families funded with MOE funds under TANF, including certain alien families or time-limited families who cannot be served with Federal TANF funds, but who are being served in a segregated State TANF program. (We discuss this alien limitation in detail further on in this section.) It also includes a family that meets these criteria, but is not receiving TANF, and instead is receiving benefits and services from a separate State program. The expenditures to provide these benefits and services under all State programs may count toward the MOE requirement, provided the expenditures also meet all other requirements and limitations set forth in part 263.

A State is free to define who is a member of the family for Federal TANF purposes and may use this same definition for MOE purposes. For example, it could choose to assist other family members, such as noncustodial parents, who might significantly enhance the family's ability to achieve economic self-support and self-sufficiency. By including such individuals within its definition of family, a State could provide them with services through TANF or a separate State program. Noncustodial parents could then engage in State-funded activities such as work or educational activities, counseling, or parenting and money management classes.

The NPRM stated that we expect States to define ''child'' consistent either with the ''minor child'' definition given in section 419 or some other definition applicable under State law. The State must be able to articulate a rational basis for the age they choose.

The definition of ''eligible family'' expressly includes families that ''would be eligible for such assistance but for the application of section 408(a)(7) of this Act.''

Under section 408(a)(7), States may not use Federal TANF funds to provide TANF assistance to a family that includes an adult who has received federally funded assistance for a total of 60 months. Therefore, if a family becomes ineligible for Federal assistance under the TANF program due to this time limit, but still meets the definition of eligible family, then this family may be considered an eligible family for MOE purposes. (Note: In the NPRM, in § 273.2(c), we did not accurately cite the applicable criteria. The final rule at § 263.2(c) corrects this error; in referencing paragraph (b) of this section, it captures all three criteria for ''eligible families.'')

Section 5506(d) of Pub. L. 105–33 (the Balanced Budget Act of 1997) clarified that the definition of an eligible family also includes lawfully present aliens who would be eligible for TANF assistance, but for the application of title IV of PRWORA.

Thus, the definition of eligible family allows States to claim MOE expenditures with respect to three types of family members: (1) those who are eligible for TANF assistance; (2) those who would be eligible for TANF assistance, but for the time-limit on the receipt of federally funded assistance; and (3) those lawfully present who would be eligible, but for the application of title IV of PRWORA. An alien family who meets any one of these three criteria may be considered an eligible family provided they also meet the family composition requirement (i.e., have a child living with a custodial parent or other caretaker relative or be a pregnant individual) and financial eligibility criteria established by the State. These last two requirements are based on the statutory language stating that eligible families ''means families eligible for assistance under the State program funded under this part (TANF) * * * and that would be eligible for such assistance.''

While this three-part definition of eligible families may appear to allow States to claim qualified expenditures with respect to all lawfully present alien eligible family members, i.e., both qualified and nonqualified aliens, as discussed further below, this is not necessarily the case. Nor is it the case that the amendment to the definition under the Balanced Budget Act precludes States from claiming MOE for illegal aliens under certain circumstances.

While we mentioned the 1997 amendment in the NPRM, at that time, we had not fully analyzed the significance of the statutory language defining ''eligible families'' for MOE claiming purposes, relative to the extant eligibility provisions in title IV of PRWORA. Title IV of PRWORA sets forth the aliens who are eligible for Federal public benefits and for State and local public benefits; whereas, the definition of eligible families limits the expenditures that may be claimed for MOE. While there is obvious overlap between these two concepts, they are distinct and must be analyzed separately.

To understand eligibility for Federal TANF benefits, readers must be familiar with the definition of qualified alien, Federal public benefit, and Federal means-tested public benefits. Section 401 in title IV of PRWORA provides that, in general, only qualified aliens, as defined in section 431 of PRWORA, are

eligible for Federal public benefits. (At the end of this discussion, we explain two very limited circumstances under which it may be possible for a State to provide certain benefits to all aliens.) The definition of ''qualified aliens'' at § 260.30 refers to section 431 of PRWORA, as amended (e.g., by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208) and the Balanced Budget Act of 1997 (Pub. L. 105–33)). The revised definition of ''qualified aliens'' includes: legal permanent residents; asylees; refugees; aliens paroled into the U.S. for at least one year; aliens whose deportations are being withheld; aliens granted conditional entry; battered alien spouses, battered alien children, the alien parents of battered children, and alien children of battered parents who fit certain criteria; and Cuban/Haitian entrants.

The Department has interpreted the term ''Federal public benefit'' (see TANF–ACF–IM–98–5, dated August 24, 1998, transmitting the notice with comment period interpreting ''Federal public benefit,'' published in the **Federal Register** dated August 4, 1998, vol. 63, No. 14, and available on line at http://www.acf.dhhs.gov/programs/ofa/im98–5.htm). It has determined that the TANF program (when using Federal TANF funds) generally provides a Federal public benefit. The Department also issued an interpretation of the term ''Federal means-tested public benefit'' and designated the TANF program as a Federal means-tested public benefit. (See the **Federal Register** for August 26, 1997, 62 FR 45256.)

Even qualified aliens may be ineligible for means-tested Federal public benefits. Section 403 of PRWORA prohibits qualified aliens, with exceptions, who arrive on or after August 22, 1996, i.e., newly arrived aliens, from receiving Federal means-tested public benefits for five years.

Exceptions to the five-year bar include qualified aliens who are refugees, asylees, or aliens whose deportation is being withheld, Amerasians, and Cuban/Haitian entrants, as well as veterans, members of the military on active duty, and their spouses and unmarried dependent children.

However, as discussed below, States may elect to help any newly arrived aliens who are eligible family members by providing either State or local public benefits or benefits that are not a State or local benefit. If the State uses segregated State funds in TANF or funds in separate State programs to provide such benefits, the expenditures may qualify as MOE.

Further, in regard to whether qualified aliens may be eligible for Federal TANF benefits, section 402 of PRWORA provides that States have the authority in TANF to decide whether to help qualified aliens who arrived in this country prior to August 22, 1996, and qualified aliens who arrived on or after August 22, 1996, but for whom the five-year bar had expired. In other words, States are authorized to decide whether qualified aliens are eligible for the State's TANF program. However, a State may not deny certain qualified aliens eligibility even if it decides that as a general matter qualified aliens are not eligible to receive Federal TANF benefits. States may not deny eligibility to refugees and asylees, aliens whose deportation has been withheld, Amerasians, and Cuban/Haitian entrants. These groups are eligible for Federal TANF benefits for five years after the date of their entry into the country or the date asylum or withholding of deportation was granted. Also, States may never deny eligibility to legal permanent residents who have worked forty qualifying quarters or to aliens who are veterans, members of the military on active duty, and their spouses and unmarried dependent children.

As with other parts of the TANF program, the way the State structures the delivery of TANF and MOE benefits determines which eligibility requirements apply. If a State commingles Federal TANF funds with State funds, then the benefits provided must follow the rules at section 401(c) for Federal public benefits. A State providing Federal public benefits to aliens and using commingled TANF funds to help aliens may claim, for MOE purposes, only the expenditures that it makes with respect to eligible qualified alien family members. Eligible qualified aliens include those who are eligible for TANF assistance; would be eligible for TANF assistance, but for the time limit on receiving federally funded TANF assistance; or are lawfully present in this country and would be eligible for TANF assistance, but for the application of title IV of PRWORA. If the State decides to restrict the eligibility of noncitizens to receive TANF benefits and commingles its MOE funds, then it will only be able to claim toward MOE the expenditures that it must make on behalf of the excepted qualified aliens mentioned above.

If a State does not commingle Federal and State funds, but instead uses segregated State funds in its TANF program or separate State program funds to provide benefits that meet the definition of a State or local public benefit, then it must follow the rules of section 411 of PRWORA. State or local public benefits have the meaning prescribed under section 411(c) of PRWORA. It is generally up to the State to determine if the benefits it offers are State or local public benefits within the meaning of the Act. However, because we interpreted that the TANF program, using Federal TANF or State commingled funds, generally provides a Federal public benefit, we also would interpret that the TANF program, using State TANF funds that have been segregated from Federal TANF funds, generally provides a State or local public benefit (subject to the limited circumstances explained at the end of this discussion). We make this interpretation because the statutory language in section 401(c) is identical to the language in 411(c). Within the meaning prescribed under section 411(c), States would also determine whether various separate State or local programs or activities are State or local public benefits.

Section 411(a) of PRWORA provides that only qualified aliens and certain nonqualified aliens are eligible for State or local public benefits. The nonqualified aliens consist of nonimmigrants under the Immigration and Nationality Act or aliens paroled into this country under section 212(d)(5) of such Act for less than one year. There are a handful of legal nonqualified aliens, e.g., temporary residents under the Immigration Reform and Control Act (IRCA), aliens with protected status, and aliens in deferred action status who are prohibited from receiving State or local public benefits under this provision. (At the end of this discussion, we explain two very limited circumstances under which it may be possible to provide certain benefits to all aliens.)

Section 411(d) of PRWORA permits States to expand alien eligibility by providing State or local public benefits to illegal aliens. But this may occur only if the State enacts a law after August 22, 1996, that affirmatively provides that illegal aliens are eligible to receive (all or particular) State or local public benefits.

Section 412 of PRWORA also allows States, at their option, to further limit alien eligibility for State public benefits. There are time-limited exceptions for refugees, asylees, or aliens whose deportation has been withheld. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF during their first five years following entry, the grant of asylum, or the withholding of deportation. The

other excepted qualified aliens consist of veterans, members of the military on active duty, and their spouses and unmarried dependent children, as well as permanent residents who have earned forty qualifying quarters. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF without the time limit described above.

In light of sections 411 and 412 of PRWORA, we have concluded that, if a State uses segregated State TANF funds or separate State program funds to provide State or local public benefits, it may only claim for MOE purposes the qualified expenditures made with respect to eligible family members who are qualified aliens, nonimmigrants under the Immigration and Nationality Act, aliens paroled into this country under section 212(d)(5) of such Act for less than one year, and illegal aliens if the State enacted a law after August 22, 1996, that affirmatively provides for eligibility to receive specifically authorized State or local public benefits.

A State may claim the expenditures for illegal aliens for MOE purposes only if the law in question is broad enough to encompass TANF eligibility. The only avenue for claiming expenditures for illegal aliens in the definition of eligible families in section 409(a)(7)(B)(i)(IV) is under the criteria of families eligible for assistance under TANF. Once a State affirms that illegal aliens are eligible for TANF assistance, then the State may provide a State or local public benefit as part of TANF or a separate State program. For example, if the State's law only authorizes for child care to be provided to illegal aliens through a non-TANF program (e.g., CCDF), it could not claim any such expenditures as MOE. However, if its law authorizes child care provided through TANF for illegal immigrants, it may claim such expenditures as MOE. Or, if it provides such a service to illegal aliens through a separate State program and not the TANF program, but the illegal aliens are eligible for both, it may claim those expenditures as MOE.

A State may claim qualified expenditures for the individuals described in the prior two paragraphs for MOE purposes because these are the aliens who are either eligible for TANF benefits or lawfully present in this country and eligible for TANF assistance, but for the application of title IV of PRWORA. If a State decides to restrict alien eligibility for State public benefits, then it may only claim MOE for qualified segregated TANF expenditures or qualified separate State program expenditures made with respect to the excepted qualified aliens mentioned in section 412.

Two limited circumstances exist in which it may be possible for a State to help all aliens. These circumstances apply regardless of funding source, i.e., whether a State uses Federal TANF, State TANF, or separate State program funds. These circumstances derive from section 401(b) and (c) and section 411(b) and (c) of PRWORA, which describe alien eligibility for Federal public benefits and State or local public benefits, respectively.

First, both sections 401(b) and 411(b) of PRWORA affirm that States may provide certain noncash Federal or State and local public benefits to any alien. Such benefits are those necessary for the protection of life or safety and include those specified by the Attorney General in a notice dated August 23, 1996 (AG Order No. 2049–96, 61 FR 45985 available on line at http://www.acf.dhhs.gov/news/welfare/wr/830fdreg.htm). In the notice, the Attorney General specified the kinds of noncash government-funded community programs, services, or assistance that are necessary for protection of life or safety and for which all aliens continue to be eligible. However, for all aliens to be eligible, sections 401(b)(1)(D) and 411(b)(4) both state that neither the government-funded programs, services, or assistance provided, nor the cost of such assistance, may be conditioned on the individual recipient's income or resources. While such service may meet one of the purposes of TANF and may be provided as part of TANF or a separate State program, a State may claim toward MOE only qualified expenditures with respect to eligible (needy) families. Therefore, to claim any expenditures that meet the Attorney General's specifications for life and safety, a State must have a sound methodology that enables it to identify and claim only the portion of total qualified expenditures for benefits that it has provided to eligible families.

Second, section 401(c) defines a Federal public benefit and section 411(c) defines a State or local public benefit. Both sections use the same definition. The August 4, 1998, **Federal Register** notice that identified TANF as a Federal public benefit expressly states that not ''all benefits or services provided by these programs are 'Federal public benefits' and require verification.'' Because sections 401(c) and 411(c) use the same wording to define a public benefit, we believe this statement may also apply to benefits provided with segregated State TANF funds and separate State program funds. When a benefit is not a Federal or State or local public benefit, a State is not statutorily bound to restrict eligibility to certain aliens and can provide that benefit to all aliens.

The August 4, 1998 **Federal Register** ''Notice with Comment Period'' includes some general discussion about discerning whether a benefit should or should not be considered a Federal public benefit. We suggest this same discussion may be valuable to States in interpreting, per section 411(c), the specific services that a State would or would not consider a State or local public benefit under TANF or through a separate State or local program. If a particular benefit or service under the State's TANF program or separate State or local program is not a public benefit, then the State may claim qualified expenditures with respect to any alien family member who is ''eligible for TANF assistance.''

In addition we proposed that States may be able to count as MOE expenditures, funds transferred to Tribal grantees to assist families eligible under an approved Tribal TANF plan. However, if the eligibility criteria under the Tribal TANF program are broader than under the State's TANF plan, then all expenditures of State funds within the Tribal TANF program might not count as MOE. Only expenditures used to assist an ''eligible family'' under the State program count. States must ensure that State funds are expended on behalf of families eligible under the State's income and resource standards.

(c) Types of Activities

Section 409(a)(7)(B)(i)(I)(aa)–(ee) specifies that State expenditures on eligible families for the following types of assistance are ''qualified expenditures'' for basic MOE purposes:

- Cash assistance (see subsequent discussion on this);
- Child care assistance (see the discussion at § 263.3);
- Education activities designed to increase self-sufficiency, job training, and work (note the specific exception at § 263.4);
- Any other use of funds allowable under section 404(a)(1) (see subsequent discussion on this); and
- Associated administrative costs (subject to a 15-percent cap, as discussed in § 263.0 and subsequently).

It is important to remember that the activities mentioned above count toward a State's basic MOE requirement if they are reasonably calculated to accomplish a purpose of the program. This restriction follows from the language at section 409(a)(7)(B)(I)(ee) of the Act authorizing as MOE, ''any other

use of funds allowable under section 404(a)(1).'' Section 404(a)(1) of the Act refers to activities that are reasonably calculated to meet a purpose of the TANF program. The use of the word ''other'' infers that the activities listed above (ee), i.e., (aa)–(dd) must also be reasonably calculated to accomplish a purpose of the program. Hence, not only must expenditures of funds pursuant to (ee) be reasonably calculated to accomplish a TANF purpose, so must State expenditures pursuant to (aa)–(dd): cash assistance, child care assistance, educational activities, and administrative costs (discussed in detail further on).

We mentioned in the NPRM that expenditures for ''assistance'' for MOE purposes may take the form of cash, certificates, vouchers, or other forms of disbursement, as determined by the State. MOE expenditures may also be for ongoing, short-term, or nonrecurrent benefits. The definition of assistance at § 260.31 (§ 270.30 of the NPRM) does not limit the nature of State-funded aid provided to eligible families under TANF or separate State programs that can count as MOE. The authorization as MOE of ''any other use of funds allowable under section 404(a)(1)'' indicates that Congress intended all types of benefits provided to families under TANF under section 404(a)(1) of the Act should count as MOE. These can include ''nonassistance'' benefits such as nonrecurrent, short-term benefits.

Thus, State expenditures with respect to eligible families for activities such as pre-pregnancy family planning services, teen parenting programs, youth and family counseling or support services, job training or employment services, or forms of crisis assistance that meet the purposes of the program under section 404(a)(1) may also count toward meeting a State's MOE requirement. However, such expenditures are subject to other limitations and restrictions under §§ 263.5 and 263.6 (§§ 273.5 and 273.6 of the NPRM).

In the NPRM, we also addressed additional limitations and restrictions. We included some specific case situations that came to our attention and invited comment on these and other examples of aid for eligible families that States believed could qualify.

(1) Cash Assistance

This category includes cash payments, including electronic benefit transfers, to meet basic needs; assistance with work-related transportation costs; clothing allowances; and any child support collected on behalf of an eligible child that the State passes through to the eligible family.

The preamble in the proposed rule pointed out that section 5506(b) of Pub. L. 105–33 amended section 409(a)(7)(B)(i)(I)(aa) of the Act to specifically allow assigned child support collected by the State and distributed to the family to count toward a State's basic MOE so long as the amount is disregarded in determining the family's eligibility for and amount of TANF assistance. However, we neglected to point out that section 5506(b) also provided that the assigned child support distributed to the family must come from the State's share of the amount collected. The law specifically refers to the amount collected and distributed to the family under section 457(a)(1)(B). Section 457(a)(1)(B) provides that the State may retain or distribute to the family its share of the support amount so collected. Thus, more accurately, section 409(a)(7)(B)(i)(I)(aa) expressly allows the State's share of assigned child support amount collected on behalf of the family and distributed to the family to count toward a State's basic MOE, provided that the State disregards the amount sent to the family in determining the family's eligibility and amount of TANF assistance. We have clarified this point in the final rule.

Cash assistance also includes State expenditures on behalf of eligible families as part of a State's refundable Earned Income Tax Credit (EITC) program. Under a State EITC program, we determined that only expenditures, i.e., the refundable portion of EITC payments actually paid to eligible families, may count as MOE. Also, if the State had an EITC program in FY 1995, it may count the total amount of the refundable portion of the EITC actually paid to eligible families only to the extent that this amount exceeds the total amount of the refundable portion of the EITC actually paid in FY 1995 (see § 263.5).

(2) Any Other Use of Funds Allowable Under Section 404(a)(1)

Section 404(a)(1) provides that TANF funds may be used ''in any manner that is reasonably calculated to accomplish the purpose of the TANF program, including to provide low income households with assistance in meeting home heating and cooling costs.'' In § 260.20 (§ 270.20 of the NPRM), we list the statutory purposes of the TANF program.

(3) Medical and Substance Abuse Services

The statute does not prohibit the expenditure of State MOE funds on medical expenditures. Therefore, States may count expenditures of their own funds to provide treatment services to individuals seeking to overcome drug and/or alcohol abuse when these services assist in accomplishing the purposes of the program. This policy would also comport with both the Administration's support for drug rehabilitation services and the congressional call for State flexibility in the operation of welfare programs.

We reminded States that such expenditures must be consistent with the purposes of the program and made to, or on behalf of, eligible families. We also reminded States that section 408(a)(6) bars the use of Federal TANF funds for medical services. Therefore, States using MOE funds to provide medical treatment services may not commingle State and Federal TANF funds. In addition, any State expenditures on medical services that are used to obtain Federal matching funds under the Medicaid program would not count as MOE. (Refer to the discussion under § 263.6.) Finally, State expenditures on medical and substance abuse services may only count as MOE subject to the ''new spending'' limitations set forth in § 263.5.

(4) Juvenile Justice

State funds used to pay the costs of benefits or services provided to children in the juvenile justice system and previously matched under the EA program do not count toward MOE. More specifically, as juvenile justice services do not meet any of the purposes of the TANF program, they are not an allowable use of funds under section 404(a)(1).

While some States may expend their Federal TANF funds for this purpose, under section 404(a)(2), the definition of ''qualified State expenditures,'' for MOE purposes, does not include the reference to section 404(a)(2). Therefore, we have concluded that Congress did not intend to automatically qualify all previously authorized IV–A expenditures as MOE. States that expend Federal TANF funds for this purpose, under section 404(a)(2), must not commingle State funds with Federal TANF funds if they wish the State funds to count as MOE.

(5) State ''Rainy Day'' Funds

Some States inquired whether State funds allocated or set aside during a fiscal year as a ''rainy day'' fund, to act as a hedge against any economic downturn, could count as MOE. While we understand State intent, these allocations or set-asides are not expenditures. States must actually expend funds on behalf of eligible

families during the fiscal year for the money to count toward the State's MOE for that fiscal year. (However, under section 404(e), States may reserve Federal TANF funds from any fiscal year for use in any other fiscal year.)

(6) Administrative Costs

Administrative expenditures may count toward a State's MOE, but only to the extent that they do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year. This limitation is the same as the limit for Federal TANF administrative expenditures. Therefore, we proposed that the State apply the same definition of administrative costs for MOE purposes as for Federal TANF funds.

Section 404(b)(2) states that expenditures of Federal TANF funds with respect to information technology and computerization needed for tracking or monitoring activities are not subject to the 15-percent TANF limit. We are providing the same flexibility with respect to the administrative cost cap on MOE expenditures. Thus, the rules do not include information technology and computerization expenditures under the administrative cost cap; they allow such expenditures to count toward meeting a State's MOE requirement, without being limited by the 15-percent cap on administrative expenditures.

Comments and Responses

Summary

We received numerous comments on § 273.2 of the proposed rule. Many of the comments focused on the definition of eligible family. One commenter praised our broad interpretation of the term ''eligible family.'' Others indicated that it may not be broad enough. Numerous commenters requested clarification of the definition.

We also received comments regarding some of the examples of qualified expenditures mentioned in the proposed rule as well as a few comments on other examples of aid for eligible families that commenters believe could qualify. Although we received only a few specific comments regarding the 15-percent cap on administrative MOE expenditures, we received a substantial number of comments on various aspects of the proposed definition of administrative costs. Since this definition applies to the State as well as the Federal cap on administrative expenditures, we refer you to the beginning of this subpart, at § 263.0, for a fuller discussion of the various issues raised and conclusions reached regarding the final definition of administrative costs.

Finally, a couple of the comments concerned the cash management principles governing the draw-down of Federal TANF funds because the draw-down of Federal TANF funds is tied to MOE expenditures.

After carefully considering the comments, we made some clarifications and a few changes to the final rule. We will address the comments following the order of the NPRM preamble.

(a) Qualified State Expenditures

Comment: One commenter noted that States have raised a number of questions regarding application of the Cash Management Improvement Act (CMIA) to the TANF program and MOE funds. The commenter recommended incorporating the guidance currently being developed jointly by the Financial Management Service (FMS) of the U.S. Department of Treasury and ACF in the final rule, as appropriate.

Another commenter recommended clarifying the final rule to specify that States may draw down Federal TANF funds without being required to show that they met their MOE requirement by the end of the year. The commenter wrote that our rules impose a de facto match requirement that is burdensome on States and could cause cash flow problems.

Response: The guidance the commenter is referring to has not yet been completed. We intend to release it as a separate issuance once it is completed. In the meantime, CMIA Policy Statement Number 19, dated June 1, 1997, and issued by FMS provides general cash management guidelines for States in drawing down their Federal TANF funds.

Federal TANF funds are subject to the Cash Management Improvement Act and the grant regulations at 45 CFR 92.20(b)(7). These rules restrict the draw-down of Federal funds. The CMIA Policy Statement Number 19 requires that States must expend a proportionate share of MOE funds for any period the State draws down Federal TANF funds. Thus, we have not made the recommended clarification.

The MOE requirement is not a de facto match requirement. However, it is similar to a matching requirement in one respect. It is a cost-sharing requirement, as Congress recognized that State financial participation is essential for the success of welfare reform.

To allow a State to expend Federal TANF funds first, then later spend State funds to fulfill the basic MOE requirement, would convey to the State a benefit (interest income) that was not authorized by the legislation establishing TANF. PRWORA did not provide for the TANF block grant allocations plus interest. The recommended action would also be in violation of 31 U.S.C. 6503(c)(1), which governs intergovernmental financing and the U.S. Treasury-State (cash management) Agreements signed by each State and Territory.

Although States must meet their basic MOE level for a fiscal year by the end of that fiscal year, the guidance in CMIA Policy Statement Number 19 does not restrict a State's ability to draw down its full TANF grant. Once a State meets its basic MOE requirement, the State may draw down its remaining TANF funds without contributing additional MOE funds. However, the draw-down of Federal TANF funds must be for immediate cash needs. Under no circumstances may a State draw down funds that are not needed for a specific program expenditure.

(b) Eligible Families

In addition to comments as discussed below, we corrected an incomplete citation in § 273.2(c) of the NPRM. This paragraph addressed the circumstances under which expenditures on families that had exceeded the Federal time limit would count as MOE. It should have cited paragraphs (b)(1), (b)(2), and (b)(3)—thus indicating that the families receiving assistance had eligible alien status, included a child living with an adult relative, and were needy under the financial criteria in the TANF plan. However, it failed to include the reference for this third provision. In the final rule, we corrected this language.

Comment: A few commenters argued that we should leave the definition of ''eligible family'' to each State. One commenter said that the proposed definition attempts to usurp the State's authority to define eligible family; another indicated that Congress was silent on this topic.

Response: We do not agree that Congress was silent on the topic of ''eligible families.'' In fact, this issue is addressed in the Conference Report (H.R. Rep. No. 725. 104th Cong., 2d sess., at 56, p. 296). In pertinent part, the conferees agreed that ''qualified expenditures that count toward the * * * spending requirement are all State-funded expenditures under all State programs that provide any of the following assistance to families eligible for family assistance benefits (TANF). * * *'' More importantly, section 409(a)(7)(B)(i)(I) of Act provides that qualified expenditures count if made with respect to eligible families. Section

409(a)(7)(B)(iv) defines eligible families in pertinent part as ''families eligible for assistance under the State program funded under this part,'' i.e., under TANF.

Because we must enforce a penalty if a State fails to meet the basic MOE requirement, we must specify the standards for that penalty. The term ''eligible families'' is a critical part of those standards. In this way, States may know which expenditures may count and avert a penalty.

Comment: Several commenters expressed concern that the proposed rule does not allow expenditures to be counted toward the basic MOE requirement if made for lawfully residing aliens who are not included in the definition of ''qualified alien,'' such as certain persons residing under color of law (PRUCOL). The commenters pointed out that section 5506(d) of the Balanced Budget Act of 1997 (Pub. L. 105–33) amended the welfare reform law to allow States to count towards MOE funds spent on ''families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV.''

Response: We agree that the Balanced Budget Act made this change and mentioned it in the preamble to the NPRM. Also, the proposed regulation recognized that MOE expenditures could be used to help certain eligible nonqualified alien family members (nonimmigrants under the Immigration and Nationality Act and aliens paroled into the U.S. for less than one year). However, as previously mentioned, we did not accurately analyze the significance of this statutory language (defining ''eligible families'' for MOE claiming purposes relative to the extant provisions of title IV of PRWORA). Refer to the earlier extensive discussion regarding the noncitizens for whom the State may claim MOE expenditures.

Comment: Several commenters questioned the proposed rule at § 273.2(b)(2), which required that a child live with a custodial parent or other adult caretaker relative. One commenter noted that the Balanced Budget Act of 1997 eliminated the relationship requirement under 408(a)(1) of the Act. The commenters believed the statutory definition of eligible families under section 409(a)(7)(B)(i)(IV) and even the proposed rule permitted them to assist children who do not live with a custodial parent or other adult caretaker relative (e.g., children in foster care and juvenile justice situations). For example, expenditures associated with helping a child who lives in an alternative living arrangement had been permissible under the former Emergency Assistance program and therefore should count toward the basic MOE requirement. Another commenter believed the proposed rules were too narrow and recommended modifying the rules to permit qualified State expenditures for such children to count toward the basic MOE requirement.

Response: We do not agree that the Balanced Budget Act did away with the relationship requirement. We do not believe that Congress intended to eliminate the relationship requirement for either State MOE dollars or Federal TANF funds. Section 5505(a) of the Balanced Budget Act of 1997 expressly indicates that section 408(a)(1) was amended to eliminate redundant language. Previously, both sections 408(a)(10) (the home residence requirement) and 408(a)(1) (the minor child requirement) explicitly stated that Federal TANF funds could only be expended on a family that includes a child residing with a parent or other caretaker relative. The Balanced Budget Act removed the redundant phrase from 408(a)(1) and added a cross-reference to 408(a)(10), where the phrase remains intact.

Section 409(a)(7)(B)(i)(IV) defines eligible families, in pertinent part, as ''families eligible for assistance under the State program funded under this part.'' The State program funded under this part is the TANF program, whether funded with the Federal grant and/or State funds. The criteria with respect to TANF assistance include the provisions under section 408, and specifically the provision just discussed under 408(a)(1). Under section 408(a)(1), no family is eligible for TANF assistance unless the family includes a minor child who resides with the parent or other caretaker relative. Therefore, we believe there is a direct correlation between sections 408(a)(1) and 409(a)(7)(B)(i)(IV).

We conclude that the intent of section 409(a)(7)(B)(i)(IV) is that the family include a child residing with a parent or other caretaker relative. A State may still choose to aid the ''child-only'' cases that exclude the adult(s) from the case. Nevertheless, that child must be residing with a parent or other caretaker relative. Qualified State expenditures under all programs (TANF or separate State programs) may count toward basic MOE if made with respect to eligible families who meet the above criteria and are for one of the categories of activities listed under 409(a)(7)(B)(i)(I). As we indicated in the proposed rule, not all expenditures for services that had been previously authorized under the former AFDC, EA, or JOBS programs qualify for MOE purposes. In particular, there are services (e.g., juvenile justice situations) that do not meet any of the purposes of the TANF program. Rather, such former EA services generally fall under section 404(a)(2), not 404(a)(1). Therefore, the expenditures do not qualify.

Comment: A few commenters requested that we revise the language at § 273.2(b)(2) of the proposed rule to permit the provision of assistance to minors who are temporarily absent from the home, similar to the time periods given in section 408(a)(10)(A).

Response: As we explained above, an ''eligible family'' is defined, in part, as one in which there is a child residing with a parent or other caretaker relative. Thus, the child's home is that of the parent or other caretaker relative. However, as with TANF, under section 408(a)(10), we expected that States would establish policies that define a reasonable period of temporary absence of the minor from the home for MOE purposes. Otherwise, qualified expenditures to provide services or assistance to the child once he or she left the home would no longer count toward basic MOE.

During the temporary period, the child is considered to be residing with the parent or other caretaker relative. Therefore, State may continue to help the eligible family through expenditures that are reasonably calculated to accomplish a purpose of the program, including some expenditures for the temporarily absent child (except as noted later in this discussion). As we previously mentioned, all qualified expenditures must be reasonably calculated to accomplish a purpose of the program.

For example, family preservation services, such as parenting training or counseling, and some forms of transitional assistance, could help ensure that parents may care for their children in their own home (purpose 1). In contrast, it is unlikely that expenditures on child care services would be reasonably calculated to accomplish that purpose (or any of the other TANF purposes) if the only child in the eligible family is temporarily absent from the home.

Sometimes the child is temporarily absent from the home because he or she has been placed in the care of a correctional facility, juvenile residential facility, group home, protective care, foster care, other facility or other nonrelative care arrangement. Since the child is deemed to be residing with his or her parent or other caretaker relative during the temporary period, expenditures reasonably designed to

accomplish the purpose of the program, including continuation of cash assistance, would count toward MOE. However, expenditures for residential care as well as assessment or rehabilitative services, including services provided to children in the juvenile justice system, do not meet any of the purposes of the TANF program and would not count toward basic MOE. The principal purpose for placement is to protect the child or to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation.

It is important to note that this interpretation does not preclude a State from providing foster care or other protective care assistance for the child. However, these expenditures do not count toward the State's basic MOE requirement because they are not reasonably calculated to accomplish a purpose of the program.

It would be reasonable for States to use the time frames given under section 408(a)(10) to define ''temporary'' and to develop a corresponding MOE policy. (Section 408(a)(10) automatically applies when a State uses commingled State funds to provide TANF assistance.) The child must return to the home by the end of the temporary period established by the State. Otherwise, the child no longer resides with the parent or other caretaker relative. If the child is the only eligible minor in the eligible family, then services or assistance for the eligible family would no longer count toward the basic MOE requirement, if the child does not return after the temporary absence.

We do not believe it is reasonable to determine that a child is temporarily absent from the home if the child has been adjudicated or otherwise determined to require placement out of the home for longer than the State's established temporary period. In these situations, the absence is for a significant period, and expenditures for the child do not count as qualified once the child has left the home. Further, the child is not deemed to be residing with his or her parent or other caretaker relative. If the child is the only child in the family, then qualified expenditures to provide services or assistance to the family would no longer count toward basic MOE once the child left the home.

Comment: The NPRM indicated that a State is free to define who is a member of a family for TANF and MOE purposes and can choose to assist other family members such as noncustodial parents. Several commenters requested clarification regarding the effect of including the noncustodial parent or others as a member of the eligible family (e.g., applicability of sanctions). The commenters asked whether ''assistance'' provided to a noncustodial parent counts against the family for purposes of the time limit; whether a State can provide assistance or services to a noncustodial parent without providing assistance to the rest of the family; and whether a State must include the noncustodial parent as a family member. One advocacy group also asked whether a State could provide assistance to other relatives not living in the home; define a family to include more distant relatives not in the home; or even include nonrelatives not living in the home. A community organization felt that the potential addition of noncustodial parents or others not historically included within the family should not be totally discretionary with the State. The commenter recommended regulatory restrictions such as not providing assistance to a noncustodial parent when the custodial parent is not assisted. Another community organization requested that we spell out the full ramifications of States providing assistance outside the traditional ''AFDC household'' so that States will be aware of the consequences of their decisions.

Response: A number of commenters appeared to have interpreted our statement that States could include the noncustodial parent as part of the family to mean that any persons outside of the home may be a member of the eligible family. However, we did not intend for other relatives or nonrelatives not living in the home to be included as members of the eligible family. Only if a child is eligible in the home in which such other individuals live may the State choose to include them as part of that eligible family.

At minimum, an eligible family must consist of a minor child who resides with a parent or other caretaker relative (or consist of a pregnant individual). Beyond this minimum configuration, States may add other household members to comprise the eligible family. Thus, we expected that a State would configure a family from the individuals living in the home.

The only exception to this rule is the noncustodial parent. As the child's parent, a State may choose to include the noncustodial parent as a member of the child's eligible family. It also may choose not to. Further, a State may choose the circumstances under which a noncustodial parent would be a member of the child's eligible family. We leave this to State discretion and have included a minimal definition of noncustodial parent at § 260.30.

However, it is important to remember that an adult may receive TANF assistance only as part of a TANF family. This means that an adult, including a noncustodial parent, cannot apply for or receive TANF assistance independent of the child and custodial parent or caretaker relative, if applicable. Once the State determines the family is eligible, it is up to the State to determine the most appropriate assistance and nonassistance benefits to provide to family members.

Similarly, expenditures for adults only count for basic MOE purposes if the adult is part of a TANF or TANF-eligible family (i.e., a family that would be eligible for TANF assistance, but whose family members are not necessarily receiving it). And, as with TANF, the State determines the appropriate benefits to provide the eligible family.

As a member of the child's eligible family, a State could provide a noncustodial parent with benefits or services that could further the family's ability to attain economic self-support and self-sufficiency. Congress clearly supported this notion. For example, in section 101 of PRWORA, Congress stated that promotion of responsible fatherhood and motherhood is integral to the well-being of children. In section 407(h) of the Act, Congress expressed support for requiring noncustodial, nonsupporting parents under the age of 18 to fulfill community work obligations and attend appropriate parenting or money management classes after school. A provision in section 466(a) of the Act permits a State to issue an order, or to request that a court issue an order, requiring an individual owing past-due child support to participate in work activities, as defined in section 407(d) of the Act.

In our NPRM discussion of individual regulatory provisions, we also suggested that States examine the various sections of this rule where the term family is used. We understood that States needed to realize the other effects, in terms of the TANF requirements, of adding other persons to the eligible family. Applicability of any or all the TANF requirements depends on whether a family member is receiving TANF ''assistance'' as defined in § 260.31.

Applicability of a TANF requirement also depends on the person(s)

mentioned in a particular requirement. The TANF requirements use various terms, such as ''adult or minor child head-of-household,'' ''adult,'' ''teen parent,'' ''family member,'' ''individual,'' ''parent or other caretaker relative,'' or ''single custodial parent'' when referring to family members. The effect of a requirement may vary depending on the status of the person(s) receiving assistance. Each requirement must be examined to determine the effect of the status of family members on its applicability or on the amount of assistance paid (e.g., in sanction cases).

For example, the calculation of the work participation rates under section 407(b) of the Act consists of the number of families receiving assistance under the State program funded under this part that include an adult or a minor child head-of-household who engaged in work for the month (the numerator), divided by the number of families receiving TANF assistance during the month that include an adult or a minor head-of-household minus the number of families that are subject to a penalty for refusing to work in that month—except if a family has been sanctioned for more three of the last 12 months (the denominator). For this requirement, once a TANF eligible family includes an adult who receives some form of TANF ''assistance,'' the family is included in the calculation of the work participation rate, and the adult may be required to participate in work activities. An ''adult'' eligible family member receiving TANF assistance could be the custodial parent or other adult caretaker relative, a noncustodial parent, or any other adult household member as determined by the State.

Furthermore, section 407(e) of the Act requires the State to reduce or terminate the family's TANF assistance if an individual in the family refuses to engage in required work. ''Individual'' eligible family members could include the noncustodial parent or other members of the eligible family. Yet, the child care exception applies only if the individual refusing is a single custodial parent caring for a child under age six.

Applicability of a requirement can also depend on the context of the funding. The term ''under the State program funded under this part'' used in the above provisions, as well as the terms ''under the program'' and ''under the program funded under this part,'' all mean the State's TANF program, whether funded with Federal or State funds. Applicability of a TANF provision also depends on whether the State funds under the TANF program to provide assistance to the family member are commingled with, or segregated from, Federal grant funds. We mentioned earlier in this discussion that a State could expend State funds for MOE purposes in different ways. In terms of the TANF program, State expenditures may be commingled with, or segregated from, Federal grant funds. Provisions in the statute that use any of the above-mentioned terms apply to Federal or State-funded (whether commingled or segregated) assistance received under the TANF program, as depicted in the above examples.

In addition, under section 408(a)(3) and title IV–D of the Act, a family may not receive TANF assistance unless an assignment of support rights has been executed on the child's behalf. The assignment would also include the right to spousal support in the case of a custodial parent who receives TANF assistance. However, as discussed in the preamble to § 260.31, if the noncustodial parent also receives TANF assistance as a family member, the assistance provided to the noncustodial parent will not be considered ''assistance'' for purposes of the collection and distribution of assigned child support under title IV–D of the Act.

Provisions that only use the term ''grant'' or ''amounts attributable to funds provided by the Federal government'' (e.g., the five-year time limit, and expenditures for medical services) refer only to assistance provided using Federal TANF funds. They do not apply to State-funded TANF assistance unless the assistance comes from commingled funds. If a family member receives assistance from commingled State funds, then rules that would otherwise only pertain to the use of Federal grant funds apply.

However, as discussed at § 264.1, after further analysis, we have interpreted the five-year limit to only apply when the adult family member is the head-of-household or the spouse of the head-of-household and receiving assistance. Thus, if the noncustodial parent (i.e., the parent living in another household) receives TANF assistance as an eligible family member, that receipt impacts the family's lifetime limit only if he or she is the spouse of the head-of-household. We believe this situation will occur rarely, if ever. The months that any other adult eligible family member who is not the head-of-household or the spouse of the head-of-household receives TANF assistance would not count toward the family's lifetime limit.

A State may also aid eligible family members by providing various services under the TANF program that do not constitute ''assistance.'' If so, the TANF requirements explained above do not apply. Services that are not assistance (e.g., counseling, job readiness, employment placement or post-employment services) may be provided to any eligible family member, e.g., the noncustodial parent.

For basic MOE purposes, expenditures must be with respect to an individual who is a member of an eligible family. An eligible family member may also receive ''nonassistance'' or ''assistance'' through a separate State program. The requirements applicable to ''assistance'' received under the TANF program do not apply to separate State programs or to ''nonassistance'' provided to members of an eligible family.

Comment: The definition of eligible families prohibits States from counting for MOE purposes expenditures made for pregnancy prevention services to childless individuals.

Response: Such expenditures would count toward meeting the basic MOE requirement only if the childless individual is a member of an eligible family, e.g., an eligible teen family member. Section 409(a)(7)(B)(i)(I) expressly provides that only qualified expenditures made with respect to members of eligible families count. Thus, we have not changed the final rule. However, Federal TANF funds may be used for this purpose to provide ''nonassistance'' per section 401(a)(3) of the Act.

Comment: Numerous commenters requested clarification of § 273.2(b)(3) of the NPRM which required that an eligible family must be financially eligible according to the TANF income and resource standards established by the State under its TANF plan. The commenters indicated that a uniform or single income/resource standard is inappropriate as it would restrict States' ability to provide families with services such as transitional assistance, e.g., child care, transportation, ongoing case management, education and training, or diversion services for families who need one-time or short-term help to prevent the need for traditional TANF cash assistance. A few commenters noted that a State's child care program may have its own income and resource limits. Another commenter indicated that the lack of flexibility may prevent certain transfers to tribal TANF programs from counting toward basic MOE. Therefore, commenters asked us to clarify the rules to allow for different standards of need for different types of services. They wanted a definition broad enough to cover families such as those who are transitioning off TANF, those who are at risk of receiving TANF, and those served through separate State

programs. Finally, another commenter asked us to de-link MOE and TANF eligibility.

Response: The proposed rule at § 273.2(b)(3) provided that an eligible family must be financially eligible according to the TANF income and resource standards established by the State under its TANF plan. It appears that commenters interpreted our use of the plural term, ''standards,'' to mean that the elements used to determine financial eligibility (income and resources) constituted a single set of criteria for all the services that a State would provide. This was not our intention. We used the term ''standards'' in the event a State wanted to have multiple financial requirements based on the different services that it wished to provide or the scope of families it wished to aid.

States have the flexibility to decide the particular income and resource requirements that they will use to determine whether a family is financially eligible to receive a service, a package of services, or all of the services provided with State basic MOE funds. Thus, both income and resource requirements may vary, as determined by the State. For example, a State could establish different financial criteria for families no longer receiving TANF cash assistance in order that family members may receive transitional services. Or, a State may want to establish standards for providing short-term or nonrecurrent assistance to families in order to prevent the need for ongoing TANF assistance.

Section 409(a)(7)(B)(IV) of the Act indicates that an eligible family is a family who is or would be eligible (as provided in this section) for assistance under the State program funded under this part. The State's TANF program is the State program funded under this part. Thus, there is a statutory link between MOE and the State's TANF program. However, that link merely requires that an eligible family is or would be eligible for TANF assistance. It does not require that eligible family members must necessarily receive TANF cash assistance or any other benefit or services through the TANF program. Section 407(a)(7)(B)(i)(I) of the Act permits the State to help eligible family members through activities in ''all programs,'' i.e., TANF and separate State programs.

Comment: Some commenters mentioned that States should be able to use basic MOE funds to create programs with definitions of need that may not assess income and assets at all. They argued that section 409(a)(7) allows a State to claim basic MOE spending with respect to eligible families for any use of funds that are reasonably calculated to accomplish the purpose of the TANF program. Providing assistance to needy families is mentioned in only two of the four purposes of the program under section 401(a) of the Act. Thus, the term ''eligible families'' should include a broader population of families, not just those who are needy families. Two commenters, including one national organization, also noted that the TANF purposes do not require that spending has to be made to, or on behalf of, an eligible family. For example, preventing and reducing the incidence of out-of-wedlock pregnancies and encouraging the formation and maintenance of two-parent families could involve the development of materials, pamphlets, videotapes, and counseling activities directed at teen pregnancy prevention and other pregnancy prevention initiatives. Such expenditures benefit all TANF eligible families but do not necessarily benefit any one family in particular.

Response: As we explained in the above response, the statute defines MOE expenditures as those made ''with respect to eligible families.'' Thus, it clearly links MOE expenditures to eligible families. An eligible family is a family who is or would be eligible for assistance under the State's TANF program. A family may not receive ''assistance'' under the State's TANF program unless the family is needy. We interpreted the term ''needy'' for TANF and MOE purposes to mean financial deprivation, i.e., lacking adequate income and resources. We continue to believe this is the most appropriate interpretation and decline to expand the scope of the definition of needy. Hence, for basic MOE purposes, eligible families are those who are financially eligible according to the State's applicable income and resource criteria.

States may establish different income and resource criteria to cover the scope of needy eligible families they wish to serve or the various services or activities they want to provide. States are free to design programs involving MOE activities, including those mentioned by the commenter, to reach as broad a population as they choose. However, only that part of the total expenditures made on behalf of eligible families who meet the State's applicable financial eligibility criteria counts toward a State's basic MOE.

We would like to point out that Federal TANF funds may also be used to pay for ''nonassistance'' activities (such as those described above) that meet the purposes of the program as given in section 401(a)(1)–(4) of the Act and § 260.20. Federal TANF funds may also be used for activities that benefit non-needy families in some cases, e.g., activities that meet the purpose of either section 401(a)(3) or (a)(4) of the Act. In this respect, there may be more flexibility in the expenditures that are allowable uses of Federal funds than those that are allowable for MOE purposes. This is because federally funded services or benefits do not necessitate a determination of financial eligibility (need) if they do not meet the definition of assistance. Thus, States may use Federal TANF funds (in accordance with section 404 of the Act) to provide ''nonassistance'' services or benefits to eligible individuals who meet the State's other, nonfinancial, objective criteria for the delivery of such benefits.

Comment: Some commenters asked whether a State must make use of resource standards, noting that there is no statutory requirement to do so. Other commenters noted that the definition of ''needy'' may or may not include an asset test. For various benefits, a State may just establish income criteria to determine the families who are eligible for the benefit. One national organization also indicated that some States are considering eliminating resource standards.

Response: Title IV–A of the Act setting forth the TANF program does not address income or resource requirements (except under section 408(f) with respect to deeming an alien's sponsor's income and resources). Rather, it uses the term ''needy.'' Although we interpreted ''needy'' to mean financial deprivation, i.e., lacking adequate income and resources, we also recognize that some State programs may just involve an income test. Therefore, we are not requiring States to have resource requirements. We have clarified this point in the final rule under § 263.2(b)(3) by stating that a family must be financially eligible according to the appropriate TANF income and resource (when applicable) requirements established by the State and contained in its TANF plan. (We discuss eligibility criteria in the TANF plan further in response to other comments in this section.) In this way, States not only decide the scope of families they want to serve, but also the families most in need of particular programs or services.

Comment: One commenter noted that, with respect to resources, a State's standard may address cash assets only. Two commenters indicated concern that an asset limit that does not allow a family to own a serviceable and reliable vehicle to get to work or services is

extremely counterproductive to moving people to work.

Response: It is the State's responsibility to specify income and/or resource limits. States define resources and determine which resources are considered, e.g., whether both liquid and nonliquid resources must be considered and the dollar limit(s) for each type of resource. For example, many States have already eased restrictions that prevented AFDC recipients from owning cars. Some States are increasing the excluded value or discounting entirely the value of a motor vehicle in determining TANF eligibility. We agree that such actions can promote job preparation and work.

Comment: A few commenters, including two advocacy groups, recommended that we establish a ceiling on the income standards used by a State to ensure that basic MOE expenditures are appropriately targeted to help families most in need.

Response: The proposed rules were silent on this issue. However, we do not think it is appropriate for us to establish a ceiling in the final rule. TANF leaves this responsibility to the States. We hope that States will establish reasonable income standards to ensure that expenditures are targeted to families most in need.

While Congress did not explicitly provide for an income cap under TANF, we believe that Congress was very interested in the ways States are targeting their resources to help families most in need find work and move toward self-sufficiency. For example, section 404(d)(3)(B) of the Act requires that TANF funds transferred to title XX programs must be used only for programs and services to children or their families whose income is less than 200 percent of the income official poverty line (as defined by the Office of Management and Budget) applicable to a family of the size involved. Thus, we re-emphasize our hope that States will target their resources in ways that help needy families and support the goals of the program.

In § 265.9(c), we discuss the required information on MOE programs that States must submit annually. For example, States must report the eligibility criteria for the families served under each MOE program/activity. This information will help us to know the scope of families served in the various MOE programs. At some future date, depending on how MOE programs evolve, we may want to look at addressing MOE-related issues through legislative or regulatory proposals.

Comment: Two commenters asked what the applicable standard is for purposes of basic MOE calculations if a State applies different income standards to different forms of assistance.

Response: For purposes of counting MOE expenditures, qualified expenditures under all State or local programs consist of expenditures claimed with respect to eligible families (or eligible family members) who met the financial criteria (income and resource requirements, when applicable) corresponding to the particular activity (i.e., service or assistance provided) as described in the State plan.

It is also important to note that the TANF compliance supplement issued by OMB for auditors will include the basic MOE requirement. In addition, States may be subject to other audits or reviews from time to time. Therefore, States must be able to support their MOE expenditures with adequate documentation.

Comment: One commenter recommended that we replace the term ''eligible families'' with ''TANF-related families'' to give States flexibility to help families become self-sufficient. Another commenter recommended that we define ''eligible families'' to include persons eligible for any benefit that could be made to a family with TANF funds in the State program, i.e., any expenditure that could be made under section 404(a)(1) or (2) of the Act with respect to a family. Thus, a State could use its own funds to pay for benefits that it would otherwise have paid with Federal TANF grant funds.

Response: ''Eligible families'' is the term used in the statute. Therefore, we believe this is the appropriate term to use in the rules. As we explained earlier, States are free to establish different income and resource (when applicable) criteria to match the scope of families it wishes to serve and type of services it wants to provide. In the TANF program and in separate State programs, States have the flexibility to offer a range of services that they think will help eligible families attain and maintain self-sufficiency. However, for basic MOE purposes, States cannot necessarily use their own funds in the same ways as Federal TANF funds. To count toward basic MOE, expenditures of State funds must be made with respect to eligible families. The expenditures, whether under or separate from the TANF program, must provide the family or family members with services that ''qualify,'' i.e., fit any of the activities listed under section 409(a)(7)(B)(i)(I) of the Act. This provision would not include expenditures under section 404(a)(2) of the Act. (We address expenditures under section 404(a)(2) later in this discussion.)

Comment: A few commenters asked whether States needed to include the income and resource requirements in the State's TANF plan. One of the commenters recommended that State plans clearly define and delineate all their programs so that there is a clear understanding of who is eligible, what services and benefits are available, and the TANF requirements and other provisions that apply to recipients of assistance. In addition, States should notify recipients in TANF programs (funded with either Federal or State funds) regarding their options and responsibilities, and the consequences of their choices. They also believed we should require States to develop MOE plans in advance of making expenditures and that States should file such plans with HHS and publish them in the State.

Response: We agree with the comments that it is appropriate for States to specify in their TANF plans the financial eligibility criteria (income and resources, when applicable) associated with all State or local programs for which MOE expenditures are claimed (including State funds that are commingled, segregated or separated from Federal TANF funds). Section 402(a)(1(A)(i) of the Act requires that the TANF plan outline how the State intends to provide assistance to needy families with (or expecting) children, and provide parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient. Section 402(a)(1)(B)(iii) requires that the TANF plan indicate the objective criteria for delivery of benefits, the determination of eligibility, fair and equitable treatment, and opportunity for appeal of adverse actions. Neither section makes any distinction between Federal or State-funded assistance, service, or benefits. Since States can use either Federal or State funds to provide assistance, services, or benefits, we believe that the State's TANF plan is the appropriate place to indicate this information for both TANF and MOE expenditures.

If there is more than one activity within a program and the financial eligibility criteria differ per activity, the State must also indicate each different set of criteria in the TANF plan. For example, a State uses State funds in its transitional services program that consists of transportation and child care benefits. If the financial eligibility criteria are different for the two benefits, the State must indicate the financial eligibility criteria for each benefit.

In addition, although we do not require it, we believe that the plan is the most appropriate place for States to provide a brief description of each MOE program benefit provided to eligible families or eligible family members, as well as any other particular eligibility criteria tied to receiving the specific benefit (e.g., must be participating in the State's work experience component to receive a particular benefit). In § 265.9(c), we discuss the required information that States must submit annually. One of the required items includes naming each of the State's MOE programs and describing the major activities provided to eligible families under each such MOE program. To the extent this information is in the State's TANF plan, the annual reporting requirement may be met by referencing the plan.

In summary, the following information must be in the State's plan in order for us to deem the plan submission complete: (1) The financial eligibility criteria with respect to eligible families that are associated with the State's TANF program and all State or local MOE programs; and (2) a brief description of the corresponding program benefit provided to eligible families or eligible family members, if the State has used MOE funds (either commingled or segregated) to provide the benefit. It would also be helpful for States to include a brief description of the corresponding program benefit provided through separate State MOE funds. However, the information is not required in order to deem the State's plan submission complete.

We maintain a copy of each State's TANF plan, as well as any updates to the plan. As the Balanced Budget Act clarified, States need to update their plans, as appropriate, to reflect new or revised financial or programmatic requirements as a result of changes in State law or State policies. The plan is an important vehicle for ensuring public awareness of the various ways States are helping eligible families attain and maintain self-sufficiency.

Comment: A few commenters believed we should hold States accountable for complying with their plans for services and benefits under TANF (funded with either Federal or State funds) and penalize them if they fail to do so.

Response: The basic MOE penalty applies if a State fails to meet the basic MOE annual spending requirement with respect to eligible families as provided in this subpart. However, neither that penalty nor any other penalty provides authority for us to penalize a State for failure to carry out any part of its TANF plan.

We believe that States are committed to expending their funds in ways that best assist eligible families attain work and self-sufficiency. States have a very real stake in the success of welfare reform. States also recognize that they are ultimately accountable for their expenditure claims. States are audited annually or biennially and compliance with the basic MOE provisions is part of the audit.

Following publication of the rules, we will update the compliance supplement to give auditors detailed information about how to assess State reports on their MOE expenditures.

As part of their review, we will refer them to the information supplied in the TANF Financial Report and the supplemental information on MOE programs and MOE expenditures provided annually under § 265.9(c). This supplemental material provides information about the scope of eligible families served with MOE funds and the ways in which States expend their MOE funds to help eligible families.

In the compliance supplement, we will suggest auditing procedures that include reviews of all the MOE reports and an examination of issues such as the following: (1) Were all MOE expenditures reported for the fiscal year actually made during that fiscal year; (2) has the State adequately documented that reported MOE expenditures went to eligible families; (3) were the methodologies the State used to estimate the portion of program expenditures going to eligible families sound; (4) were all the reported expenditures consistent with the purposes of TANF; (5) were any expenditures made in violation of the prohibitions in § 263.6; (6) where applicable, did all expenditures meet the ''new spending test'' (e.g., for every such program, did the State properly identify whether the program existed in 1995 and only count expenditures above the total State expenditures in 1995); (7) were administrative costs within the 15-percent cap; and (8) were the expenditures consistent with the cost principles set forth in OMB Circular A–87.

We will use the results of the audits, together with our own analysis of the TANF Financial Report and the annual report, to identify situations where a State might be liable for an MOE penalty. For example, the fourth quarter TANF Financial Report would identify any State that reported MOE expenditures below the minimum 80-percent (or 75-percent) standard for the year. Either the TANF Financial Report or the annual report might identify types of expenditures that could be inconsistent with one or more of the requirements for ''qualified State expenditures.'' We might also undertake additional State reviews based on complaints that arise or requests from Congress.

Comment: A few commenters expressed concern regarding the eligibility determination process for different types of services or assistance. The commenters contend that the method of determining eligibility could vary depending on the service. For example, the method for determining a family's eligibility for diversion services may be more abbreviated than the process used to determine eligibility for ongoing TANF cash assistance. One commenter recommended that the regulations require an application for all State-funded benefits and verification that the family is actually eligible before any basic MOE expenditures may count.

Response: States decide the method(s) for determining whether the family consists of at least one child living with a parent or other caretaker relative and is financially eligible according to the appropriate income and resource (when applicable) criteria established by the State. As we mentioned in the above response, section 402(a)(1)(B)(ii) requires States to indicate in their plan the objective criteria for the delivery of benefits and the determination of eligibility. Nothing in this provision precludes a State from having different methods of determining eligibility for different types of services. However, we would note that 45 CFR 92.42 requires States to keep records to document claims and that States should, therefore, have and keep adequate records on eligibility.

Nevertheless, we remind States to pay attention to the TANF provisions that apply with respect to State-funded TANF assistance (i.e., to the use of commingled or segregated funds). States risk potential penalties if they violate certain TANF provisions. For example, section 408(a)(4) imposes a penalty on a State if the State's TANF program fails to participate in the Income and Eligibility Verification System (IEVS). The IEVS provision helps to improve the accuracy of eligibility determinations for applicants and recipients of TANF assistance.

States have an inherent interest in ensuring the integrity of their expenditures. Should a State learn of any material deficiency in its method for determining eligibility, we anticipate that the State would rectify it immediately, so that funds for services

are properly benefitting members of eligible families.

(c) Types of Activities

Comment: Several commenters recommended rewording § 273.2(d) of the proposed rule to avoid confusion regarding the applicability of ''assistance'' as defined under § 260.31 for basic MOE purposes. Commenters noted that States have the flexibility to count expenditures with respect to eligible families whether or not the expenditures meet the definition of assistance.

Response: As we explained earlier in this discussion, we believe that States may help eligible family members through an array of services that fall within the broad categories of activities listed in section 409(a)(7(B)(i)(I), including services that would not fall within the definition of assistance at § 260.31, such as nonrecurrent, short-term assistance. To clarify this point, we have reworded § 263.2(d) of the final rule and included similar language at § 260.31(c)(1).

(1) Cash Assistance

Comment: A few commenters requested clarification of the amount of State Earned Income Tax Credit (EITC) that can count toward the basic MOE requirement. One commenter noted that a State's EITC expenditures should count toward the basic MOE requirement even if none of the credit was ''actually sent'' to an eligible family member. For example, some States have ''nonrefundable'' EITC programs. Under a ''nonrefundable program,'' the EITC serves to reduce the family's State income tax bill. However, the State does not pay the family any EITC remaining if the credit amount is larger than a family's State income tax bill. Another commenter asked whether we intended the entire cash payment actually received by the eligible family to count toward basic MOE, even if a portion of the payment consists of a State income tax refund.

Response: We have addressed this issue extensively in the preamble for the new § 260.33. An EITC program can help to relieve the State income tax liability for working poor families by decreasing the family's State income tax liability. The family's tax liability is the amount of taxes owed prior to any adjustment for credits or payments. EITC can also supplement a family's income—if the credit amount exceeds the family's State income tax liability and the State pays the family the remainder (i.e., it refunds the credit amount remaining). Such a refund is equivalent to cash assistance and may count as a qualified expenditure because it is reasonably calculated to meet a purpose of the TANF program.

State income taxes represent revenue to the State. Credits that offset a family's State income tax obligation provide tax relief to the family while reducing the State's revenue. A reduction in taxes, or revenue foregone, is not an expenditure. Therefore, only the EITC amount that exceeds a family's State income tax liability prior to application of the EITC is an expenditure. It may count for basic MOE purposes if the excess amount is actually paid out (refunded) to the eligible individual. Section 409(a)(7) of the Act stipulates that only ''expenditures'' with respect to eligible families that provide a benefit or service that is reasonably calculated to meet a purpose of the TANF program count toward a State's basic MOE. Thus, if a State does not disburse or pay out any excess EITC remaining, there is no expenditure.

States must determine the amount of any excess EITC paid to a family in a fiscal year by reconciling the family's State income tax obligation for the year against the total EITC amount for which the family qualifies. Any excess EITC amount actually paid to the family may count toward the State's basic MOE. In this regard, any EITC that a worker receives in advance through his or her paycheck may only serve to offset the family's tax liability. Advance EITC would have to be reconciled at the end of the year, in the same manner as the lump-sum EITC credit, to determine the portion, if any, that exceeded the tax liability.

For example, a wage earner qualifies for a $200 earned income tax credit. His or her family has a $75 State income tax liability for the tax year. When reconciling at the end of the year, the first $75 of the credit is used to reduce the eligible family's State income tax liability to zero. This part of the calculation represents revenue foregone to the State and does not constitute an expenditure. If the State also elects to refund (pay out) the remaining $125 in EITC, then the $125 actually sent to the eligible family is a qualified expenditure and counts toward the State's basic MOE.

The same principles apply in the case of a worker who is otherwise due a State income tax refund. For example, suppose the wage earner qualifies for an earned income tax credit of $200. Assume further that the family has a $75 State income tax liability. Yet, through withholding, the wage earner paid a total of $150 in State income taxes throughout the year. After reconciliation at the end of the income tax year, the State owes the worker $150 from withheld State income taxes and $125 in excess EITC. If the State pays out the EITC owed and sends it to the family as part of a refund check in the amount of $275, only the EITC portion, or $125, counts toward the State's basic MOE.

Comment: One commenter asked to what extent other tax credits such as a dependent care credit, credit to purchase a car seat or health insurance, tax forgiveness credit, sales tax credit, and property tax credit count toward a State's basic MOE requirement. The commenter also asked to what extent, if any, other tax relief provisions such as personal or dependent exemptions or the standard or other forms of deductions count toward a State's basic MOE requirement.

Response: Tax provisions that only serve to provide a family with relief from State taxes, such as income taxes, property taxes, or sales taxes, represent a loss of revenue to the State, not expenditures to provide a benefit or service to eligible families. For example, exemptions and deductions are generally subtracted from total taxable income, serving only to reduce the amount of income subject to income tax. Therefore, such exemptions and deductions would not constitute an expenditure for the purposes of section 409(a)(7) of the Act. Similarly, tax credits that rebate, refund, or return to a family a portion of the State's tax revenue (e.g., property, sales, or income taxes paid by families to the State) would not count toward the State's basic MOE requirement. Such credits serve only to offset a particular tax (e.g., a State property tax credit that refunds a portion of property taxes paid). A reduction in tax burden is not an expenditure. There has been no direct outlay of State funds to provide a service or benefit to eligible families.

However, credits that go beyond tax relief and are paid to the eligible family would count toward a State's basic MOE requirement if the expenditure is reasonably calculated to meet a purpose of the TANF program. For example, like the earned income credit, a child care or dependent care credit is subtracted from the family's income tax obligation. The portion of the credit that exceeds the income tax liability and is paid to the family may count toward the State's basic MOE requirement. Should the family qualify for more than one refundable credit (e.g., an earned income credit and a dependent care credit), then the amount by which the total combined value of the allowable credits exceeds the family's State income tax liability may count for basic MOE purposes.

It is important to note that while States may describe elements of their tax provisions, such as exemptions or deductions, as ''expenditures,'' the provision may not actually be an expenditure. Similarly, States may differ in their methods of providing certain credits. For example, a sales tax or property tax credit may be claimed through the State's income tax system or through a separate process. Neither of these factors is material to determining whether some or all of the value of a credit, exemption, or deduction can count for basic MOE purposes. Accordingly, we urge States to carefully examine any tax initiative to determine whether it only serves to provide tax relief. If so, the money does not count for MOE purposes, even if a portion of the tax revenue is refunded or rebated to the eligible family as ''cash assistance.'' However, actual expenditures such as some refundable tax credits may count for MOE purposes if the portion of the credit that exceeds the family's income tax liability is sent to the eligible family and the refund is reasonably calculated to accomplish a purpose of the program. Should a State wish to consult with us on these matters, we are available for technical assistance.

Comment: Several commenters noted that lack of transportation to training, job interviews, jobs, child care, or other services that accomplish the purpose of the program represents one of the most significant barriers to individuals attaining and maintaining employment. There are frequently no public or private transportation services in rural areas, so the traditional approach of tokens or vouchers is inadequate. Transportation is also problematic in urban areas due to the mismatch of job and transit destination sites and traditional commuter services times and routes.

Commenters generally recommended that we give States sufficient flexibility to respond to individual travel needs by allowing a broad range of activities as MOE. Examples of suggested allowable transportation activities included brokerage and coordination pilot programs, initiation of services that increase access for TANF recipients to new development or redevelopment employment sites, subsidization of new transit services either directly or in combination with other Federal or State sources, sharing in the cost of extending existing public transportation services, and developing necessary transportation infrastructure. One commenter added that we should tie transportation development costs for basic MOE to coordination mechanisms among human services agencies, State departments of transportation, and private transportation providers.

One national organization commented that, if public transit providers must use the cost allocation method, our rules would be unduly restrictive and could impede the ability of States to provide cost-effective services. The commenter suggested classifying such services as contracted services for TANF clients to be paid for by TANF agencies, with any non-TANF riders considered incidental. Another commenter recommended adding a section under this subpart to address when transportation-related expenditures count for basic MOE purposes.

Two commenters referred to the WtW program by suggesting that qualified transportation expenditures for basic MOE purposes should include transportation services provided through the State's WtW program and by clarifying that States could use TANF funds to support transportation services consistent with the WtW block grant program.

Response: We agree that transportation is a critical element in helping eligible individuals find and keep jobs. President Clinton recognized the importance of this issue in his 1998 State of the Union address. To help individuals on welfare get to work, he proposed an Access to Jobs initiative in the transportation reauthorization bill. Congress approved this proposal as the Job Access and Reverse Commute grant program in the Transportation Equity Act for the 21st Century (TEA–21), enacted in June 1998.

On May 4, 1998, we issued written guidance jointly with the Departments of Transportation and Labor on some of the ways in which States could use TANF and WtW funds to break down the transportation barriers for eligible individuals (Temporary Assistance for Needy Families Program Policy Announcement TANF–ACF–PA–98–2). Most of the examples could also serve as examples for the use of basic MOE funds. We updated this guidance to incorporate the provisions of TEA–21 in TANF–ACF–PA–98–5, dated December 23, 1998. We anticipate issuing additional guidance on the use of funds shortly after publication.

We do not think that it is necessary to add specific regulations to address transportation expenditures.

Transportation expenditures with respect to eligible families count as basic MOE if they meet all the requirements under section 409(a)(7) of the Act and this subpart. For example, under section 409(a)(7)(B)(i)(I)(aa) of the Act, transportation expenditures count if they are a form of cash assistance that is reasonably calculated to accomplish a purpose of the program (e.g., reimbursement for mileage, gas, public transit fare, auto repairs/insurance, or a basic cash allowance for transportation needs to go to or from work or training). Also, under section 409(a)(7)(B)(i)(I)(ee) of the Act, other types of transportation expenditures count if they reasonably accomplish a purpose of the TANF program, such as promoting job preparation and work. A broad range of transportation activities are possible within this category. We included some examples of such activities in the joint guidance cited above. However, we remind States that applicable TANF rules apply to State-funded transportation assistance (as defined in § 260.31) provided under the TANF program. (We discussed the implications of State-funded assistance in an earlier response.)

We also remind States that only qualified transportation expenditures with respect to eligible families count toward the basic MOE requirement. Congress clearly did not intend to include expenditures for the public at large. Thus, it is improper to claim as basic MOE general expenditures required to carry out other responsibilities of a State or local government and benefitting the public at large. However, a State could contract with a public or private transit agency for transportation services for eligible family members. Under such a contracting arrangement, a transit company could serve noneligible individuals so long as the State does not claim as State MOE the funds used to pay for, or subsidize, use by these noneligible individuals.

A State could also claim as MOE those start-up, program, and administrative costs that are attributable to eligible family members under a State or local transportation initiative (e.g., to broker transportation services) that is consistent with TANF goals, but targeted to a larger low-income population or more broadly to a low-income area.

States must allocate costs when State or local programs or agencies share costs, e.g., the TANF agency shares the use of vans or buses with a senior citizen program or shares in the purchase of transportation services.

We know that many States and locales have already made tremendous strides toward breaking down the transportation barriers faced by eligible family members. However, we also know that Federal TANF and State MOE funds are insufficient to overcome all transportation deficiencies. The recently

passed Job Access and Reverse Commute grant programs will give States additional flexibility in developing and providing transportation services.

The Job Access program provides competitive grants to assist States and localities in developing flexible transportation services to connect welfare recipients and other low-income persons to jobs and other employment-related services. The Reverse Commute grant program is for projects that will provide transportation services to suburban employment centers from urban, rural, and other suburban locations for all populations. The Mass Transit Account of the Highway Trust Fund and the General Fund finance both programs. However, the amount of the Federal grant under either program may not exceed 50 percent of the total project's cost. The balance must be met locally. Thus, a 50/50 Federal/local match is required under both programs.

In this regard, we remind States of the prohibition under section 409(a)(7)(B)(iv)(IV) of the Act and § 263.6(c) of this subpart stipulating that any State funds expended as a condition of receiving Federal funds under other programs do not count toward the State's basic MOE. Thus, any State funds used to meet the cost-sharing requirements of the Job Access and Reverse Commute grants program do not count for basic MOE purposes. However, in this case, Federal TANF funds may be used to satisfy non-Federal match requirements of another program (within specified monetary limits).

In addition, section 409(a)(7)(B)(iv)(III) of the Act and the regulatory text at § 263.6(e) of this subpart expressly provide that State funds expended to meet the WtW matching requirements do not count toward a State's basic MOE. Thus, States may not double-count expenditures to provide transportation services for individuals participating in an allowable WtW employment activity.

The statute is equally clear regarding expenditures for supportive services, such as transportation, to help eligible family members who are WtW participants. Section 403(a)(5)(C)(i)(VI) of the Act provides that a State may use WtW funds to provide supportive services to eligible participants only ''if such services are not otherwise available.'' A State could use basic MOE funds to provide transportation services consistent with the WtW block grant program because the WtW and TANF programs share the same purposes. But, as explained above, the expenditures do not count for basic MOE purposes if the State also used these expenditures toward the required WtW match under section 403(a)(5) of the Act.

(2) Any Other Use of Funds Allowable Under Section 404(a)(1)

Comment: One commenter recommends that we allow States to claim expenditures toward basic MOE that were formerly allowable under a State's AFDC–EA program. Another commenter specifically asked whether services paid under a housing assistance program qualify for basic MOE purposes. The housing assistance component provides payment for rent, security deposit, and utilities to prevent and/or end homelessness or near homelessness. A third commenter asked whether expenditures for micro-entrepreneurship development services qualify for basic MOE purposes. The commenter believes this approach fosters employment opportunities in rural areas through self-employment options.

Response: Section 409(a)(7)(B)(i)(I)(ee) of the Act permits any activity with respect to eligible families that is reasonably calculated to accomplish the purpose of the TANF program to count for basic MOE purposes. For example, one purpose of the program is to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives. Thus, some (but not all) emergency assistance and services with respect to eligible families, which had been previously provided by a State under its AFDC–EA program, would meet this purpose and could count for basic MOE purposes. We believe that emergency housing assistance services could meet this purpose as well. However, only the expenditures made with respect to eligible families count for basic MOE purposes. (Refer to § 263.5 for discussion of the ''new spending'' limitation on certain MOE program expenditures.)

Another purpose of the program is to end the dependence of needy parents on government by promoting job preparation, work, and marriage. Micro-entrepreneurship services promote job preparation and work. In this regard, a State may also deposit State funds into the eligible family member's Individual Development Account (IDA) to help with business capitalization. The funds count once toward the basic MOE requirement—in the fiscal year in which the State deposits the money into the eligible family member's IDA. The State could not use the IDA balance carried forward to the next fiscal year to meet the basic MOE requirement for the next fiscal year.

(3) Medical and Substance Abuse Services

Comment: A number of commenters supported our clarification in the preamble to allow States to use State funds to provide drug and alcohol treatment services to eligible family members when these services assist in accomplishing a purpose of the program. Nearly all the commenters requested that we add the clarification to the final regulation.

One commenter found the need to separate medical from nonmedical substance abuse treatment services problematic and unrealistic as both types of services are lacking in rural areas. The commenter also noted that child care and transportation costs related to these services should also count toward a State's basic MOE. Another commenter suggested that we provide guidance in the preamble to differentiate medical from nonmedical alcohol and drug treatment services.

Two other commenters felt that medical services in connection with gaining and retaining unsubsidized employment (e.g., pre-employment services that include physical examinations) should count toward the basic MOE.

Response: We agree that allowing expenditures with respect to an eligible family member for nonmedical substance abuse treatment is an important clarification and have added it to the final regulation.

We did not intend to imply that substance abuse treatment must be exclusively nonmedical in nature for the nonmedical services to count for basic MOE purposes. We recognize that drug and alcohol abuse treatment services may include medical as well as nonmedical activities. However, if States wish to use commingled State TANF funds for substance abuse treatment services, they have the responsibility to develop policies that distinguish between expenditures for the provision of medical services and nonmedical services. The policies must reflect a reasonable interpretation of the statutory language.

Section 408(a)(6) of the Act expressly excludes the use of Federal TANF funds to provide medical services except for pre-pregnancy family planning activities. The same prohibition applies to any commingled State funds expended to treat an eligible family member for drug and alcohol abuse. Commingled State funds used to provide nonmedical services, such as substance abuse services, to an eligible family member would count toward basic MOE if the service is reasonably

calculated to accomplish a purpose of the program, e.g., help the individual prepare for work, find, or keep a job.

The prohibition on medical expenditures does not apply to segregated State TANF funds or separated State funds. Therefore, States may count medical expenditures with respect to eligible family members toward the basic MOE provided these expenditures are consistent with the purposes of the program and are not matched by the Medicaid program or otherwise prohibited under section 409(a)(7)(B)(iv) of the Act or § 263.6(b) and (c) of this subpart.

We again remind States that the drug and alcohol abuse treatment services with respect to eligible families must be consistent with the purposes of the program to count toward the State's basic MOE requirement. If so, then by extension, expenditures for other supportive services such as transportation and child care that facilitate the eligible family member's ability to access and complete substance abuse treatment may also count for basic MOE purposes, if the MOE requirements are met. (Refer to § 263.3 for discussion of the limitation on certain child care expenditures.)

We agree that pre-employment services is an example of a qualified activity because it accomplishes a purpose of the program. Therefore, by extension, the associated medical expenditures would count toward basic MOE if the State uses segregated or separated funds to pay for the services.

(4) Juvenile Justice

Comment: We received several comments regarding our discussion of juvenile justice expenditures. Most of the commenters opposed our conclusion that juvenile justice expenditures do not count for basic MOE purposes because the expenditures do not meet any of the purposes of the TANF program. However, the commenters did not specifically explain how the purposes are met.

Response: As we explained in detail earlier in our discussion, juvenile justice expenditures do not count for basic MOE purposes. The principal purpose of a child's placement in the juvenile justice system is to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not serve to end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation. Thus, it is not an allowable use of funds under section 404(a)(1) of the Act.

In some States, Federal TANF funds may support juvenile justice programs pursuant to section 404(a)(2) of the Act. However, the basic MOE requirement under section 409(a)(7) of the Act expressly does not count expenditures for services or activities that only fall under section 404(a)(2). Thus, it does not cover benefits and services for a child removed from his or her home and receiving care in a correctional facility or juvenile residential facility. States that were previously authorized to cover the costs of children in the juvenile justice system under their formerly approved AFDC-Emergency Assistance plans would need to use Federal TANF funds for this purpose.

Clearly, expenditures on eligible families for services that are reasonably calculated to accomplish the purpose of the program do qualify for basic MOE purposes. For example, a State may wish to provide family preservation services so that an eligible child family member may be cared for in his or her own home (purpose 1). Such assistance could include family or individual counseling services or parenting training to improve family functioning, referrals to outside service providers who could help an ''at risk'' child or family function better, and associated assessment and case management activities.

(5) State ''Rainy Day'' Funds

Comment: One commenter noted that States have a long history of creating rainy day funds or special reserves to cover contingency needs. States recognize the need to be fiscally prudent in the anticipation of caseload increases, natural disasters, economic declines, and increasing participation rates. But the commenter believed the language in the proposed rule limits State flexibility to use State funds for this purpose.

Response: Section 409(a)(7)(A) and (B) of the Act stipulate that only qualified expenditures made with respect to eligible families count toward a State's basic MOE. Placing funds in a reserve or rainy day fund does not represent an expenditure. While we agree that it may be fiscally prudent to create a rainy day fund or a reserve, the money in the fund does not count for basic MOE purposes until the fiscal year in which the State actually expends funds on behalf of eligible families in ways that meet the requirements of section 409(a)(7) of the Act and this subpart.

(6) Administrative Costs

Comment: Several commenters raised questions about how the administrative cost cap was applied to MOE and separate State programs. A few did not want a cap on the administrative costs of separate State programs, believing that the PRWORA does not authorize us to cap those administrative costs. Three commenters took exception to the application of the 15-percent administrative cost cap to separate State programs. The three commenters believe that such ''separate State programs'' should be excluded from coverage of the definition.

Response: We believe these comments are a result of confusion about the proposed regulatory language. The MOE administrative cost cap is not a limit on the administrative costs of separate State programs. Rather, it is a limit on the amount of administrative costs that can count as MOE. Section 409(a)(7)(B)(i)(I)(dd) clearly limits the amount of administrative costs that can count as basic MOE. We have revised the regulatory language at § 263.2(a)(5) to clarify the distinction.

We also noted an error in the proposed TANF reporting form and the accompanying instructions that may have added to the confusion. The instructions provided separate columns for reporting of expenditures from MOE funds, one for State TANF expenditures and one for separate State programs. It then indicated how administrative costs would be determined ''for each of these columns.'' This language suggested that there were two separate caps, when that is not the case. We have corrected the instructions for the form.

Comment: Two commenters indicated that administrative spending for the TANF program would probably never involve a specific payment to, or on behalf of, a specific eligible family. Yet this is a qualified expenditure. Therefore, the commenter thought all types of spending should qualify toward the basic MOE.

Response: The different treatment of administrative costs is based on statutory distinctions. According to section 409(a)(7)(B)(i)(I)(dd) of the Act, administrative expenses under all programs means ''[A]dministrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee).'' Therefore, the statute includes as MOE, administrative expenses if the expenditure relates to carrying out another qualified activity that helps eligible families.

Comment: One commenter observed that the definition of administrative costs under § 273.0(b) of the proposed

regulation applies to State MOE expenditures since the use of State MOE funds have the same administrative cost cap as Federal TANF funds.

Response: The commenter correctly noted that the definition of administrative costs applies whether State funds or Federal TANF funds are used to pay these costs.

Comment: Two commenters supported our proposal to exempt State expenditures used toward information technology and computerization needed for tracking or monitoring as required by title IV–A. One commenter noted that while section 409(a)(7)(B)(i)(I)(dd) of the Act does not clearly state that this exemption applies, nevertheless, States are facing massive systems needs as a result of welfare reform. In addition, the exception for technology and computerization should include costs for contracts to develop new programs; staff needed to install and maintain additional systems; staff collating, inputting and analyzing required tracking and monitoring data; training costs for new hardware and software; and preparing the reports and other documents related to the tracking and monitoring mandates.

Response: We have retained our proposal that the same exception given under section 404(b)(2) with respect to costs related to information technology and computerization needed for tracking and monitoring apply to State-funded administrative costs in connection with qualified expenditures.

We addressed the treatment of computer-related costs in the discussion of the definition of administrative costs at § 263.0. Refer to that section for a full discussion of issues raised regarding information technology and computerization needed for tracking or monitoring. Basically, this discussion affirms that certain systems costs may be excluded in determining whether a State is within or exceeded the 15-percent limitation placed on administrative expenditures. It also provides guidance about the scope of that exclusion.

Comment: One commenter said that the cap on administrative costs does not apply to additional State dollars that a State must expend if assessed a penalty.

Response: The commenter is correct. Section 409(a)(12) of the Act requires a State to expend additional State funds under its TANF program to replace any loss of Federal grant funds due to a penalty. The 15-percent limit under section 404(b) applies only to Federal TANF funds, and, thus, does not apply to the State replacement funds under section 409(a)(12). Further, as the statute precludes the use of replacement funds to meet the MOE requirement, they are not subject to the MOE rules, including the MOE cap on administrative expenditures. However, they must otherwise be allowable expenditures under the State's TANF program.

Section 263.3—When Do Child Care Expenditures Count? (§ 273.3 of the NPRM)

Overview

In the NPRM preamble we explained that there were certain restrictions on the child care expenditures that could count for basic MOE purposes. First, only child care expenditures used to assist eligible families under the State's TANF criteria count toward the State's basic MOE. Under § 263.2 (formerly § 273.2), we indicated that eligible families mean families that have a child living with a parent or other adult caretaker relative (or consisting of a pregnant woman) and are financially needy per the appropriate TANF income and resource standards (when applicable) established by the State under its TANF plan. Thus, not all State expenditures to provide child care services would necessarily qualify for basic MOE purposes, particularly if the eligibility criteria for the child care services are broader than the State's TANF criteria, e.g., under the Child Care Development Fund (CCDF).

Second, section 409(a)(7)(B)(iv) of the Act establishes four general restrictions on State expenditures. (These restrictions are listed in § 263.6.) Two of the restrictions, at subsections 409(a)(7)(B)(iv)(IV) and 409(a)(7)(B)(iv)(I), apply to child care expenditures.

Subsection 409(a)(7)(B)(iv)(IV) generally excludes any State funds expended as a condition of receiving Federal funds under other Federal programs from counting toward a State's basic MOE. Thus, Congress prohibited ''double-counting.'' However, this subsection also provides an exception to this restriction for child care expenditures (i.e., the State's CCDF MOE and the State's share of matching funds). State child care expenditures used to meet the child care MOE requirement or to receive Federal matching funds under the CCDF may also count toward meeting the State's basic MOE requirement if the expenditures are made on behalf of members of an eligible family.

The amount of State child care expenditures that may count for basic MOE purposes is limited to the State's share of expenditures in FY 1994 or FY 1995, whichever is greater, for the former title IV–A child care programs, i.e., the AFDC/JOBS child care, transitional child care, and At-Risk Child Care programs. This capped amount is the same amount as the State's child care MOE amount, for purposes of qualifying for child care matching funds.

If a State has additional State child care expenditures, i.e., expenditures that have not been used toward meeting the child care MOE requirement or to receive Federal matching funds under CCDF, these expenditures may count toward the State's basic MOE, provided the expenditures meet all other requirements and limitations set forth in subpart A of this part. Subsection IV does not limit the amount of such additional child care expenditures that may count for basic MOE purposes.

Subsection 409(a)(7)(B)(iv)(I) excludes any expenditures that come from amounts made available by the Federal government. Therefore, Federal TANF funds transferred from the TANF program to the Child Care and Development Block Grant (also known as the Discretionary Fund of the CCDF) would not count toward MOE. Neither would Federal TANF funds directly received under CCDF (or any other program that allows for child care).

Comments and Responses

We received a number of comments on this section. Some commenters found the information regarding expenditures that could count helpful, especially since States are making significant investments in child care. Others thought that the preamble was confusing because it did not clearly distinguish between child care expenditures that are subject to a dollar limit (and therefore would not count in the entirety toward the basic MOE) and those that can count without limit. A few commenters recommended that the final regulations at § 263.3(a) (formerly § 273.3(a)) clearly explain which child care expenditures count rather than merely cross-referencing the statutory provision.

Several commenters expressed concern that the definition of ''eligible family'' deters States from counting child care expenditures under the State's child care program for transitional and at-risk families. We address this and other comments in the discussion below.

Comment: Some commenters noted that the wording in this section does not clearly explain which expenditures do and do not count toward the State's basic MOE requirement. The commenters thought that we should add a clarification to the final regulations.

Response: States may receive an allocated amount of Federal matching funds under the matching fund component of the CCDF. To receive its share of these matching funds, the State must meet a maintenance-of-effort (MOE) requirement. The child care MOE requirement is a specific dollar amount that we calculated for each State based on their FY 1994 or FY 1995 State child care expenditures under the title IV–A child programs. Thus, under the CCDF matching fund, States must expend State-only dollars that equal their child care MOE level and may claim Federal matching funds (up to the allocated amount) for State funds expended beyond the child care MOE level to provide CCDF-funded child care services. A State may also count these State-funded child care expenditures toward the State's basic (TANF) MOE as long as the expenditures also meet the requirements under section 409(a)(7) of the Act and this subpart. However, the amount that may be counted for basic MOE purposes is limited to State's child care MOE amount. States should note that while the basic MOE limit for double-counting child care expenditures is the same amount as the child care MOE amount, this does not mean that the State may use only child care MOE expenditures. For example, if a State's annual child care MOE requirement is $5 million, then the State may only count up to $5 million of its CCDF matching fund expenditures toward its annual basic MOE requirement. The State could claim the $5 million in child care expenditures from either expenditures used to meet the State's child care MOE requirement or expenditures used to receive CCDF Federal matching funds.

It is not unusual for a State to expend in excess of the funds needed to draw down CCDF funds to provide child care services. There is no dollar limit on counting toward basic MOE State expenditures to provide child care assistance that have not been used to meet the CCDF matching fund requirements. We have clarified this policy in the regulatory text. At the same time, we remind States of the ''new spending'' provision at § 263.5 that limits the amount of basic MOE expenditures that may count in certain pre-existing basic MOE programs, including certain child care programs.

For pre-existing child care programs (current State or local programs also operating in FY 1995) that were not AFDC-related programs, States may only claim ''new spending'' toward the basic MOE requirement—namely, qualified State expenditures in the current year with respect to eligible families that exceed what the State spent on that program in FY 1995. The AFDC-related child care programs included the AFDC, At-Risk, and transitional child care programs. The ''new spending'' provision does not apply to expenditures for child care services that would have been an allowable expenditure under these former title IV–A child care programs.

Hence, in terms of a child care program subject to the ''new spending'' provision, three requirements apply for the expenditure to count as basic MOE. First, only the ''new'' expenditures, those in excess of the FY 1995 program expenditures, potentially count. Second, if the expenditures have been used to meet the child care MOE requirement or to receive CCDF matching funds, the maximum amount of excess expenditures that can be double-counted is limited to the State's child care MOE amount. For those expenditures that have not been used to meet the child care MOE requirement or to receive CCDF matching funds, the excess may count as basic MOE, up to the actual amount of expenditures made outside of the CCDF matching fund requirement. Finally, if none of the expenditures in the child care program have been used to meet the child care MOE requirement or to receive CCDF matching funds, the total amount of the excess can be counted toward basic MOE.

Comment: Several commenters expressed concern that State expenditures to provide child care services to families transitioning off TANF assistance or at risk of becoming dependent on TANF assistance do not count for basic MOE purposes because of the restricted definition of eligible families. One commenter suggested that we amend the regulation to recognize State programs geared to enabling low-income families to maintain their jobs through the provision of child care. The commenters contend that we should consider any family who is financially needy according to the State's child care eligibility criteria an eligible family for basic MOE purposes. Therefore, any State spending on its child care program would count toward a State's basic MOE requirement.

Several other commenters concurred, writing that all of the State's child care expenditures under the now repealed title IV–A child care programs, which included expenditures for working families to transition off the TANF assistance program or at risk of needing TANF assistance, should count toward the basic MOE requirement, up to each State's child care MOE amount. They noted that there is no statutory requirement that an eligible family must actually receive TANF cash assistance for child care expenditures to count for basic MOE purposes.

Response: We refer you to the extensive discussion regarding the definition of eligible family under § 263.2 of this subpart. There, we reaffirm that an eligible family must consist of child living with his or her parent or other caretaker relative (or consist of a pregnant woman). The family must also be financially needy according to the appropriate income and resource (when applicable) criteria established by the State and contained in its TANF plan. However, we also mention that we never intended that States be locked into a single income and resource standard, such as the one a State uses to determine whether a family is financially eligible to receive TANF cash assistance. States are free to establish different income and resource (when applicable) criteria based on the range of families that it wishes to serve or type of services it wants to provide. We also recognize that eligible family members do not necessarily have to receive TANF cash assistance or any other benefit or services through the TANF program.

Thus, the rules would not preclude States from providing child care benefits to help families who are transitioning off of TANF assistance or at risk of needing TANF assistance or other low-income families. Nor would they prevent a State from using the financial eligibility limits for child care services and activities applicable to the use of CCDF funds or the financial eligibility criteria applicable to a State's own separately funded child care program.

Comment: One commenter noted that the NPRM gives the impression that we consider child care important for children up to the age of six, but not for children age six or older. The commenter recommends rulemaking on this issue.

Response: We believe the commenter was referring to the proposed rule at § 271.15, which provided that a State could not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability to obtain needed child care. This provision, found in § 261.15 of the final rule, reflects the statutory provision at 407(e)(2), which expressly limits the sanction exception to a single custodial parent caring for a child under age six.

This provision does not represent our perspective regarding the importance of child care for children age six and over. We recognize that child care is a critical

supportive service for families moving from welfare to work. However, our authority to regulate in this area is limited to the State penalty provision associated with this child care exception at § 261.51 of the final rule.

Comment: One commenter indicated that the State agency may not know if it needs to utilize any child care MOE expenditures to satisfy the basic MOE requirement until the final quarter of the fiscal year.

Response: The commenter may be reacting to the requirement to report expenditures quarterly. Although the report is quarterly, the expenditures reported are cumulative. The basic MOE spending requirement is an annual requirement. Thus, the reported expenditures could have occurred in the quarter represented by the report or any prior quarter in the fiscal year.

A State may choose to apply the child care expenditures that it made to meet the CCDF matching fund requirement toward satisfying its basic MOE requirement (up to the dollar limit). It is not a requirement. The State may apply such expenditures toward its basic MOE requirement anytime during the fiscal year.

The commenter may also be pointing out a potential issue for States that depend upon expenditures in other State and local programs for meeting the basic MOE requirement. To the extent such other programs are not under the control of the TANF agency, the TANF agency will need to maintain strong communications with the other agencies operating these programs in order to track and report expenditures, as well as to ensure that the State will be in compliance with the basic MOE requirement at the end of the year.

Section 263.4—When Do Educational Expenditures Count? (§ 273.4 of the NPRM)

Overview

Only expenditures on educational services or activities that a State targets to eligible families to increase self-sufficiency, job training, and work may count toward a State's MOE. The statute excludes educational services or activities that are generally available, including through the public education system. As the conferees explained in H.R. Rep. No. 725, 104th Cong., 2d sess., p. 277, States may not count as MOE ''any expenditure for public education in the State other than expenditures for services or assistance to a member of an eligible family that is not generally available to other persons.''

Expenditures on special services that are targeted to ''eligible families'' and are not generally available to other residents of the State may count. These could include contracted educational services or activities that provide special classes or expand the capacity of existing programs, for example, to provide: targeted services for teen parents in high schools or other settings; training in English as a second language for eligible immigrants; remedial education to achieve basic literacy; courses for high school equivalency (GED) certificates; or pre-employment or job-readiness activities.

We also note that expenditures on supportive services, such as transportation, to assist a member of an eligible family in accessing educational activities may also count toward a State's MOE, either as cash assistance or another type of benefit or service consistent with the purposes of the Act. (See §§ 263.5 and 263.6 for other general restrictions on these expenditures.)

Comments and Responses

We did not receive many comments on this section. The comments that we did receive focused on two areas: the requirement that the education activities must not be generally available to other residents of the State, and the use of the term ''targeted.'' We address these concerns and others below.

Comment: Two commenters thought the term ''targeted'' was misleading and needed clarification. As written, qualified educational expenditures could be ''targeted'' to eligible families, yet the recipients of the services may be persons who are not members of eligible families.

Response: We agree. The statute clearly stipulates that only services with respect to eligible families count toward the State's basic MOE requirement. We have therefore reworded the regulation to say that the services must be ''provided to'' eligible families.

Comment: A number of commenters voiced concerns regarding the meaning and operation of the exclusion of expenditures for educational services that are generally available to other residents of the State. One commenter noted there is no specific definition of services that are generally available to the public. Some of the commenters believed that States could be discouraged from using State MOE funds for education. Providing educational services that are generally not available to the public could result in operating segregated classes for eligible families in order to have the expenditures count for basic MOE purposes. In fact, the commenters noted that the examples of educational activities for eligible families given in the NPRM are no different than those provided by the public education system. Thus, the provision essentially eliminates a State's ability to count educational activities or services toward the basic MOE requirement whenever the services are made available to other residents of the State. As one commenter put it, ''[W]ho pays for the assistance is irrelevant, as is whether anyone from the general public also has access. The proposed rule limits States' ability to maximize its resources.''

One commenter also raised concerns regarding the potential impact that expenditures for educational services for eligible families will have on current public education programs funded by the State. The educational activities for basic MOE purposes may come at the expense of similar education services and activities provided by the traditional public education system.

Another commenter asked whether the restriction applies to post-secondary public institutions.

Response: We modified the regulatory text to provide a little more guidance. The modified language incorporates language from a similar provision under title XX at section 2005(a)(6) of the Act. More specifically, the title XX provision excludes expenditures for the provision of any educational service that the State makes generally available to its residents without cost and without regard to their income. We thought this additional language was helpful and have added it to the regulatory text. Under TANF and title XX, we believe Congress intended to prohibit States from substituting program funds for existing expenditures from general funds on the traditional, free public education system. Thus, general fund expenditures for traditional, free public education do not count toward the State's basic MOE requirement.

Accordingly, we do not think that the exclusion would cover post-secondary educational or vocational programs in the State unless all residents of the State may attend the post-secondary institution without cost and without regard to their income.

We do not think it is appropriate for us to define activities that are not generally available to persons who are not members of an eligible family. We defer to the States to decide appropriate educational activities for MOE purposes, i.e., to increase job training, self-sufficiency, and work.

Basically, a State may use MOE funds to expand existing educational services by contracting for additional services for eligible family members or by funding brand new activities. States do not need to segregate the activities, services, or

classes. They may even use the physical facilities of the public education system. Other residents of the State may participate in the funded activities so long as the State does not count, as MOE, funds used to subsidize or pay for persons who are not members of an eligible family. States may also count, as MOE, funds used to provide a service for eligible families in a part of the State or locale where the service does not exist.

Similarly, States may count as MOE funds used to contract for, or share in, the costs of providing educational activities on job sites (e.g., ESL classes). In this particular situation, other employees at the site who are not members of eligible families could attend the classes. However, as previously mentioned, a State may not count, as MOE, any funds used to subsidize or pay for persons who are not members of an eligible family.

In summary, a State may count, as MOE, funds used to pay costs (e.g., fees or tuition) to enable an eligible family member to attend a class or participate in an educational activity. Nonexcluded educational expenditures with respect to eligible families count for basic MOE purposes if the activities are designed to increase self-sufficiency, job training, and work.

We remind States to allocate costs that are associated with more than one State or local program or agency properly.

Comment: One commenter recommended that the State substantiate its basic MOE expenditures by providing overall budget information on its education services and programs, not just those provided to eligible families. The State should also provide a comprehensive budget picture of support for education activities and services for the entire education agency responsible for TANF-related education services—thus, reflecting any shifts in funds between the traditional, free education programs in public schools and the TANF-related education services.

Response: We do not believe it is necessary for the State to regularly submit such information. However, States are subject to audits annually or biennially pursuant to the Single Audit Act. The audit includes a review of a State's compliance with MOE requirements. Under 45 CFR 92.42, States are responsible to have a process designed to achieve reliability of financial reporting and compliance with applicable laws and regulations, including retention of background documentation that validates such reports. The audit findings include any questioned costs. We are informed of all audit findings.

Other studies, or reviews by OIG or GAO, may be conducted. Such reviews could cover processes, such as a State's budgetary process, that are generally beyond the scope of an audit. Further, if appropriate, for example, audits may also be conducted as a result of requests by Congress or in response to complaints from individuals or organizations.

Finally, we have made changes to the reporting on MOE programs at § 265.9(c) that should provide a clearer picture of educational activities being funded by MOE.

Comment: One commenter indicated that using State funds to enhance access to education for low-income families is an important way of helping families out of poverty. At the same time, States are concerned with the risk for penalties if they use separate State funding to provide financial aid for low-income families. The commenter was concerned that while the State may view education as an effective means of advancing work rather than avoiding the work participation requirement, we might view it as an inappropriate diversion.

Another commenter questioned whether State-funded expenditures to permit a member of an eligible family to obtain no more than the first baccalaureate degree or one vocational education program certificate as part of ''job skills training directly related to employment'' counts for basic MOE purposes. These educational activities are only available to students who meet other strict criteria established under State law (which include a recent work history; enrollment in an accredited or approved State university, community college, or other vocational school or training program; and maintaining a cumulative grade point average of at least a ''C'').

Response: The inherent effect of any separate State program is that the TANF requirements do not apply. In the NPRM, we expressed concern that States might use separate programs to avoid the work requirements or to avoid returning a share of their child support collections to the Federal government. As a result, we proposed several measures to counteract this possibility, including denying certain penalty relief to States. In the final rule, we decided to eliminate the proposed link between a State's decision to operate separate State programs and its eligibility for penalty relief. However, we still intend to gather information that will enable us to monitor the nature and scope of such programs. Refer to the preamble, section entitled ''Separate State Programs'' for a full discussion of this issue.

We have been persuaded that States are using both separate State programs and the TANF program to serve a variety of policy purposes that do not seem to be designed to avoid TANF requirements. For example, States are working to increase the economic viability of families by providing financial aid for post-secondary education and supporting other education and training activities on a selective basis. Unless excluded, educational expenditures with respect to eligible families count for basic MOE purposes if the activities are designed to increase self-sufficiency, job training, and work. These activities may be under the TANF program or apart from the TANF program. In either case, we hope that State and local officials are working with educators, post-secondary institutions, and the business community to design appropriate opportunities for families consistent with the goals of TANF.

As a point of clarification, the list of work activities in section 407 of the Act (and § 261.30 of these rules) determine what is countable for the purpose of the State's work participation rates. However, they do not limit the nature or type of educational or training services the State may provide with Federal TANF or State MOE funds.

Section 263.5—When Do Expenditures in State-Funded Programs Count? (§ 273.5 of the NPRM)

Overview

We explained in the NPRM that section 409(a)(7)(B)(i)(II) establishes limits on the amount of expenditures that may count when the MOE expenditures are for activities under separate State or local programs. The heading for the provisions under this section indicates that ''transfers from other State and local programs'' cannot count toward a State's MOE. In the months following enactment, we received numerous questions about this language.

We do not believe that the language intended to convey a literal or physical transfer of funds. Instead, we believe that Congress wanted to prevent States from substituting existing expenditures in any pre-existing outside programs for cash welfare and related assistance to needy families and to prevent States from claiming such existing expenditures as expenditures for MOE purposes.

Therefore, section 409(a)(7)(B)(i)(II)(aa) provides that the money spent under State or local

programs may count as MOE only to the extent that the expenditures exceed the amount expended under such programs in the fiscal year most recently ending before the date of enactment (August 22, 1996). Thus, States may count only additional or ''new'' expenditures, i.e., expenditures above FY 1995 levels. Like some commenters, we call this the ''new spending'' provision.

Section 409(a)(7)(B)(i)(II)(bb) provides an alternative limitation. We believe that this provision was intended as an exception to the ''new spending'' provision under (aa). Under provision (bb), State expenditures under any State or local program during a fiscal year may count toward a State's MOE to the extent that the State is entitled to a payment under former section 403 as in effect before the date of enactment with respect to the expenditures. We interpret this to mean that State funds expended under State or local programs that had been previously authorized and allowable under the former AFDC, EA, and JOBS programs in effect as of August 21, 1996, may have all such expenditures count toward the State's MOE. In other words, the limit under (aa) does not apply to what would have formerly been expenditures under the title IV–A program; there is no requirement that these expenditures be additional or new expenditures, above FY 1995 levels.

Comments and Responses

We did not receive many comments on this section. But some of the comments that we did receive raised some important issues regarding the concept of ''separate'' State or local programs, as well as the meaning of the exception to the ''new spending'' provision. One commenter also questioned the calculation process for determining any ''new spending'' for programs in which the ''new spending'' provision applies. A couple of commenters also felt the proposed rule needed to be clarified. As a result of some of these comments, we have made some clarifications in the final rule, including revisions to reflect the statutory language more directly regarding the treatment of current fiscal year expenditures in any State or local program that also existed in FY 1995.

Comment: One commenter observed that this section indicates that expenditures made under separate State programs that had not previously been authorized under the former AFDC/EA/JOBS programs cannot now count toward maintenance of effort. The commenter objected to this provision. For example, the AFDC–UP program has been repealed. Therefore, families who previously received general assistance because a parent could not meet the criteria under the AFDC–UP program, now become ''part of the service equation.'' Therefore, the commenter suggested that all funds now spent to support these families should count for basic MOE purposes without limitation.

Response: The example given clearly falls under the statutory exception at section 409(a)(7)(B)(i)(II)(aa) of the Act. For programs that were operating in 1995 and were not former AFDC-related programs, States may only claim qualified expenditures with respect to eligible families if their expenditures are in excess of what they spent on that program in 1995. General assistance programs are not AFDC-related programs. AFDC-related programs include the AFDC, EA, and JOBS programs, as well as the IV–A child care programs (AFDC, At-Risk, and transitional child care programs). Qualified expenditures during a fiscal year to provide AFDC-related services (e.g., At-Risk Child Care services) to eligible families may count without limitation.

Comment: One commenter noted that for pre-existing programs (State or local programs operating in FY 1995) that were not AFDC-related programs, the State may only claim qualified State expenditures in the current fiscal year that exceed what the State spent on that program in FY 1995. Thus, State spending for State or local programs that are not AFDC-related must be ''new spending.'' However, in many cases, States will use both State MOE resources and Federal TANF funds to fund a number of different programs. The ''new spending'' provision could apply for these situations as well.

Response: We agree with this observation. Section 409(a)(7)(B)(II) of the Act excludes expenditures under ''any State or local program during a fiscal year'' that do not exceed the amount expended under the State or local program in FY 1995. Thus, the statute does not specify that the ''new spending'' provision on qualified State expenditures only applies to State programs that are currently separate from TANF. Instead, the provision applies to ''any'' State or local program existing in FY 1995 that did not have allowable expenditures under the former AFDC, EA, JOBS, and IV–A child care programs (AFDC, At-Risk and transitional child care programs). For example, a State or local program that is now included under the TANF program or receiving TANF and MOE resources could have existed separately from the State's former AFDC-related programs in FY 1995. Therefore, we have decided to amend the annual report to require that States report the information proposed under § 273.7(b) for all their State-funded MOE programs. We refer you to § 265.9 for a full discussion of all the comments regarding the proposed annual addendum and the changes we have made in the final rule.

Comment: One commenter noted that State spending in a State At-Risk Child Care program is an example of spending that was previously authorized and allowable under former section 403. Therefore, the ''new spending'' provision does not apply. Another commenter wondered whether expenditures for which a State could not have received Federal matching payments due to the At-Risk cap would also be exempt from the ''new spending'' provision. For example, take the case of a State that has run an At-Risk Child Care program for the working poor since FY 1995. The State did not receive matching funds for all of its expenditures for child care services under this program. Are the potentially qualified expenditures above the former cap subject to the ''new spending'' provision or exempt from this provision?

Response: If the State's child care program for the working poor was authorized and allowable under former section 402(i) under the Act, then we believe the ''new spending'' provision would not apply to qualified expenditures with respect to eligible families during a fiscal year, for the reasons given below.

Former section 402(i)(5) of the Act specified that amounts expended by the State to provide child care to any at-risk low income family would be matched. However, section 403(n) limited the amount of the matching payments a State could receive. The issue is whether a State can count all of its qualified expenditures with respect to eligible families during a fiscal year, without limitation, because the expenditures in FY 1995 were allowable, notwithstanding the cap.

Section 409(a)(7(B)(II)(bb) of the Act uses the phrase ''is entitled to a payment'' under former section 403 to indicate when the ''new spending'' provision does not apply. After considerable deliberation on this issue, we concluded that Congress intended States to be able to claim the State's portion of title IV–A welfare spending toward basic MOE, based on the idea that MOE is a substitute for the former matching arrangement. To carry out this intent, Congress needed to define the former title IV–A welfare spending. They did this by referring to

expenditures for which the State would be entitled to payment under former 403 of the Act. This section authorized Federal matching payments for allowable welfare expenditures. Thus, we believe that Congress was looking for allowable welfare expenditures, not actual payments to the States. This concept would include allowable expenditures that were more than the State could receive in the form of a matched payment. Therefore, we conclude that the new spending provision does not apply to child care expenditures made by a State to augment the Federal and State matching funds available in its At-Risk Child Care program.

However, we remind States of the dollar limitation discussed under § 263.3 of this subpart. Qualified child care expenditures used to meet the requirements of the CCDF matching fund (i.e., as matching and MOE amounts) may also count as basic MOE expenditures only up to the State's child care MOE amount.

Comment: One commenter raised questions about the appropriate calculation for determining the amount of new spending for programs subject to this provision. The commenter noted that it is not clear from the statute if the intent of this provision is for States to only count toward the MOE requirement additional spending that represents an increase over FY 1995 spending levels on eligible families. If this is the statutory intent, then the commenter recommends that we require a State to document whether its spending above FY 1995 levels has served eligible families and to report spending on eligible families in FY 1995. In cases where the State does not know the precise level of FY 1995 spending on eligible families, the regulations should permit States to use a reasonable estimating methodology. If the State is unable to determine or to estimate the amount of spending on eligible families in FY 1995, then it would need to otherwise demonstrate that it has targeted all of the increase in spending (relative to FY 1995 funding levels) toward eligible families.

In addition, the commenter recommends that we require total FY 1995 State expenditures for all State or local programs subject to the new spending provision, not just separate State programs as we proposed. Thus, the commenter believed that we should require this information for State or local programs funded with both TANF, as well as MOE resources. We should also require total State spending in the same State or local program for the current fiscal year. Otherwise, we will be unable to determine whether claimed MOE expenditures meet the new spending provision.

Response: Although the commenter was responding to our proposal under § 273.7(b) to collect supplementary information on separate State programs, we believe that this is the best place to address the commenter's points because they speak to the calculation of additional or new spending claimed for MOE purposes. However, we also refer you to § 265.9 for a fuller discussion of all the comments regarding the proposed annual addendum and the changes we have made in the final rule to the information States must report annually.

We do not agree that it is either necessary or required in the statute for a State to document or to report to us what it spent during FY 1995 on eligible families in programs that are now subject to the ''new spending'' provision. The ''new spending'' provision under section 409(a)(7)(B)(II)(aa) of the Act references current fiscal year expenditures under any State or local program to the extent that ''the expenditures exceed the amount expended under the State or local program'' in FY 1995.

This provision does not refer to eligible families in defining ''the amount expended'' in FY 1995; rather it refers generally to expenditures. However, it does refer to eligible families in defining qualified expenditures for the current fiscal year. As a result, we conclude that States must calculate ''new'' or additional spending under each State or local program subject to the ''new spending'' provision by comparing total qualified State expenditures with respect to eligible families for the current fiscal year with total State expenditures for the program in FY 1995. If total qualified State expenditures with respect to eligible families for the current fiscal year exceed total State expenditures in FY 1995 under the program, the State may claim the excess for basic MOE purposes because the State spent all those funds on eligible families. If total qualified State expenditures with respect to eligible families for the current fiscal year do not exceed total State expenditures in FY 1995 under the program, the State may not claim any current fiscal year qualified expenditures toward its basic MOE requirement.

We agree with the commenter's suggestion that a State should report total FY 1995 expenditures for each State or local MOE programs subject to the ''new spending'' provision. We are also requiring total current fiscal year expenditures for all State or local MOE programs. This includes State or local MOE programs that are currently separate from the State's TANF program, as well as MOE programs funded under TANF. We are requiring this information because it will help provide context for the reported expenditures on eligible families and give some indication of their plausibility.

Section 263.6—What Kinds of Expenditures Do Not Count? (§ 273.6 of the NPRM)

Overview

As we previously discussed, expenditures under State programs (TANF and separate State programs) do not count as MOE if they are not made on behalf of eligible families.

The statute also provides several general restrictions on MOE expenditures. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures do not count: (1) expenditures of funds that originated with the Federal government; (2) State funds expended for the Medicaid program under title XIX of the Act; (3) any State funds used to match Federal WtW funds provided under section 403(a)(5) of the Act, as amended by sections 5001(a) (1) and (2) of Pub. L. 105–33; and (4) expenditures that States make as a condition of receiving Federal funds under other programs. See discussion of § 263.3 for additional information.

Section 5506(c) of Pub. L. 105–33 amended section 409(a)(7)(B)(i) by adding another restriction under section 409(a)(7)(B)(i)(III). Pursuant to section 409(a)(12), States must expend State funds equal to the total reduction in the State's SFAG due to any penalties incurred. Section 409(a)(7)(B)(i)(III) provides that such expenditures may not count toward a State's basic MOE. (See § 264.50.)

TANF funds transferred to the Social Service Block Grant Program, under title XX of the Act, or transferred to the Child Care and Development Block Grant program (also known as the Discretionary Fund within the Child Care and Development Fund), do not count toward meeting a State's MOE requirement because of the first restriction under 409(a)(7)(b)(iv), which prohibits funds that originated from the Federal government from being used for MOE purposes.

Finally, it is important to note that only State expenditures made in the fiscal year for which TANF funds are awarded count toward meeting the MOE requirement for that year. For example,

expenditures made in prior fiscal years or, in the case of FY 1997, expenditures made prior to the date the State started its TANF program do not count as basic MOE.

Comments and Responses

We received few comments on this section, including a comment concurring that this section accurately tracks statutory requirements. Although no changes need to be made to the final rule as a result of these comments, we are clarifying § 263.6(b) of the final rule so that the regulatory language aligns more closely with the statutory prohibitions at section 409(a)(7), as amended.

Specifically, the proposed rule at § 273.6(b) provided that State funds used to match Federal funds (or expenditures of State funds that support claims for Federal matching funds), including State expenditures under the Medicaid program, do not count toward a State's basic MOE requirement. We have kept the part of this provision that prohibits State funds expended for the Medicaid program under title XIX from counting toward a State's basic MOE requirement. The rest of this provision is included in § 263.6(c).

If it had remained part of paragraph (b), then it would have been misleading and would have contradicted the exception under § 263.6(c). That exception permits State funds expended to meet the requirements of the CCDF Matching fund to count (up to the State's child care MOE level) toward the State's basic MOE requirement, provided the State has met all other requirements of this subpart. The requirements of the CCDF Matching Fund include an MOE requirement plus additional State expenditures that would be matched with Federal funds, up to the State's allocation. Based on the proposed wording under paragraph (b) of this section, the additional child care expenditures made by the State for purposes of receiving matching funds would not have counted toward the State's basic MOE. Yet, we stated clearly under paragraph (c) of this section and in the proposed § 273.3(a) that such child care expenditures could count (up to the amount of the State's child care MOE level).

We believe that the prohibition under revised § 263.6(c) takes in all requirements that a State must meet to receive Federal TANF funds, whether it is an MOE requirement, expenditures to receive Federal matching funds, or both. In addition, the Balanced Budget Amendments (Pub. L. 105–33) amended section 409(a)(7)(B)(iv) by replacing the prohibition under (III) ''any State funds which are used to match Federal funds'' with the prohibition related to the receipt of WtW funds—namely, ''any State funds which are used to match federal funds provided under section 403(a)(5).'' We had not reflected this change in the language at § 273.6(b).

We conclude that the language at section 409(a)(7)(B)(iv)(IV) of the Act also prohibits the counting for basic MOE purposes of any State funds expended to match Federal funds under other programs (or expenditures of State funds that support claims for Federal matching funds). Therefore, this language did not need to appear in § 263.6(b) because the regulatory provision at § 263.6(c) incorporates this prohibition. When we deleted the language from § 263.6(b), we also removed the apparent contradiction between § 263.6 (b) and (c) regarding State child care expenditures used to meet the CCDF matching fund requirements.

Comment: One commenter recommended allowing encumbrances as of September 30th of a fiscal year, but paid in a subsequent period, to count toward the State's basic MOE requirement.

Response: We disagree with this recommendation. By statute, only expenditures count toward a State's basic MOE requirement. An obligation, or encumbrance, is not an expenditure until actually paid. An expenditure counts toward the State's annual basic MOE requirement for the fiscal year in which it is actually paid.

Comment: One commenter believes that any expenditures made to replace reductions in the SFAG as a result of penalties should count toward the State's basic MOE requirement.

Response: The statute at 409(a)(7)(B)(i)(III) expressly excludes these additional State expenditures from counting toward the State's basic MOE requirement.

Comment: One commenter was concerned that States may infer that the prohibition on counting any State funds used as a condition of receiving Federal funds under another Federal program means that States may not purchase bus passes for program participants or otherwise help pay for their public transportation because, then, TANF resources are going to public transit providers who use the money as a match for their own Federal grants.

Response: Section 409(a)(7)(B)(iv)(IV) of the Act and § 263.6(c) of the regulatory text prohibit counting for basic MOE purposes any State funds that are expended as a condition of receiving Federal funds from other programs (unless specifically authorized, e.g., the State child care expenditures under the CCDF matching fund). For example, this prohibition would apply to State funds expended to meet the cost-sharing requirement of the recently passed Jobs Access transportation grants program.

However, the purchase of bus passes, in the context described by the commenter, does not constitute an example of State funds spent in order to receive other Federal funds. Rather, it represents an alternative form of providing a transportation benefit for a TANF-eligible family. As previously discussed, State funds used to purchase bus passes that help an eligible family member go to or from work or training would be an appropriate use of State MOE funds because this activity promotes job preparation and work, a purpose of the TANF program.

Section 273.7 of the NPRM

Note: We moved the provisions that appeared in § 273.7 of the NPRM and have not issued a new § 263.7. The information proposed in § 273.7(a) and the comments on this section appear under § 265.3. The information proposed in § 273.7(b) and the comments on this section appear under § 265.9.

Section 263.8—What Happens If a State Fails To Meet the Basic MOE Requirement? (§ 273.8 of the NPRM)

Overview

Under section 409(a)(7)(A), if a State does not meet the basic MOE requirement, we will reduce the amount of the SFAG payable for the following fiscal year on a dollar-for-dollar basis.

Section 5001(g) of Pub. L. 105–33 added another penalty to section 409(a) for a State that receives a WtW formula grant pursuant to section 403(a)(5)(A) of the Act, but fails to meet the basic MOE requirement for the fiscal year. Under section 409(a)(13) of the Act, we must reduce the amount of the State's SFAG for the following fiscal year by the amount of the WtW formula grant paid to the State if the State fails to meet the basic MOE requirement.

Comments and Responses

We received three comments on this section. One commenter observed that this section tracks the statutory requirement. Two others commented on the severity of the penalty amounts. We have made no changes to this section.

Comment: Two commenters felt that the penalties are too severe. One commenter recommended deleting the provision that requires reducing the State's SFAG by the amount of a State's WtW grant if the State fails to meet its

basic MOE requirement for the fiscal year.

Response: Although we agree that the penalties are very significant, as we mentioned in the above discussion, the statute expressly requires both reductions.

Section 263.9—May a State Avoid a Penalty for Failing To Meet the Basic MOE Requirement Through Reasonable Cause or Corrective Compliance? (§ 273.9 of the NPRM)

Overview

Under section 409(b)(2), a State may not avoid a penalty for failure to meet its basic MOE requirement based on reasonable cause. In addition, section 5506(m) of Pub. L. 105–33 amended section 409(c)(4) to provide that a State may not avoid the penalty through a corrective compliance plan.

Congress' decision not to provide for a reasonable cause exception or corrective compliance in basic MOE penalty cases indicates that Congress considered the MOE requirement crucial to meeting the work and other objectives of the Act.

Comments and Responses

We received three comments on this section. One commenter agreed that this section tracked the statute. The other commenters basically questioned the lack of reasonable cause and corrective compliance. We have made no changes to this section.

Comment: Two commenters thought that reasonable cause and the corrective compliance process should be available to a State that failed to meet its basic MOE requirement. One of the commenters expressed concern that the regulations are silent with respect to an appeal process.

Response: As we mentioned in the above discussion, the statute under sections 409(b)(2) and 409(c)(4) of the Act expressly provides that reasonable cause and corrective compliance do not apply to the basic MOE penalty provision. The State may appeal our decision to impose a reduction on the SFAG payable to the Departmental Appeals Board, in accordance with section 410 of the Act. Hence, the appeal process described in § 262.7 applies even if reasonable cause and corrective compliance do not apply.

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

Section 263.10—What Actions Would We Take Against a State if It Uses Federal TANF Funds in Violation of the Act? (§ 273.10 of the NPRM)

Overview

Section 409(a)(1) contains two penalties related to use of Federal TANF funds (i.e., all Federal TANF funds under section 403) in violation of TANF program requirements. The first is a penalty in the amount of funds that a State uses improperly, as found under the Single Audit Act. We would reduce the SFAG payable to the State for the immediately succeeding fiscal year quarter by the amount misused.

In addition, we would take a second penalty, equal to five percent of the adjusted SFAG, if we find that a State has intentionally misused funds. You can find criteria for ''intentional misuse'' at § 263.12.

For both of these penalties, States may request that we grant reasonable cause and submit a corrective compliance plan for correcting the violation.

We received no comments on this section. However, we did revise the regulatory text because we noticed that it did not closely track the statutory language. The final rule language is clearer that the five-percent penalty for intentional misuse of funds is in addition to the misuse-of-funds penalty. Also, like the statute (at section 409(a)(1)(B)), the final rule puts the burden of proof regarding intent on the State.

Section 263.11—What Uses of Federal TANF Funds Are Improper? (§ 273.11 of the NPRM)

Overview

The statute contains many prohibitions and restrictions on the use of Federal TANF funds. In determining if funds have been used ''in violation of this part,'' States should particularly note the prohibitions in section 408 of the Act and section 115 of PRWORA. In summary, these sections provide that States must not use Federal TANF funds to provide assistance to:

- A family with an adult who is a head-of-household or a spouse of a head-of-household or with a minor head-of-household who has received assistance funded with Federal TANF funds for more than 60 months (except for a family included in the 20-percent hardship exemption);
- A family without a minor child living with a parent or adult caretaker relative (or a pregnant individual);
- A family not assigning support rights;
- An unmarried parent under 18, without a high school diploma, who does not attend high school or equivalent training;
- An unmarried parent under 18 not living in an adult-supervised setting (unless covered by a statutory exception);
- A fugitive felon and probation and parole violator;
- A minor child absent from the home 45 days (or at State option, 30–180 days);
- For ten years, a person found to have fraudulently misrepresented residence to obtain assistance; and
- An individual convicted of certain drug-related offenses unless the State has enacted a law to exempt such individuals from the prohibition (refer to section 115 of PRWORA).

Also, States must not use Federal TANF funds for medical services, except for pre-pregnancy family planning services. (This prohibition raised a number of concerns among States and advocates that are discussed below.)

Section 404 also limits the use of Federal TANF funds. More specifically, section 404(a)(1) provides that TANF funds may only be used ''* * * in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs. * * *'' Thus, TANF funds cannot be used in a manner not reasonably calculated to serve the purposes of the program.

In determining if an activity may be funded with TANF funds under this provision, you should refer to the purposes described in section 401 of the Act and reiterated at § 260.20. Also, you should be aware that the specific prohibitions or restrictions in the statute (e.g., the prohibitions in section 408) apply even if an activity seems otherwise consistent with the purposes in section 404(a)(1).

In addition, section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used ''in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996.'' We interpret this provision to cover activities that are not permissible under section 404(a)(1), but were included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan as of September 30, 1995, or, at State option, August 21, 1996. Examples of such activities are juvenile

justice and foster care activities that were included in many State plans. Under this provision, only those States whose approved AFDC State plans included juvenile justice activities as of September 30, 1995, or, at State option, August 21, 1996, may use Federal TANF funds for those activities.

Because of the detailed and specific legislative history associated with the language at section 404(a)(2), indicating Congress's clear intent to grandfather in juvenile justice costs as an allowable use of Federal TANF funds, we would allow such use, notwithstanding the specific prohibitions in section 408 of the Act (e.g., prohibiting the expenditure of Federal TANF funds on assistance if a child is not living with an adult relative).

States should also note that if they exceed the 15-percent limit on administrative costs under section 404(b), we will consider any amount of funds exceeding that limit to be a misuse of funds. In the final rule, we have modified the language in §§ 263.11 and 263.13 to clarify this position.

Likewise, we would consider unauthorized or inappropriate transfers of TANF funds to be a misuse of funds. We would consider any of the following transfers to be inappropriate or unauthorized: transfers to any program except the Child Care and Development Block Grant (also known as the Discretionary Fund within the Child Care and Development Fund) or the Social Services and Block Grant Program under title XX of the Social Security Act; transfers to those two programs in excess of the 30-percent cap; and transfers to SSBG in excess of the 10-percent cap (or, beginning in FY 2001, in excess of the 4.25-percent cap). TANF expenditures used to match Job Access funds are not considered transfers.

OMB Circulars A–102 and A–87 also include restrictions and prohibitions that limit the use of Federal TANF funds.

The Department previously promulgated A–102 (the common rule) in its regulations at part 92 of title 45, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' All provisions in part 92 are applicable to the TANF program. TANF is not one of the Block Grant programs exempt from the requirements of part 92, as OMB has not taken action to exempt it. Rather, OMB has determined that TANF should be subject to part 92. Section 417 was not meant to invalidate other general requirements that Congress and Federal agencies, primarily OMB, have put in place to assure that Federal grant funds are properly administered or to inhibit Federal agencies from fulfilling their financial management responsibilities in managing their programs. We believe that Congress understood that TANF, like other Federal grant programs, was subject to existing appropriations, statutory, and regulatory requirements regarding the general administration of grants, notwithstanding section 417.

By reference, part 92 also includes A–87, the ''Cost Principles for State, Local and Indian Tribal Governments,'' the basic guidelines for Federal awards. These guidelines provide, in part, that an allowable cost must be necessary and reasonable for the proper and efficient administration of a Federal grant program, and authorized or not prohibited under State or local laws or regulations.

A–87 also includes some specific prohibitions on the use of Federal funds generally that apply to Federal TANF funds. For example, A–87 prohibits the use of Federal funds for alcoholic beverages, bad debts, and the salaries and expenses of the Office of the Governor.

(a) Clarifications of Use of Federal TANF Funds—Substance Abuse Services

In our pre-NPRM consultations, we received several inquiries regarding the use of Federal TANF funds for substance abuse treatment, i.e., treatment for alcohol and drug abuse. In light of the prohibition on the use of Federal TANF funds for ''medical services, except for pre-pregnancy family planning activities,'' we held discussions with other Federal agencies and learned that in many, but not all instances, the treatment of alcohol and drug abuse involves not just ''medical services,'' but other kinds of social and support services as well.

Allowing States to use Federal TANF funds for substance abuse treatment is programmatically sound and reasonably calculated to achieve TANF goals since it may help clients make successful transitions to work and provide for a stable home environment for TANF children. Accordingly, our rules permit States to use Federal TANF funds for drug and alcohol abuse treatment services to the extent that such services are not medical. States will have to look at the range of services offered and differentiate between those that are medical and those that are not. In short, States may not use Federal TANF funds for services that the State identifies as medical; they may only use Federal TANF funds for services that are nonmedical.

(b) Clarification of the Use of Federal TANF Funds for Construction and Purchase of Facilities

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting Federal grant funds to be used for this purpose. Since the statute is silent on this matter, States must not use Federal TANF funds for construction or the purchase of facilities or buildings.

(c) Clarification of the Use of Federal TANF Funds as State Match for Other Federal Grant Programs

States may use Federal TANF funds under section 403(a) to match other Federal grant programs only if authorized under the statute of the grant program. Further, any funds so authorized are still subject to the TANF program requirements and must be used in accordance with the purposes of the TANF program and with these regulations.

(d) Clarification of the Use of Federal TANF Funds To Add to Program Income

We have received a number of inquiries about whether or not TANF funds may be used to generate program income. An example of program income is the income that a State earns if it sells another State a training curricula that it has developed, in whole or mostly, with Federal TANF funds.

States may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how to treat this program income. To give States flexibility in their use of TANF funds, States may add, to their TANF grant, program income that has been earned by the State. States must use such program income for the purposes of the TANF program and for allowable TANF activities. We will not require States to report on the amount of program income earned, but they must keep on file financial records on any program income earned and the purposes for which it is used, in the event of an audit or review.

(e) Clarification of the Use of Federal TANF Funds—Amounts Reserved for Subsequent Years

Section 404(e) of the Act, entitled ''Authority to Reserve Certain Amounts for Assistance,'' allows States to reserve Federal TANF funds that they receive ''for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State program funded under this part.'' In the

NPRM preamble, we did not include a specific discussion of this provision. However, we have added a preamble discussion in the final rule because: (1) we have subsequently received questions about its interpretation; (2) the penalty on misuse of Federal funds encompasses this provision; and (3) the definition of assistance at § 260.31 has implications that States need to understand.

After a careful reading of section 404(e), we have determined that the statute limits a State's ability to spend reserved money in a couple of very important ways. First, a State may expend reserved money only on benefits that meet the definition of assistance at § 260.31 or on the administrative costs directly associated with providing such assistance. It may not expend reserved funds on benefits specifically excluded from the definition of assistance or on activities generally directed at serving the goals of the program, but outside the scope of the definition of assistance. Secondly, a State may spend its reserved funds only on assistance provided within its TANF program (i.e., ''the State program funded under this part''). This latter limitation precludes the State from transferring reserved funds to either the SSBG or the Discretionary Fund of the CCDF. We believe the effect of these limitations will not be too serious because States are still spending such large portions of their funds on benefits that meet the definition of assistance. However, to ensure themselves the maximum flexibility in the use of their funds, States could spend down their reserved funds on any expenditures on assistance and leave current-year funds available to cover transfers and other activities.

Comments and Responses

We received several comments on this section. A couple of commenters expressed concerns about a State's ability to correct information in their Financial Report, avoid penalties for minor reporting errors, and present a case that they should not be penalized; you can find a discussion of the issues in the preamble for § 265.8. A detailed discussion of the other comments on this section and our responses follows. These comments resulted in a couple of minor changes to the proposed policy.

Comment: Most comments received on this section addressed the prohibitions and restrictions on the use of Federal TANF funds. We received some general support for our proposals and clarifications (e.g., allowing for program income and clarifying that States could expend Federal TANF fund on nonmedical substance abuse services). We also received a number of individual comments seeking additional clarification or more detail in the regulation about the allowability of certain expenditures. Areas of concern to individual commenters were medical costs, substance abuse, transportation, and juvenile justice services.

Response: We think it is very important that we lay out for States our view of what would constitute a misuse of funds so that they will be in the best possible position to avoid this penalty. Basically, section 404(a)(1) provides that Federal TANF funds may be used ''* * * in any manner reasonably calculated to accomplish the purpose of this part. * * *'' However, section 408 of the Act and section 115 of PRWORA provide that States must not use Federal TANF funds in specified circumstances. In addition, section 404 limits the use of Federal TANF funds. The prohibitions in sections 408 of the Act and 115(a)(1) of PRWORA and the limitations in section 404 of the Act apply, even if an activity seems otherwise consistent with the purpose of this section.

Section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used ''in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996.''

Activities authorized under this subsection must have been in an approved plan under part A or F to be an allowable expenditure of Federal TANF funds.

In response to commenters' concerns, we have added references to sections 404 and 408 of the Act to the regulatory text. These are the two most significant statutory references for TANF requirements that were not specified in the proposed regulatory text.

In general, we believe it is sufficient for our rules to provide broad references to the statutory, regulatory, and policy provisions that will apply under this penalty. In certain policy areas—including administrative costs, the applicability of general grant administration standards, and the allowability of previously authorized expenditures—we believe that some clarification was needed, and our preamble and regulations reflect that judgment. However, other statutory provisions (e.g., much of section 408 of the Act and section 115(a)(1) of PRWORA) are relatively straightforward, and we are not aware of significant issues of interpretation that necessitate further regulation of these provisions.

In response to some of the specific concerns raised by commenters, we point out the following:

(1) The allowability of juvenile justice services depends upon what was previously authorized under a State's plan. A Federal definition would not be appropriate.

(2) Because of the statutory prohibition on use of Federal TANF funds for medical expenditures (except for pre-pregnancy planning), we could not authorize employment-related medical expenditures or medical services for substance abuse treatment under regulation.

However, we have decided not to provide a definition of medical services (and other key terms) in order to give States the maximum flexibility to provide services needed by recipients—within the constraints of the statute.

(3) To the extent that we have not addressed a provision in this final regulation, States may expend their Federal TANF funds under their own reasonable interpretations of the statutory language, and that is the standard that will apply in determining penalty liability.

(4) In several respects, States have more flexibility in the use of Federal TANF funds than State MOE funds. Two of these are: (1) on benefits that were previously authorized; and (2) in certain circumstances, on benefits that serve the goals of the program, but are not attributable to individual needy (or eligible) families. For example, if the expenditures are reasonably related to the purposes of TANF (at § 260.20) and do not constitute expenditures for ''assistance'' (and are otherwise allowable), a State could use Federal TANF funds for transportation investments that reduce the dependence and support the employment of needy parents, even if it cannot associate all such expenditures with individual needy families. Likewise, States may use Federal TANF funds for expenditures associated with the third and fourth TANF goals (i.e., related to the formation and maintenance of two-parent families and the prevention of out-of-wedlock pregnancies) without associating such expenditures to individual needy families. Thus, the statute and rules both provide States with some of the spending flexibility that commenters were seeking, with respect to transportation expenses, in particular, and other types of activities.

Comment: We received a few comments concerning our reference to activities carried out under AFDC or JOBS. Commenters objected to our conception that section 404(a)(2) covered only those prior program

expenditures that were included in a State's AFDC or JOBS plans. Also, a couple of commenters wanted broad authority to spend funds on emergency services for children, such as juvenile justice, even when their State plans did not include specific references to such services.

Response: Section 404(a)(2) provides that a State may use its Federal TANF funds ''in any manner that the State was authorized to use amounts received under part A or F * * *'' Although more than one interpretation of this phrase is possible, we believe our interpretation is the best for a number of legal and policy reasons. First, the reference to ''the State'' in the statutory language is consistent with looking at each State individually based on what was specifically authorized for that State. Also, under prior law, costs were authorized based on approved State plans. Second, our interpretation is consistent with the view that section 404(a)(2) was designed to ''grandfather in'' States whose prior programs allowed such expenditures. Third, there were some questionable funding practices by States under prior law, and we believe the best policy is to limit the extent to which they are perpetuated.

Thus, in order for a State to expend Federal TANF funds under the authority of section 404(a)(2), the expenditures at issue must have been specifically authorized under that State's AFDC or JOBS plan. Section 404(a)(2) does not broadly authorize continued expenditures on vaguely defined, or undefined, programs; it merely authorizes the use of the TANF ''in a manner'' in which the State previously had the authority to expend AFDC and JOBS funds. States only had authority to expend AFDC and JOBS funds consistent with approved plans.

Comment: We received several comments challenging the applicability of 45 CFR part 92 and OMB Circulars A–87 and A–102 to the TANF program and a few comments challenging the reference to section 115 of PRWORA. Commenters cited section 417 of the Act and the reference in section 409(a)(1) to violations ''of this part'' as the basis for not applying these provisions to the TANF program.

Response: We disagree with these comments. With respect to the OMB requirements, we believe that TANF, like other Federal grant programs, is subject to Departmental grants administration regulations and OMB circulars. The only time Federal grant programs would not be subject to grant administration regulations or OMB circulars is when OMB exempts them. OMB has not exempted the TANF program from these requirements; thus, they apply to the TANF program.

Section 417 does not prevent us from applying the part 92 regulations to TANF because the referenced requirements are not developed to enforce substantive provisions under this part. Thus, our approach to this issue is consistent with the approach taken in § 260.35 and discussed in the preamble section entitled ''Recipient and Workplace Protections''; i.e., section 417 of the Act does not limit the applicability of other Federal laws and rules.

With respect to violations of section 115 of PRWORA, first, we are clarifying that our intent is to cover only violations of section 115(a)(1) under the misuse penalty. Thus, we would focus on whether States were expending Federal TANF funds on individuals who are ineligible for such assistance under Federal law. We would not monitor compliance with other provisions under section 115. To make this point clear, we have changed the regulatory reference from ''section 115'' to ''section 115(a)(1).'' Secondly, we would point out that section 417 does not limit our ability to hold States accountable for complying with section 115 of PRWORA. While we could, in theory, set up a different enforcement mechanism, such as a disallowance system, to cover violations of this provision, that would seem to be an unnecessary administrative complication; the misuse penalty would have a comparable financial effect and provides States with ample opportunity to appeal.

Comment: One commenter suggested a change in language to conform more closely to what the statute reads. The change would substitute the language of this section from ''reasonably related to the purposes of TANF'' with ''reasonably calculated to accomplish the purposes of TANF.''

Response: We agree with the comment and have made the change.

Section 263.12—How Will We Determine if a State Intentionally Misused Federal TANF Funds? (§ 273.12 of the NPRM)

Overview

As we discussed in the proposed rule, in determining if a State has intentionally misused funds, we will apply a ''reasonable person'' test; i.e., a State must demonstrate to our satisfaction that it spent its TANF funds for purposes that a reasonable person would consider to be within the purposes of the TANF program. We will also consider funds to be intentionally misused if there is documentation, such as Federal guidance or policy instructions, that precludes the use of funds for such purposes, or if the State misuses the funds after receiving notification from us that such use is not allowable.

Comments and Responses

We received a few comments on this section. These comments resulted in a minor change to the proposed rule as discussed below. We also made some minor editorial changes to the regulatory text.

Comment: We received a number of comments about the procedures that applied to this penalty. Some commenters wanted the regulation to mention explicitly that the corrective compliance and appeal processes applied to the intentional misuse penalty. A few of these commenters also stated that we should give States an opportunity to submit a corrected financial report. One commenter further mentioned that States need a reasonable period of time to act upon a notification of misuse.

Response: Under the provisions of §§ 262.4, 262.5, 262.6, and 262.7 of the final rules, States have the opportunity to appeal a penalty based on the misuse or intentional misuse of funds. States have 60 days to submit a written response to our notification that we have determined it is subject to a penalty. We believe that 60 days is a reasonable period for a State to respond to a notification of misuse, as it is the amount of time the statute gives for submitting a corrective compliance plan and, under the audit process, a State should receive advance warning that the notification is coming. During this 60-day period, the State has the opportunity to demonstrate that our determination was incorrect or based on insufficient information. For example, a State could argue that the action at issue occurred prior to the effective date of final rules and was based on a reasonable interpretation of the statute. A State could also submit a corrected TANF Financial Report that helps demonstrate that all of its TANF expenditures were appropriate and allowable. In addition, as § 263.10 indicates, a State could demonstrate that it had reasonable cause for the misuse or intentional misuse of funds or provide us with a corrective compliance plan.

Comment: One commenter said that the misuse penalty should not apply while the State is pursuing legal remedies.

Response: We will not take an adverse action (i.e., reduce the adjusted SFAG)

prior to completion of any administrative review by the Departmental Grant Appeals Board (GAB). However, if the GAB sustains our penalty decision, the State will owe interest from the date of our final notification of an adverse action.

Comment: One commenter objected to the presumption in the NPRM that a State has misused funds until the State proves otherwise. The commenter argued that the proposed rule shifts the burden of proof to the States in proving a negative.

Response: We disagree with the comment. A State will normally receive notification that it has misused funds based on documented findings of audits performed under the Single Audit Act. As States know from prior experience, these audits utilize a variety of tools to evaluate expenditures, including the statute and regulations and a compliance supplement issued by OMB that focuses on certain areas of concern. In addition, the audit findings reflect reliable information taken from various sources, such as samples of case records and operational assessments. We believe that these audits will give us an objective appraisal of whether a misuse of funds has occurred.

Thus, we believe that the initial ''burden'' of establishing misuse of funds rests with the auditors rather than the State. Then, States will have the opportunity both to review, analyze, and rebut the findings via the standard audit resolution procedures and to seek penalty relief through the reasonable cause and corrective compliance processes.

Comment: A few commenters raised issues pertaining to misuse due to a failure to follow Federal guidance. One commenter mentioned that Federal guidance must be in accordance with the TANF statute before such guidance can be used to substantiate a claim of misuse. A second commenter recognized that legitimate issues may arise over a difference in interpretation of the statute. A third commenter argued that posting Federal guidance to a web page does not constitute notice and that States should be given adequate time to implement any changes necessitated by the guidance.

Response: We agree that Federal guidance must adhere to the statute. Currently, all guidance that we issue is based on a careful review of the statutory language and legislative history. We will continue to follow this practice when preparing future guidance.

We further recognize that a difference in the interpretation of a statutory provision is possible. We do not intend to penalize States pending resolution of such a difference. Under § 262.4, a State has the opportunity to demonstrate that our determination that the State is subject to a penalty was incorrect. In short, a State may present alternative interpretations of a statutory provision during the penalty resolution process. Because we could withdraw a determination of misuse based upon such a State presentation, we have changed § 263.12(b) and (c) to say that we ''may'' (rather than ''will'') consider funds to be misused if: (1) there is Federal guidance or policy indicating that TANF funds could not be used for a particular purpose; or (2) if the State continues to use the funds in the same or similarly improper manner after receiving notification of improper use.

Regarding the comment about notice of Federal guidance, we intend to rely on different methods for transmitting guidance to the States and other interested parties. We presently post Federal guidance to our web page and also mail it to all State TANF agencies and other appropriate parties. We plan to continue this dual issuance process so long as some State TANF agencies have limited Internet capabilities. However, in the interest of reducing costs associated with the printing and mailing of guidance materials, we intend to increase our reliance on electronic modes of communication as State capabilities increase. Also, we are sensitive to operational issues and, where possible, will include implementation time frames in our guidance.

Comment: A couple of commenters urged us to hold States accountable for complying with their plans for services and benefits under TANF and penalize States when they fail to do so.

Response: We do not believe that we have the authority under the statute to penalize States in these circumstances. The misuse of funds penalty refers to violations ''of this part.'' It does not reference expenditures made in violation of State plan provisions. Section 417 of the Act limits our ability to enforce TANF. Therefore, we have not included this recommendation in the final rule.

Section 263.13—Is There a Limit on the Amount of Federal TANF Funds a State May Spend on Administrative Costs? (§ 273.13 of the NPRM)

Overview

In the preamble for § 263.0, we discuss most of the comments we received on the administrative cost provisions in the rule. We decided to consolidate the discussion in one place since most of the comments related to both the Federal and the MOE cap. Therefore, we refer you to that section for a discussion of a host of issues related to the Federal cap.

This section of the rule speaks specifically to how the Federal administrative cost cap is determined. However, in reviewing the comments, we realized that the proposed rule had not directly presented the cap provision. To address this deficiency, we changed the title for this section and added a new paragraph (a) to explain the Federal cap provision. Paragraph (b) contains language from the NPRM on the exclusion for systems costs, modified as discussed below.

In paragraph (a), we also have added regulatory language advising States that we would consider a violation of the Federal cap to be a misuse of funds.

In reviewing the comments on the systems exclusion, we noted that proposed regulatory language in this section was not completely consistent with the statutory language (i.e., the proposed regulation said that the specified systems costs ''are not administrative costs for this purpose''). In the final rule, we have revised the language to conform more closely to the statute. Under the revised language, we track the statutory language and provide that the Federal administrative cost cap does not apply to ''Federal TANF expenditures on information technology and computerization needed for tracking or monitoring required by or under title IV–A of the Act.''

The revised regulatory language also provides clarification of one issue that was not directly addressed in the written comments, but which has come up in the context of the WtW regulation and the proposed rule on the bonus for reduction of out-of-wedlock births. By statute, the Federal administrative cap applies to any grant made to the State under section 403. It thus applies to WtW funds, out-of-wedlock bonuses, high performance bonuses, supplemental grants, high performance bonuses, and contingency funds.

The WtW regulations address the cap as it pertains to any WtW funds received by the State under section 403(a)(5). This final rule addresses any other funds provided under section 403.

The new language provides for a consolidated cap for all TANF funds (i.e., funds provided under section 403 other than WtW funds under section 403(a)(5)). Thus, it would limit the total amount of expenditures that a State could spend on administrative costs from all these separate funding provisions. We would not require that

the State meet a 15-percent cap for each of these multiple sources of funds.

While the statutory language would allow an alternative interpretation of separate funding caps, there is no evidence that Congress intended to create all these separate administrative cost caps. Also, we do not think creation of a consolidated cap would undermine the purpose of the provision, of limiting administrative costs, and we do not believe the potential benefit of separate caps would justify the additional administrative burden that States would incur.

Subpart C—What Rules Apply to Individual Development Accounts?

Section 263.20—What Definitions Apply to Individual Development Accounts (IDAs)? (§ 273.20 of the NPRM)

Overview

Individual Development Accounts (IDAs) are similar to savings accounts and enable recipients to save for ''big ticket'' items, such as a home, or a college education or start a business. Money in an IDA account would not affect a recipient's eligibility for TANF assistance.

States may use IDAs as an incentive for recipients to find jobs and to use their earned income to save for the future.

Recipients can use IDAs as long-term investments, without losing eligibility for TANF assistance in the early stages of becoming self-sufficient.

The NPRM defined an IDA as an account established by, or for, an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes. It also defined a number of other terms used applicable to IDAs.

Comments and Responses

We received a few comments on the provisions in this section and made some minor changes to the proposed regulations, as discussed below.

Comment: Several commenters said that we should clarify whether individuals eligible for TANF assistance through segregated State funds could be beneficiaries of the IDA program.

Response: Under the definition in the NPRM, individuals who were eligible for TANF assistance could participate in IDAs.

The statute at section 404(h)(2)(A) provides that under a State program, an IDA may be established by or for an ''individual eligible for assistance under the State program operated under this part.'' This latter phrase means that IDAs can cover individuals who are eligible under the TANF program, regardless of the funding source. We have revised the regulatory language at § 263.20 so that it refers to eligibility for the TANF program. Under the definitions at § 260.30, the TANF program includes all activities under the State program, regardless of funding source.

Comment: One commenter stated that Federal regulations ought to expressly state that, under PRWORA, funds in an IDA are to be disregarded for purposes of determining eligibility for, or amount of, assistance under Federal means-tested programs (other than under the Internal Revenue Code).

Response: We agree that the regulations should clarify that States must disregard IDA funds in determining eligibility and amount of assistance for such Federal means-tested programs. Section 404(h)(4) explicitly states that there should be no reduction in benefits. We have revised the regulatory language at § 263.20 to clarify this point.

Comment: One commenter explained how one State defined its IDA programs under its welfare reform waiver more broadly than the NPRM and suggested that we revise the regulation to allow for a broader range of IDA strategies.

Response: The statute is very specific in terms of how IDA funds may be used. Accordingly, we have not changed the position taken in the proposed rule. However, under section 415 of the Act, until a State's welfare reform waivers expire, the State has latitude to continue its waiver policies and operate its program more broadly than the statute permits.

Section 263.21—May a State Use the TANF Grant To Fund IDAs? (§ 273.21 of the NPRM)

Overview

PRWORA gives States the option to fund an Individual Development Account Program. Thus, States have the option to fund IDAs with TANF funds for individuals who are eligible for TANF assistance.

We received one comment on the provisions in this section and made some minor changes to the proposed regulation, as discussed below.

Comment and Response

Comment: One commenter said that the NPRM does not clearly express that IDA is an optional program that the States may choose to implement within limits permitted by Federal law.

Response: We agree that the IDA provision is an optional program, which is subject to State rules within the limits permitted by Federal regulations and statute. We have revised the regulatory language at § 263.2 to clarify this point. Also, consistent with the statutory language at section 403(a)(5)(C)(v), we have specified that WtW funds may also be used to fund these IDAs.

Section 263.22—Are There Any Restrictions on IDA Funds? (§ 273.22 of the NPRM)

Overview

IDAs are similar to savings accounts and enable recipients to save earned income for certain specified, significant items. IDAs contain special restrictions on who can match recipient contributions.

The NPRM required that: (1) a recipient deposit only earned income into an IDA; (2) recipient's contributions to an IDA may be matched by a qualified entity; and (3) recipients may spend IDA funds only to purchase a home, pay for a college education, or start a business.

Comments and Responses

We received a few comments on the provisions in this section and made some minor changes to the proposed regulation, as discussed below.

Comment: Several commenters expressed that the NPRM was more restrictive than the statutory language on the source of matching funds and thereby unduly limited possible matching funds to an IDA account.

Response: The language in the proposed rule was inadvertently narrower than the statutory provision. We have changed the regulation at § 263.22 so it now comports with the statutory language. Under the final rule, ''matching funds may be provided by or through a qualified entity.''

Comment: One commenter stated that we should allow TANF recipients to withdraw money from IDAs for training expenses, as well as for post-secondary purposes.

Response: The statute is very specific in terms of how IDA funds may be used. Only post-secondary education expenses at an eligible institution are permissible. While expenses for certain vocational education or training activities would be allowable, expenses for job training that is not at the post-secondary level or at an eligible institution would not be. Accordingly, we have not changed the proposed rule.

Section 263.23—How Does a State Prevent a Recipient From Using the IDA Account for Unqualified Purposes? (§ 273.23 of the NPRM)

Overview

Money in an IDA account does not affect a recipient's eligibility for TANF assistance. Withdrawals from the IDA must be paid directly to a college or university, a bank, savings and loan institution, an individual selling a home, or a special account (if the recipient is starting a business).

Section 404(h)(2)(D) authorizes the Secretary to establish regulations to ensure that individuals do not withdraw funds held in an IDA except for one or more of the above qualified purposes.

In our research, we found that several States had established IDAs under their welfare reform demonstration projects and subsequently transferred those provisions to their TANF programs. Each State had designed its own procedures for preventing withdrawals or penalizing recipients who withdrew funds from their IDAs for unauthorized purposes. For example, several States count a withdrawal for a nonqualified purpose as earned income in the month of withdrawal unless the funds were already counted as earned income. Other States count such withdrawals against a family's resource limit. Still another State calculates a period of ineligibility using a complex formula.

With this in mind, we did not feel that it was necessary to be overly prescriptive in mandating how States would ensure that individuals do not make unauthorized withdrawals from IDA accounts. Thus, we give States broad flexibility to establish procedures that ensure that only qualified withdrawals are made.

In addition, section 404(h)(5)(D) gives the Secretary the authority to determine whether or not a business contravenes law or public policy. We have decided that we should base our determination on the business's compliance with State law or policies. Thus, our rules give States maximum flexibility in setting up these programs, while assuring that a business established by a needy family meets State requirements.

Comments and Responses

We received a few comments in support of the provisions in this section, as discussed below. These comments did not result in any change to the proposed policy or rule.

Comment: A few commenters supported the entire section on IDAs, noting that the Secretary exercised her discretion to give States maximum flexibility in designing and administering these programs.

Response: We appreciate the commenters' support for our approach. The intent of the proposed rule was to allow States the latitude that they needed to administer an effective IDA program and develop innovative approaches for moving recipients from dependency to self-sufficiency.

IX. Part 264—Other Accountability Provisions (Part 274 of the NPRM)

Note: We have moved the content of § 274.20 of the NPRM, entitled ''What happens if a State sanctions a single parent of a child under six who cannot get needed child care?'' to part 261. You can find a discussion of the comments related to this provision at §§ 261.15, 261.56 and 261.57.

Section 264.0—What Definitions Apply to This Part? (§ 274.0 of the NPRM)

This section cross-references the general TANF regulatory definitions established under part 260.

We received no comments on this section. However, we decided to add definitions for ''countable State expenditures,'' ''Food Stamp trigger'' and ''unemployment trigger,'' which relate to the discussion of the Contingency Fund in subpart B, in order to make subpart B easier to understand. We also added a definition of ''FAG,'' which is used in the discussion of the spending levels of the Territories in subpart C. Finally, we moved this section out of subpart A, as it was in the NPRM, so that it is clear that the definitions apply to this entire part.

Subpart A—What Specific Rules Apply for Other Program Penalties?

Section 264.1—What Restrictions Apply to the Length of Time Federal TANF Assistance May Be Provided? (§ 274.1 of the NPRM)

Under the former AFDC program, families could receive assistance as long as necessary, if they continued to meet program eligibility rules. Under the TANF program, Congress established a maximum length of time for which a family may receive assistance funded by Federal TANF funds.

Section 408(a)(7) stipulates that States may not use Federal TANF funds to provide assistance to a family that includes an adult who has received assistance for more than five years. We will calculate the five-year limit on Federal funding as a cumulative total of 60 months.

The legislative history for PRWORA clarifies the meaning of adult in section 408(a)(7)(A). States are to count only months for which an adult received assistance as the head-of-household or as the spouse of the head-of-household. (H.R. Rep. No. 725, 104th Cong., 2d sess., p. 288.) Generally, when a parent or other adult caretaker relative of a minor child applies for and receives federally funded assistance under the State's TANF program on behalf of himself or herself and his or her family, Federal funding of that assistance may not last longer than five years. States must disregard any months when an adult receives assistance when he or she is not the head-of-household or is not the spouse of the head-of-household.

Any month when a pregnant minor or minor parent received assistance as the head-of-household or married to the head-of-household counts toward the five-year limit. However, section 408(a)(7)(B) clarifies that the State must disregard any month for which assistance has been provided to an individual who is a minor child who is not the head of a household or married to the head of a household.

The five-year limitation on Federal funding also disregards any months that an adult receives assistance while living in Indian country (as defined by section 1151 of title 18, United States Code) or in an Alaska Native Village where at least 50 percent of the adults are not employed (see § 264.1(b)(1)(ii)).

Subsection 408(a)(7)(G) provides for special treatment of assistance provided to a family with Welfare-to-Work grant funds (formula or competitive) under the time-limit provision. First, months for which a family receives cash assistance funded with Welfare-to-Work grant funds (under section 403(a)(5) of the Act) do count towards the five-year limit; however, months for which a family receives only WtW noncash assistance do not count towards the five-year limit.

Second, families may receive assistance (cash or noncash) funded with WtW grant funds even though they are precluded from receiving other TANF assistance because of the five-year limit.

Some families may receive assistance from Federal TANF funds for more than five years based on hardship or if the family includes an individual who has been battered or subjected to extreme cruelty as defined in section 408(a)(7)(C)(iii).

Under section 408(a)(7)(C), the average monthly number of such families may not exceed 20 percent of the State's average monthly caseload during either that fiscal year or the immediately preceding fiscal year, whichever the State elects. We will not make a determination of whether a State has exceeded the cap until any families in the TANF program have received at

least 60 cumulative months of federally funded assistance.

Since the purpose of the provision is to provide an extension to the 60-month limit, it applies after that limit is reached. We believe that this approach is the most straightforward and comports with Congressional intent that TANF assistance be provided on a temporary basis while a family becomes self-sufficient. Thus, Federal support would cease once a head-of-household or spouse of the head-of-household in the family has been assisted for 60 total months with Federal TANF funds unless the State chooses at that time to include the family in its 20-percent exception. However, the State may elect to use State funds to continue paying eligible families.

The five-year time limit applies to Federal funding; it does not set an upper bound on the amount of time a State could provide assistance to an individual family with State funds. Further, States are free to impose shorter time limits on the receipt of assistance under their programs. They are also free to allow receipt for longer periods if the assistance is paid from State funds or if the family meets the criteria the State has chosen for extension and fits with the 20-percent limit.

In the NPRM preamble to this section, we clarified the relationship between domestic violence waivers of the time limit permitted under the Family Violence Option at section 402(a)(7) and the limit on the exceptions to the Federal time limit at section 408(a)(7)(C)(ii). The key issue was whether the 20-percent limit on hardship exceptions included families of domestic violence victims.

Section 402(a)(7)(B) expressly refers to section 408(a)(7)(C)(iii) in applying the meaning of the term ''domestic violence'' to the Family Violence Option at section 402(a)(7)(A). Section 408(a)(7)(C)(iii) defines ''battered'' or ''subjected to extreme cruelty'' for purposes of describing families who may qualify for a hardship exemption at section 408(a)(7)(C)(i), and section 408(a)(7)(C)(ii) specifies a 20-percent limit on the exceptions to the time limit due to hardship. Based on the statutory language, we concluded that the number of families waived from the five-year time limit per section 402(a)(7) fell within the 20-percent ceiling established under section 408(a)(7)(C)(ii). However, we allowed a State to claim ''reasonable cause'' when its failure to meet the five-year limit could be attributed to its provision of federally recognized good cause domestic violence waivers. In the final rule, we have moved the provisions on domestic violence to a new subpart B of part 260. You can find our preamble discussion of these provisions and the comments on our proposed rules in the earlier discussion entitled ''Treatment of Domestic Violence Victims.''

As previously discussed, section 408(a)(7)(D) provides an exemption to the time limit on receipt of federally funded TANF assistance for families living in Indian country or in an Alaskan Native village. The months that a family, which includes an adult, lives in Indian country or in an Alaskan Native village, where at least 50 percent of the adults are not employed, do not count when determining whether the adult has received federally funded assistance for 60 cumulative months. In accordance with section 408(a)(7)(D), the percentage of adults who are not employed in a month will be determined by the State using the most reliable data available for the month, or for a period including the month.

In the earlier preamble discussion entitled ''Waivers,'' we discuss the impact of waivers granted under section 1115 of the Act on the five-year time limit. You will find the regulatory provisions in a new subpart C of part 260.

We received a number of comments on this section. We made some revisions to the regulations as noted in our responses to the comments below. We also amended the regulations to reflect the position that only months for which an adult received assistance as the head-of-household or as the spouse of the head-of-household count toward the five-year time limit.

Comment: A couple of commenters expressed their opposition to all time limits, and one commenter stated that the time limits will cause families to suffer.

Response: The time limit is an important aspect of welfare reform. It is meant to ensure that States and recipients place a clear priority on work, responsibility, and self-sufficiency. However, in a time-limited program, States must make sure that they offer adequate services so that families can successfully move from welfare to work.

Comment: A commenter asked whether the State should count towards the time limit any months when the adult is ineligible, but the rest of the family receives assistance.

Response: The only months that count toward the time limit are months when a family member who is the head-of-household or the spouse of the head-of-household receives assistance. Thus, for example, if the family is comprised of a mother and her infant, and the mother is not receiving TANF assistance because she is receiving SSI or because she is an ineligible alien, the months when only her child receives TANF assistance do not count toward the time limit.

Comment: Some commenters asked how the time limit applies when children receive assistance, but the caretaker relative does not.

Response: Assuming that, in this situation, the head-of-household and the spouse of the head-of-household are not receiving TANF assistance, the months when the children receive assistance do not count toward the time limit.

Comment: A few commenters asked whether months count toward the time limit when a family is subject to a full-family sanction.

Response: Any months when the State imposes a full-family sanction, and no one in the family is receiving TANF assistance, do not count towards the Federal time limit. Only months for which an adult or minor head-of-household or spouse of the head-of-household receive assistance count. However, if it wishes to, a State may count such months towards its State time limit.

Comment: Another commenter asked whether months count toward the time limit when one member of a family is sanctioned.

Response: If an adult is sanctioned, and no one who is the head-of-household or the spouse of the head-of-household is receiving TANF assistance, the Federal time limit does not apply. However, if the head-of-household or the spouse of the head-of-household continues to receive assistance while another individual is being sanctioned or the effect of the sanction is to reduce benefits to the family as a whole without denying assistance to any individual member of the family, the Federal time limit does apply.

If the State wishes to count the months when a sanction applies to a family, it may count such months toward its State time limit even if it cannot count them towards the Federal time limit.

Comment: A commenter asked how the time limit applies when a family begins to receive assistance mid-month or if the State provides assistance semi-monthly.

Response: Whenever a family receives any TANF assistance for a month, whether it covers a whole month's worth of assistance or is a partial payment, that month counts toward the Federal time limit unless the exceptions in § 264.1(b) apply.

Comment: Another commenter stated that we should inform a State if its

policies are improper or will lead to a penalty.

Response: When a State submits its TANF State plan, we review it to determine whether the plan is complete. We also identify potential problem areas and share our comments with the State. Thus, the more detail a State submits in its plan, the more feedback the State will receive on its policies and procedures. At the same time, we advise the State that our finding that the TANF plan is complete does not constitute our endorsement of State policies.

Comment: A commenter asked whether receipt of TANF assistance by a noncustodial parent would affect the custodial parent and the children.

Response: In order for an individual to receive TANF assistance as a noncustodial parent, a State must consider that parent to be a member of the family. Only the months for which a parent receives TANF assistance as the head-of-household or the spouse of the head-of-household count toward the time limit. As defined at § 260.30, a noncustodial parent cannot be the head-of-household, since he or she does not live in the same household as the child. Therefore, the months a noncustodial parent receives assistance would not count unless he or she is the spouse of the head of the household.

We note that an individual can have more than one status and the above answer applies only to an individual receiving assistance as a noncustodial parent. An individual who is the noncustodial parent of one TANF child, could also be the custodial parent of another TANF child or the head-of-household for another TANF case; if he or she receives assistance as part of such a second family, it would count towards that second family's time limit.

Comment: A commenter asked us to clarify when receipt of TANF assistance by a pregnant teen or a teen parent would count toward the five-year time limit.

Response: The months count when a pregnant teen or teen parent receives TANF assistance while he or she is the head-of-household or the spouse of the head-of-household.

Comment: Another commenter argued that the statute does not provide the authority for us to impose time limits on a minor head-of-household or minor spouse of a head-of-household who is not pregnant and is not a parent.

Response: The commenter is correct. The months for which a minor head-of-household or minor spouse of a head-of-household who is not pregnant and is not a parent receives TANF assistance do not count toward the time limit.

Comment: Commenters asked us to clarify when assistance provided under the Welfare-to-Work program counts toward the Federal time limit. One commenter expressed the opinion that WtW should not count. Another commenter asked us to define WtW cash and noncash assistance.

Response: Under the statute, noncash assistance provided under WtW never counts toward the Federal 60-month time limit. Months for which WtW cash assistance is received do count if the assistance is received by a member of the TANF family who is the head-of-household or the spouse of the head-of-household. However, individuals who have received 60 months of assistance may continue to receive WtW assistance and other benefits.

Because of the interest in this issue, we have included a definition of WtW cash assistance at a new § 260.31. See the preamble for that section for additional discussion of that definition.

As previously discussed, the policies on counting WtW and TANF assistance apply to noncustodial parents. Receipt of WtW cash assistance or TANF assistance by a noncustodial parent, in his or her status as a noncustodial parent, does not count against the time limit unless he or she is the spouse of the head-of-household. If the noncustodial parent is the spouse of the head-of-household and is included by the State in its definition of a TANF family, such parent's receipt of WtW cash assistance or TANF assistance does count against the time limit. However, if the noncustodial parent is not included in the State's definition of a TANF family (e.g., he is receiving assistance as part of another family), his receipt of WtW cash assistance does not count towards the Federal TANF time limit for the family composed of the custodial parent and their children in common.

Comment: A commenter asked whether months when assistance is received under a Tribal TANF program count toward the Federal five-year time limit.

Response: Months for which a family received assistance under an approved Tribal Family Assistance Plan count toward the five-year time limit under both State and Tribal TANF programs. Under the provisions of section 408(a)(7), the five-year limit applies to TANF assistance provided with Federal TANF funds under part A of title IV of the Act. This includes assistance provided by Tribal TANF programs. However, there is an exception under § 264.1(b)(1)(ii) for months when an adult lived in Indian country or Native Alaskan Village with high unemployment.

Comment: A commenter asked whether the clock stops while an individual is in drug treatment so that she will be job ready.

Response: The clock does not stop. The clock stops only because of the factors listed in § 264.1(b).

Comment: Another commenter asked whether a State can exempt from the time limit a family with old or disabled parents or caretakers.

Response: A family cannot be exempted from the time limit on this basis. Months when a family receives assistance can be disregarded only according to the factors listed in § 264.1(b). However, once the family has received assistance for 60 months, the State can continue to provide assistance on the basis of hardship. The State can also choose to provide assistance with State-only funds.

Comment: A number of commenters were opposed to our provisions that attempted to restrict a State from excluding families from the time limit by including child-only cases in its definition of family and diverting families to separate State programs. The commenters also opposed our proposal to require States to report on the number of families excluded.

Response: We agree that we should not limit a State's ability to determine which families they will serve under TANF and that we should not assume that a State is attempting to circumvent the statute. Accordingly, we have removed these provisions from the final rules. We also removed the requirement for separate reporting of child-only cases. You can find additional discussion on this issue in the earlier preamble discussion entitled ''Child-Only Cases.''

Comment: While one commenter agreed with our position in the NPRM, a number of commenters argued that States should be able to stop the clock for hardship or domestic violence, or because individuals in the family are unable to participate in work activities before the family has received assistance for 60 months.

Response: We do not believe that the statute envisions stopping the clock for hardship or for any reasons other than those listed in § 264.1(b). Section 408(a)(7)(C) of the Act exempts families from being terminated from TANF assistance once they reach the 60-month limit; it does not exempt them from accruing months toward the limit. The statute permits States to continue to provide assistance to families beyond the 60-month limit based on hardship or because a family member has been

subjected to battery or extreme cruelty. However, as we discussed in the preamble section entitled ''Treatment of Domestic Violence Victims,'' we have revised the final rules to recognize a broader array of good cause domestic violence waivers to extend the time limit in determining whether a State that exceeds the 20-percent limitation will receive penalty relief. Accordingly, States may be able to extend the time limits for additional families, including victims of domestic violence.

Comment: A commenter asked how the 20-percent hardship extension applies when a State has a shorter time limit than 60 months.

Response: A State with a shorter time limit can establish its own policies for extending assistance under its State time limit. The State can extend assistance beyond its (shorter) time limit based on hardship or for other reasons. However, if a State extends its time limit and continues to provide assistance to a family, the additional months count toward the Federal time limit as they ordinarily would.

Comment: Some commenters expressed the view that our provisions for how States' section 1115 waivers affect the time limit are confusing and improper.

Response: We have made some minor adjustments to these provisions. Please refer to subpart C of part 260 and the earlier preamble discussion entitled ''Waivers.''

Section 264.2—What Happens if a State Does Not Comply with the Five-Year Limit? (§ 274.2 of the NPRM)

Congress created the penalty under section 409(a)(9) to ensure that States comply with the five-year restriction on the receipt of federally funded TANF assistance. If we determine that a State has not complied with the five-year time limit during a fiscal year, then we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

Five years is the maximum period of time permitted under the statute for families to receive federally funded TANF assistance. Therefore, the penalty under this section does not apply if the State exceeds any shorter time limits on the receipt of federally funded assistance that it may choose to impose. It also does not apply to any time limits on receipt of State-funded assistance or the receipt of noncash WtW assistance.

In defining the requirement, section 409(a)(9) refers to section 408(a)(7). This latter section identifies the circumstances under which assistance may be provided for longer than five years. It provides exceptions to the time-limit requirement for minors, hardship, or families living in Indian country or in an Alaskan Native village with adult unemployment above 50 percent. Therefore, we will take into account the exceptions described under paragraphs (B), (C), or (D) of section 408(a)(7) when deciding whether the State complied with the five-year time limitation. We will use the information required to be reported in part 265 to learn whether a State is complying with the five-year time restriction on the receipt of federally funded assistance.

We do not intend to hold States immediately accountable for knowing about and verifying all months of assistance received in other States, since we are aware that, in general, States' data processing systems are not currently capable of accomplishing interstate tracking of the number of months an individual has received TANF assistance.

We received a few comments on this section, as discussed below. We made only one minor editorial change to the regulations. This change clarifies that, if a State failed to comply with the time-limit requirements, in order to avoid a penalty, it must demonstrate to our satisfaction that it had reasonable cause, or it must correct or discontinue the violation under the provisions of an approved corrective compliance plan.

Comment: A couple of commenters asked for guidance on how States should count months when a family received assistance in another State. Other commenters asked us to regulate that States will not be held accountable for knowing about a family's receipt of TANF assistance in another State.

Response: Each State must keep track of the number of months it provides TANF assistance that count towards the Federal time limit. As part of its application process, a State should ask a family whether it has lived in any other States. If the family has, the new State should contact the other State(s) to find out whether the family received assistance that counts toward the Federal time limit. We expect a State to do its best to gather this information, but will not hold the State accountable if its information about what happened in another State is not accurate, as long as the State has made a good faith effort to gather complete and accurate information. We have decided not to include this specific guidance in the regulations because our expectations for State accountability will change over time as technology improves and the State's ability to do interstate tracking of families increases.

Comment: A commenter asked whether a State with a State time limit that is shorter than the Federal time limit would be penalized if it fails to meet the requirements of its State time limit.

Response: The penalty at § 262.1(a)(9) only applies if the State fails to meet the Federal five-year time limit.

Section 264.3—How Can a State Avoid a Penalty for Failure to Comply With the Five-Year Limit? (§ 274.3 of the NPRM)

In § 262.5, we include general circumstances under which we may find reasonable cause to waive potential penalties. We also will consider an additional factor in determining whether there is reasonable cause for failure to meet the five-year limit. The additional factor relates to a State's implementation of the Family Violence Option and its provision of temporary waivers of time limits, when necessary, for victims of domestic violence.

We will grant a State reasonable cause for failing to meet the 60-month time limit, if it adequately demonstrates that it has exceeded the 20-percent limitation on exceptions because it granted individuals federally recognized good cause domestic violence waivers pursuant to subpart B of part 260. To qualify for reasonable cause based on this factor, a State would have to show that, if families with such waivers were disregarded, the number of families that received assistance did not exceed 20 percent. A State must substantiate its case for all claims of reasonable cause.

You can find additional discussion of our domestic violence policies in the preamble section entitled ''Treatment of Domestic Violence Victims.''

We received a number of comments on this section and made changes to the regulations, as discussed below.

Comment: Several commenters asked us to permit States to claim reasonable cause based on additional factors, such as the State's good faith effort to comply with the time limit, a hard-to-serve population, high unemployment or other adverse economic conditions, and other factors that are beyond the control of the State.

Response: As we discussed in the preamble to § 262.5, we believe it is sounder policy to encourage a State to correct problems and find solutions than to excuse a State's inability to meet the statutory requirements. Accordingly, we are not adding reasonable cause factors that we will consider if a State fails to meet the time-limit requirement of the statute. (However, we have revised the language at § 262.5 to allow more discretion to grant reasonable cause when a State faces special, unforeseen circumstances.)

Comment: A number of commenters also argued that we should not link the reasonable cause factor for federally recognized good cause domestic violence waivers to the victim's ability to work and that other changes should be made to the provision.

Response: We have addressed these comments in subpart B of part 260 and the preamble discussion entitled ''Treatment of Domestic Violence Victims.''

Section 264.10—Must States Do Computer Matching of Data Records Under IEVS To Verify Recipient Information? (§ 274.10 of the NPRM)

Congress originally established the Income and Eligibility Verification System (IEVS) in 1984 under section 1137 of the Act. PRWORA created a penalty at section 409(a)(4), requiring the reduction of a State's SFAG for the immediately succeeding fiscal year by up to two percent if a State is not participating in IEVS.

The IEVS provision was intended to improve the accuracy of eligibility determinations and grant computations for the public assistance programs (AFDC, Medicaid, Food Stamp and SSI). It achieves this goal by expanding access to, and exchanges of, available computer files to verify client-reported earned and unearned income. Specifically, it makes the following files available to the State public assistance agencies: (1) IRS unearned income; (2) State Wage Information Collection Agencies (SWICA) employer quarterly reports of income and unemployment insurance benefit payments; (3) IRS earned income maintained by the Social Security Administration (SSA); and (4) with the passage of the Immigration Control and Reform Act of 1986, immigration status information maintained by the Immigration and Naturalization Service (INS).

Currently, regulations at §§ 205.51 through 205.62 and the statute at section 1137(d) describe what is meant by ''participating * * * in the income and eligibility verification system required by section 1137.'' The regulation at § 205.60(a) requires each State to maintain statistics on its use of IEVS. In general, ''participation'' means that a State agency submits electronic requests to IRS, SWICA, SSA and INS for information listed in the preceding paragraph, for all TANF applicants and recipients. IRS, SWICA, SSA and INS provide the State agencies with an electronic response regarding the information requested. The frequency of the request and the timeliness of the response is a function of the data processing systems design of the responding agency. The State agency worker compares the information in the response to determine the accuracy of client reporting of case circumstances.

We received comments from two parties, which did not result in any changes to the regulation. However, we did make a change based on our internal review. INS has stated its view that Federal departments are no longer authorized to grant waivers to States to exempt certain programs from verifying alien eligibility through the SAVE system. (See 63 FR 41662, August 4, 1998.) Therefore, we removed the parenthetical in the proposed rule at paragraph (a)(4) referencing such waivers.

One of the commenters expressed the view that the proposed rule is consistent with the TANF statutory provisions. We discuss the other comments and our responses below.

Comment: A commenter argued that requiring data matches for all TANF applicants and recipients is not cost effective and should not be performed.

Response: The statute at section 1137 and the implementing regulations at §§ 205.51 through 205.62 provide that the State must request data matches for the entire TANF caseload.

Comment: The commenter asked whether we would permit targeting procedures for data matches based on cost effectiveness.

Response: States may use targeting procedures that govern the use of data matches. Paragraph 1137(a)(4)(C) of the Act states, ''The use of such information shall be targeted to those uses that are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility for all recipients.'' The implementing regulation at § 205.56(a)(1) continues to permit States to exclude categories of information from a follow-up review. States perform reviews after the data matches and compare information obtained from the match with the case record to determine if it affects an applicant's or recipient's eligibility or the amount of payment.

Comment: The commenter also expressed disagreement with the definition of participation for ''all TANF applicants and recipients'' (e.g., naturalized citizens do not require a match with INS).

Response: We recognize that States are not required to perform a data match with the Immigration and Naturalization Service (INS) for naturalized citizens. The data match with INS is only required for alien applicants and recipients.

Section 264.11—How Much Is the Penalty for Not Participating in IEVS? (§ 274.11 of the NPRM)

Since IEVS has been in existence for more than 12 years, we believe that States have had sufficient time to become full participants in IEVS. Therefore, we will impose the maximum two-percent penalty upon all findings that a State is not participating in IEVS.

We will use an audit pursuant to the Single Audit Act as the primary means of monitoring a State's IEVS participation. We will also use statistics maintained by the State, as required by § 205.60(a), as another source of information and may conduct additional Federal reviews or audits as needed.

We received few comments on this section. We discuss the comments and our responses below. We made no changes to the regulations.

Comment: A few commenters expressed concern that we were not clear in the proposed rule about how we will determine a State's nonparticipation in IEVS and the amount of the penalty. Another commenter argued that the amount of the penalty in proposed regulation needs to be amended to comport with the provisions of the Act.

Response: We will determine a State's nonparticipation in IEVS by an audit pursuant to the Single Audit Act. Specific auditing procedures for evaluating participation in IEVS are included in the Compliance Supplement to OMB Circular A–133. Anyone interested in the auditing procedures should review the Compliance Supplement for further information.

Since the statute allows us to regulate a penalty of ''not more than 2 percent,'' we could establish a penalty of less than two percent. However, we feel that a penalty of two percent is appropriate given that IEVS has been in effect for over 12 years and States have had ample time to come into compliance.

Comment: Some commenters suggested that we should impose a reduced penalty of less than two percent if the failure to operate IEVS was inadvertent, isolated, or of a technical nature. A few commenters indicated that the proposed rule is consistent with the TANF statutory requirements.

Response: If a State fails to meet the IEVS requirements, it may claim reasonable cause and/or submit a corrective compliance plan under part 262. Under these provisions, a State might be able to demonstrate that we should forgive or reduce its penalty under the types of situations mentioned by the commenters.

Section 264.30—What Procedures Exist to Ensure Cooperation With Child Support Enforcement Requirements? (§ 274.30 of the NPRM)

One of TANF's purposes is to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. Another is to end the dependence of needy parents on government benefits by promoting job preparation, work, marriage, and parental responsibility. A third is to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families. Child support enforcement provides an important means of achieving all of these goals.

The law has long recognized that paternity establishment is an important first step toward self-sufficiency in cases where a child is born out of wedlock. The earlier paternity is established, the sooner the child may have a relationship with the father and access to child support, the father's medical benefits, information on his medical history, and other benefits resulting from paternity establishment. Establishment of paternity may also help establish entitlement to other financial benefits, including Social Security benefits, pension benefits, veterans' benefits, and rights of inheritance. Accordingly, establishing paternity and obtaining child support from the noncustodial parent are critical components of achieving independence.

To ensure that a legal relationship protecting the interests of the children is established quickly and in accordance with State law, the TANF (IV–A) agency must refer all appropriate individuals in the family to the Child Support Enforcement (IV–D) agency for paternity establishment and/or services needed to establish, modify, and enforce a child support order. Referred individuals must cooperate in establishing paternity and in establishing, modifying or enforcing a support order for a child.

The IV–D agency determines whether the individual is cooperating with the State as required. If the IV–D agency determines that an individual has not cooperated, and the individual does not qualify for any good cause or other exception established by the State, the IV–D agency will notify the IV–A agency promptly. The IV–A agency must then take appropriate action.

In cases of noncooperation, the IV–A agency must either deduct from the assistance an amount no less than 25 percent of the amount of the assistance that otherwise would be provided or deny the family assistance under the TANF program.

We received a few comments on the provisions in this section and made some modest changes to the regulations, as discussed below.

Comment: Several commenters suggested that we clarify agency responsibilities for making the good cause determination. They stated that the proposed preamble and regulation did not make it clear that the statute provides States with a choice about whether the TANF (IV–A) or IV–D agency determines good cause. One State recommended that the final regulations allow for IV–D agencies to negotiate with IV–A TANF agencies to determine good cause for noncompliance.

Response: We agree that States have discretion in this area. As provided in section 454(29)(A) of the Act, the title IV–A, IV–D or XIX (Medicaid) agency may determine whether the individual has good cause for not cooperating in establishing paternity or fulfilling any other cooperation requirement. The selection of the responsible agency is at the option of the State IV–D agency. We have revised the regulatory language at § 264.30(b) to clarify this point. We have also revised the language in § 264.30(b) to explicitly recognize that victims of domestic violence could receive waivers of child support cooperation requirements if a State has adopted the Family Violence Option.

Comment: Many commenters expressed concern that the use of the term ''appropriate individual,'' used to indicate who must cooperate, suggests that Federal law requires cooperation by nonparents. They suggested that we modify the provision to clarify that Federal law mandates cooperation only with respect to parents who apply for TANF assistance for their own children.

Response: We agree with the commenters that Federal law does not require cooperation by other individuals. However, the language in the proposed rule recognized that it might be appropriate to require cooperation by other caretakers who have access to information that could be used to establish paternity or obtain child support on behalf of the child. Since we believe States should have some discretion to require cooperation in these cases, we have chosen to leave the term ''appropriate individuals'' in the regulation. At the same time, we would point out that other individuals would not ordinarily have the same level of information about the absent parent as a parent would. Thus, we would expect States to develop procedures that recognize this difference and apply a different standard in determining cooperation by nonparents.

Comment: One commenter suggested that it was unnecessary to include the language ''for whom paternity has not been established'' in either the preamble or the regulation since even if paternity was previously established, the IV–D agency must carry out child support enforcement activities, such as enforcing and modifying child support orders for children whose paternity has already been established.

Response: We disagree. Section 409(a)(5) specifically mentions cooperation in establishing paternity. We would note that the language in § 264.30(a) covers the other situations mentioned by the commenter, especially where it says ''* * * or for whom a child support order needs to be established, modified or enforced. * * *''

Comment: Several commenters recommended that we mandate a set of notice and procedural requirements for cooperation that States would need to include in their systems. One commenter suggested that we should not allow a State to impose sanctions unless there is verification that the agency has met its duty of notifying recipients. Others felt that: (1) The notices should inform TANF applicants and recipients about the cooperation requirement and the good cause and other exceptions; (2) there should be a mechanism by which an individual who has been referred to the IV–D agency for child support services can make a claim for an exemption from the cooperation requirement if it appears that one is needed; (3) there should be an interface between the IV–A and IV–D agencies when the State has set up a system in which the IV–A agency makes the ''good cause'' determinations and the IV–D agency makes cooperation decisions; and (4) an individual should be informed about a noncooperation decision and how to appeal such a decision.

Response: The statute does not give us the authority to require specific notice and procedural criteria from States. However, as the cooperation requirement is not new, States already have administrative processes in place that support fair and equitable treatment of individuals, including notices of certain requirements under this section. States are required to submit State plans that describe individual State program operations and requirements. Child Support is one of the plans required.

Section 264.31—What Happens if a State Does Not Comply With the IV–D Sanction Requirement? (§ 274.31 of the NPRM)

In accordance with section 409(a)(5), we will impose a penalty of up to five percent of the adjusted SFAG if the IV–A agency fails to enforce penalties requested by the IV–D agency against individuals who fail to cooperate without good cause. We will monitor State adherence to this requirement primarily through the single audit process.

Although States had been required to establish paternity and enforce other child support provisions for several years, and States already had systems and procedures in place for dealing with these requirements, the division of responsibility between the IV–A and IV–D agencies changed slightly under PRWORA.

We decided to increase the amount of the penalty gradually in order to give States the opportunity to make procedural adjustments before they are subject to the impact of the maximum penalty. We will impose a penalty of one percent for the first violation and two percent for the second. However, since this is not an entirely new requirement, we will apply the maximum penalty of five percent for the State's third, and any subsequent, violation of this provision.

We received two comments specifically addressing the provisions in this section. As a result, we made some minor changes to the regulations, as discussed below.

Comment: One commenter suggested that individuals who receive waivers from the child support cooperation requirements pursuant to the Family Violence Option (FVO) should also be exempt from sanction and should not be considered in determining the need for a penalty under this subsection.

Response: Although a separate section of the Act authorizes waivers under the FVO for victims of domestic violence, the purpose of these waivers and the regular good cause exceptions from child support cooperation are similar, i.e., to protect families that face special risks from inappropriate requirements and sanctions. We encourage States to establish an administratively efficient process to coordinate these two determinations. Coordinating them should help States minimize duplication of effort, avoid confusion and jurisdictional problems, and treat families in similar circumstances consistently. (See § 260.57 for additional discussion of FVO waivers and sanction policies.)

Comment: One commenter suggested we add a further criterion to specify that we will not penalize a State if the violations were de minimus.

Response: We believe that the reasonable cause criterion at § 262.5(a)(3) adequately covers such situations.

Section 264.40—What Happens if a State Does Not Repay a Federal Loan? (§ 274.40 of the NPRM)

Section 406 permits States to borrow funds to operate their TANF programs. In general, States must use these loan funds for the same purposes as other Federal TANF funds. However, the statute also specifically provides that States may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of an Indian Tribe operating a Tribal TANF program.

States have three years to repay loans and must pay interest on any loans received. Our Office of Administration has issued an Action Transmittal, OFA–TANF–98–2, dated February 3, 1998, notifying States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for States that do not repay loans provided under section 406. If the State fails to repay its loan in accordance with its agreement with ACF, we will reduce the adjusted SFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed.

Sections 409(b)(2) and 409(c)(3) provide that States cannot avoid this penalty either through reasonable cause or corrective compliance.

We received no comments on the provisions in this section. Therefore, the final rule incorporates the proposed policy.

Section 264.50—What Happens if, in a Fiscal Year, a State Does Not Expend, With Its Own Funds, an Amount Equal to the Reduction to the Adjusted SFAG Resulting From a Penalty? (§ 274.50 of the NPRM)

Section 409(a)(12) requires States to expend, under the TANF program, an amount equal to the reduction made to its adjusted SFAG as a result of one or more of the TANF penalties. Thus, States must maintain a level of TANF spending that is equivalent to the funding provided through the SFAG, even if we reduced their Federal funding as a result of penalties. If a State fails to expend its own funds to pay for State TANF expenditures in an amount equal to the reduction made to its adjusted SFAG for a penalty under § 262.1, we will reduce the State's SFAG for the next fiscal year by an amount equal to not more than two percent of its adjusted SFAG, plus the amount that the State should have expended (reduced for any portion of the required amount actually expended by the State in the fiscal year).

As discussed in § 262.3, we will monitor closely a State's efforts to replace the reduced SFAG with its own expenditures. A State must not diminish its investment in its TANF program as a result of actions violative of the TANF requirements. Therefore, if a State fails to make any expenditures in the TANF program to compensate for penalty reductions, we will penalize the State in the maximum amount, i.e., two percent of the adjusted SFAG plus the amount it was required to expend. We will reduce the penalty based on the percentage of any expenditures that the State does make.

For example, a State was required to replace an SFAG reduction of $1,000,000, but its increase in expenditures equalled only $400,000. Since it failed to repay $600,000, its penalty would be equal to two percent of the adjusted SFAG times 60 percent (because $600,000 is 60 percent of $1,000,000), plus the $600,000 that it failed to expend as required.

States should note that if they do not expend State-only funds as required, the effect will be that the amounts to be deducted from the SFAG will compound yearly, as the penalty for failure to replace SFAG funds with State expenditures also applies to the penalty at § 262.1(a)(12). We believe that this is appropriate because full resources must be available to ensure that the goals of the TANF program are met.

Pursuant to section 409(a)(12), State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be expenditures made under the State TANF program, not under ''separate State programs.'' Further, as noted in § 263.6, regarding the limits on MOE expenditures, State expenditures made to replace reductions to the SFAG as a result of penalties do not count as basic MOE expenditures.

In addition, the statute provides that the reasonable cause and corrective compliance plan provisions do not apply to the penalty for failure to replace SFAG reductions.

We received a few comments on this section. These comments resulted in changes, as discussed below.

Comment: A commenter asked if a State's replacement of funds must occur in the quarter following the imposition

of the penalty or in the next fiscal year. The commenter preferred replacement during the next fiscal year because of differences in State appropriation cycles. Another commenter suggested that the proposed rule did not comport with the language of the statute.

Response: We agree with the comments. We have revised the regulatory language at § 264.50 to reflect the sequence of penalty actions as contained in the statute at section 409(a)(12). When we withhold Federal TANF funds during a fiscal year, the State must replace them with State funds during the subsequent fiscal year. If the State fails to replace the funds during the subsequent year, then we can withhold an additional penalty during the year that follows the subsequent year. The starting point for this sequence of actions is the fiscal year in which we impose a penalty by reducing the adjusted SFAG.

Comment: A commenter recommended that we allow reasonable cause and corrective compliance when a State fails to expend its own funds to replace a reduction in the adjusted SFAG caused by other penalties.

Response: The statute prohibits reasonable cause or corrective compliance when a State fails to replace the reduction to its SFAG due to the imposition of other penalties.

Comment: One commenter suggested that we should allow States to expend the replacement funds on State-only programs that serve the TANF population.

Response: Section 409(a)(12) explicitly refers to ''the State programs funded under this part,'' which means the TANF program established under title IV–A of the Act. Separate State programs, funded exclusively with State funds, are not part of the State TANF program funded under title IV–A of the Act.

Subpart B—What Are the Requirements for the Contingency Fund?

In addition to the TANF funding they receive under section 403(a) of the Act, States may receive funding from the Contingency Fund under section 403(b). This fund was created in response to concerns related to the use of block grant funding for TANF and the end of entitlement and open-ended Federal funding of welfare assistance that existed under the AFDC program. The purpose of the Contingency Fund is to make additional Federal TANF funds available to States, at their request, for periods when unfavorable economic conditions threaten their ability to operate their TANF programs. The Fund was established to create a pool of Federal TANF funds that could be provided to needy States with economic problems.

We received several comments on the Contingency Fund sections of the NPRM. Most of the commenters asked us to make the preamble and regulations more consistent and less confusing, and to provide further clarification of the provisions. As a result, we have revised all of subpart B, restructured the sections, and amended our discussion of the provisions. Also, we have changed many of the section headings to make them clearer and to eliminate duplication. Whenever possible, we reference the sections that we used in the NPRM to make it easier for the reader. We hope that we have succeeded in making improvements and that the Contingency Fund provisions are now easier to understand. However, we have not made substantive changes to the underlying policies or procedures of this subpart because the proposed regulatory provisions closely followed the statute.

In addition to the changes we made in response to comments, we eliminated a discussion on ''Meeting FY 1997 MOE Requirements'' that was included at the end of the preamble to subpart B of part 274 of the NPRM. We believe that it is no longer necessary to include this specific discussion about the handling of the Contingency Fund in FY 1997.

This final rule also differs from the NPRM in that we added information about the overall adjustment of the Contingency Fund, and the additional remittances of contingency funds that will be due from States, that are required by the Adoption and Safe Families Act of 1997, which was enacted just as the NPRM was about to be published.

Section 264.70—What Makes a State Eligible To Receive a Provisional Payment of Contingency Funds? (New Section)

As noted in the definitions at § 260.30, the term ''Contingency Fund'' refers to the Federal TANF funds that a State may receive under section 403(b). It does not refer to any required State expenditures.

To receive a provisional payment of contingency funds, a State must qualify as a needy State for one or more months in a fiscal year. A needy State may request contingency funds in accord with the process delineated in program instruction TANF–ACF–PI–97–8, dated October 27, 1997. This program instruction provides guidance to States on the requirements for receiving contingency funds and instructions for applying for these funds.

A State is a ''needy State'' if it meets either the ''unemployment trigger'' or the ''Food Stamp trigger'' for an ''eligible month.''

To be eligible for contingency funds under the unemployment trigger, the State's average unemployment rate for the most recent three-month period must be at least 6.5 percent and at least equal to 110 percent of the State's unemployment rate for the corresponding three-month period in either of the two preceding calendar years.

To be eligible for contingency funds under the Food Stamp trigger, a State's monthly average of individuals participating in the Food Stamp program (as of the last day of each month) for the most recent three-month period must exceed its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995 by at least ten percent, assuming that the immigrant provisions under title IV and the Food Stamp provisions under title VIII of PRWORA had been in effect in those years.

The statute defines an eligible month as a month in a two-month period that begins with any month for which the State is determined to be a needy State. Once a State becomes a needy State for any given month (by meeting either the unemployment or Food Stamp triggers) and elects to receive contingency funds, it will receive a provisional payment for a two-month period. Based on the statutory definition of an eligible month, a determination that a State is a needy State for a month makes that State eligible to receive a provisional payment of contingency funds for two consecutive months, at the State's option.

Territories and Tribal TANF grantees are not eligible to participate in the Contingency Fund. Section 403(a)(7) provides that only the 50 States and the District of Columbia are eligible.

Section 264.71—What Determines the Amount of the Provisional Payment of Contingency Funds That Will Be Made to a State? (New Section)

The amount of contingency funds paid to a State is considered to be provisional because the actual amount that the State is eligible to receive is not determined when the payment is made, but, rather, after the fiscal year ends. As we discuss in § 264.73, a State that received contingency funds must complete an annual reconciliation to determine whether it must remit some or all of the contingency funds it received.

For each month of the fiscal year that it meets the eligibility criteria in § 264.70, a State may receive up to 1/12th of 20 percent of its annual SFAG allocation. The actual amount of funds that a State may realize from the Contingency Fund will vary, depending on the level of State expenditures, the number of months that it is eligible, and the total number of States receiving contingency funds. States eligible in one month may automatically receive a payment for the following month.

We will provide contingency funds to each State that requests them, in the order in which we receive the requests, until the available appropriated funds are exhausted.

Section 264.72—What Requirements Are Imposed on a State if It Receives Contingency Funds? (New Section)

In order to be eligible for contingency funds, a State must make expenditures in its TANF program, from State funds, at the required Contingency Fund MOE level. The required Contingency Fund MOE level is 100 percent of the State's historic State expenditures for FY 1994.

To keep any of the contingency funds it received, a State must exceed the Contingency Fund MOE level requirement. A State may keep only the amount of contingency funds that match, at the applicable Federal Medical Assistance Percentage (FMAP) rate, countable State expenditures, as defined in § 264.0, that are in excess of the required Contingency Fund MOE level, reduced by the proportionate remittance required by the Adoption and Safe Families Act of 1997. Because of the reconciliation formula, it is possible that a State may not be able to keep any of the contingency funds it received. Please refer to the discussion of § 264.73 on the annual reconciliation for more information.

You should note that the Contingency Fund MOE requirement is different from the basic MOE requirement. An obvious difference is that the basic MOE requirement is 80 percent (or 75 percent if a State meets its participation rates) of historic State expenditures, while the Contingency Fund MOE requirement is 100 percent of historic State expenditures. Another difference is that, in determining the Contingency Fund MOE level, expenditures for child care must be excluded. Finally, expenditures in separate State programs also must be excluded in determining countable expenditures.

This means that States cannot meet the Contingency Fund MOE requirement merely by increasing State expenditures by 20 (or 25) percent. The calculations for determining compliance with the basic MOE requirements and for determining eligibility for the Contingency Fund are different. For example, Contingency Fund MOE expenditures must be expenditures within TANF. Expenditures made under separate State programs do not count for this purpose. However, most MOE expenditures that a State makes within its TANF program for eligible families may count as both Contingency Fund MOE expenditures and as basic MOE expenditures.

As we discuss in § 264.73, each State that receives contingency funds is required to complete an annual reconciliation to determine what portion of the contingency funds it may retain and what portion it must remit.

The statute provides that a State need not remit contingency funds until one year after it has failed to meet either the Food Stamp trigger or the unemployment trigger for three consecutive months. Thus, a State may retain these funds for at least 14 months after it receives them. (However, the period of time between the annual reconciliation and the remittance date may be shorter.)

For example, if a State fails to meet either trigger for the months of July, August, and September, 1997, it has until September 30, 1998, to remit the funds. The State must include its annual reconciliation for contingency funds received in FY 1997 in its fourth quarter Financial Report for FY 1997, due November 14, 1997.

In general, contingency funds may be used for the same purposes as other Federal TANF funds. However, contingency funds are available only for qualifying expenditures made in the fiscal year in which the State receives the funds. States may not use funds received in a given fiscal year for expenditures made in either the subsequent fiscal year or a prior fiscal year. Unlike TANF funds under section 403(a), contingency funds are not available until expended.

Since contingency funds are Federal TANF funds, they are generally subject to the same requirements as other Federal TANF funds. For example, a State cannot use contingency funds to pay a family if the family has already received Federal assistance for 60 months, unless the family has received an exception under § 264.1. (See the discussion in § 263.21 on ''Misuse of Federal TANF Funds'' for additional information.)

However, unlike the TANF funds that they receive under section 403(a), States cannot transfer contingency funds (provided under section 403(b)) to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and/or the Social Services Block Grant Program under title XX of the Act. Section 404(d) of the Act permits the transfer of funds received pursuant to section 403(a) only.

Section 264.73—What Is an Annual Reconciliation? (New Section)

The purpose of the annual reconciliation is to determine the amount of contingency funds that a State is permitted to retain for a fiscal year. The annual reconciliation involves computing the amount by which the State's countable State expenditures exceeds the State's required Contingency Fund MOE level, as contingency funds match only these excess expenditures. If the countable expenditures exceed the required Contingency Fund MOE level, then the State may be entitled to all or a portion of the contingency funds paid to it. However, even if its countable expenditures exceed its required Contingency Fund MOE level, it is possible that the provisions of the Adoption and Safe Families Act of 1997, amending section 403(b)(6), will have a major impact on the amount of contingency funds that a State is permitted to retain. In fact, it may prevent a State from retaining any contingency funds.

Each State that received contingency funds is required to perform certain calculations to accomplish the annual reconciliation. First, it must determine whether it met its required Contingency Fund MOE level. If it did not, it must remit all of the contingency funds it received.

If it met its Contingency Fund MOE requirement, the State must also perform the following steps to determine how much of the contingency funds it is permitted to retain:

(1) Calculate the sum of the amount of the qualifying State expenditures plus the amount of contingency funds that the State expended, minus its required Contingency Fund MOE level.

(2) Multiply the amount arrived at in step (1) by the State's FMAP rate applicable for the fiscal year in which contingency funds were awarded.

(3) Multiply the amount arrived at in step (2) by 1/12 times the number of months during the fiscal year for which the State received contingency funds.

(4) Compare the amount arrived at in step (3) with the amount of contingency funds paid to the State during the fiscal year, and determine the lesser amount.

(5) From the amount arrived at in step (4), subtract the State's proportionate

remittance for the overall adjustment of the Contingency Fund, as required by the Adoption and Safe Families Act of 1997.

The Adoption and Safe Families Act of 1997 reduced the Contingency Fund appropriation over the four-year period from FY 1998 through FY 2001. All States receiving contingency funds in these years must remit additional funds in order to share in the adjustment proportionately. The remittance amounts of all States drawing from the Contingency Fund will be increased by proportional shares totaling $2 million in FY 1998, $9 million in FY 1999, $16 million in FY 2000, and $13 million in FY 2001. Thus, the fewer the number of States receiving contingency funds, the higher each proportionate share of the adjustment will be, and the more each State will have to remit. ACF will determine the amount of each State's proportionate remittance and will provide this information to the State for it to use in its annual reconciliation calculations.

A State should also note that if it was eligible for, and received, contingency funds for fewer than 12 months during the fiscal year, the effective Federal matching rate for contingency funds will be less than its FMAP rate for the fiscal year. The effective rate is lower because the statute creates a reconciliation step that reduces the total Federal matching by 1/12 times the number of eligible months in the year.

Below we provide an example for FY 1998 that requires the remittance of funds. Assume the following information:

A State received a provisional payment of $2.5 million in contingency funds for six months of eligibility in the fiscal year. Its qualifying State expenditures were $102.5 million, its expenditure of contingency funds was $2.5 million, and its child care expenditures were $2 million. The required expenditure of State funds to meet the 100-percent MOE level is $95 million ($100 million minus $5 million for historic child care expenditures). The State's FMAP is 50 percent. This is the only State that received contingency funds in fiscal year 1998.

Based on the information provided, we see that the State met its required Contingency Fund MOE level.

To continue with the annual reconciliation, we use the steps outlined above.

(1) $102.5 million, plus $2.5 million, minus $2 million, minus $95 million, equals $8 million. (The State's qualifying State expenditures, plus its expenditure of contingency funds, minus its child care expenditures, minus its required Contingency Fund MOE level.)

(2) $8 million, times 50 percent, equals $4 million. (The result of step (1) multiplied by the State's FMAP rate.)

(3) $4 million, times 1/12, times 6, equals $2 million. (The result of step (2) multiplied by 1/12 times the number of months the State received funding for the Contingency Fund.)

(4) The lesser amount of $2 million, compared to $2.5 million, is $2 million. (The lesser of the result of step (3) compared to the amount of contingency funds the State received.)

Were it not for the requirements of the Adoption and Safe Families Act of 1997, the State would have been eligible to retain $2 million in contingency funds and would have been required to remit $500,000. However, we are required to increase the amount the State must remit, which we accomplish in step (5).

(5) $2 million, minus $2 million, equals zero. (The overall adjustment required from all States that received contingency funds for FY 1998 is $2 million. Since only one State received contingency funds, its proportionate offset is 100 percent of $2 million. Thus, the State's remittance is increased by $2 million, and the State can retain no contingency funds. Under the assumptions we presented, the State is required to remit its entire $2.5 million provisional payment of contingency funds.)

The example above illustrates a case where the State had to remit the entire amount of the $2.5 million provisional payment of contingency funds it received even though it made expenditures above the required Contingency Fund MOE level. If additional States had drawn contingency funds for the fiscal year, this State's proportional remittance would have been smaller, and the State would have been able to retain some of the contingency funds it received.

We will not consider a State's use of contingency funds, which later must be returned under the reconciliation formula, to be an improper use of funds, and, if the State meets its Contingency Fund MOE requirement, we will not assess that penalty.

Section 264.74—How Will We Determine the Contingency Fund MOE Level for the Annual Reconciliation? (§ 274.71 of the NPRM)

For the Contingency Fund, historic State expenditures for FY 1994, the base MOE level, include the State's share of AFDC benefit payments, administration, FAMIS, EA, and JOBS expenditures. They do not include the State's share of AFDC/JOBS, Transitional and At-Risk child care expenditures. States must meet 100 percent of this MOE level.

We said we would use the same data sources and date, i.e., April 28, 1995, to determine each State's historic State exependitures as we used to determine the basic MOE requirement. However, we would exclude the State share of child care expenditures for FY 1994.

We will reduce the required MOE level for the Contingency Fund if a Tribe within the State receives a Tribal Family Assistance Grant under section 412. The last paragraph of section 409(a)(7)(B)(iii) provides for this reduction. For the basic MOE requirement, we will reduce the State's basic MOE level by the same percentage as we reduce a State's annual SFAG allocation for Tribal Family Assistance Grants in the State for a fiscal year. For example, if a State's SFAG amount is $1,000 and Tribes receive $100 of that amount, we would reduce the State's basic MOE requirement by ten percent. If the same State also receives contingency funds in that fiscal year, we would also reduce the Contingency Fund MOE level by ten percent.

Section 264.75—For the Annual Reconciliation, What Are Qualifying State Expenditures? (§ 274.72 of the NPRM)

Section 403(b)(6)(B)(ii)(I) provides that State expenditures counted toward the Contingency Fund MOE may only include expenditures made under the State program funded under this part. Thus, the State expenditures that the State makes to meet the required Contingency Fund MOE level include the expenditure of State funds within TANF only; they do not include expenditures made under separate State programs. In addition, under this section of the statute a State may not use expenditures for child care to meet the Contingency Fund MOE requirement or to qualify the State to retain any of the contingency funds it received. Thus, we have noted the exception for child care in item 3 below. (This exception appears in paragraph (b) of the regulatory text.)

In the NPRM, we referred to sections of part 273 to define qualifying State expenditures for the Contingency Fund. In these final regulations, we have eliminated references to the basic MOE sections; we believe they were confusing because there were a number of differences in the expenditures that are permitted to be included in calculating the basic MOE and the Contingency Fund MOE.

Nevertheless, we retain some of the proposed policies. More specifically, qualifying State expenditures, for

Contingency Fund MOE purposes, are expenditures, with respect to eligible families, of State funds made in the State TANF program for the following:

(1) Cash assistance, including assigned child support collected by the State, distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance to an eligible family that are not generally available to persons who are not members of an eligible family;

(3) Any other services allowable under section 404(a)(1) of the Act and consistent with the goals at § 260.20 of this chapter (except child care); and

(4) Administrative costs in connection with the provision of the benefits and services listed in paragraphs (a)(1) through (a)(3), but only to the extent consistent with the administrative cost cap for MOE expenditures at § 263.2(a)(5).

Further, in § 260.31(c)(1), we have added a reference to this subpart. This revised language clarifies that, like basic MOE, Contingency Fund MOE may be expended on benefits and services that do not meet the definition of assistance.

In item 4 above, regarding the limits on administrative costs, we have modified the preamble and regulatory language to avoid the creation of a third administrative cost cap. Under the statute and the rules, we already provide for a 15-percent cap on the portion of Federal grant funds and State basic MOE expenditures that go to administrative costs. If we said that Contingency Fund MOE expenditures were subject to a similar administrative cost cap, States and we would then have three administrative cost caps to track.

In general, we believe the basic MOE requirements should apply to Contingency Fund MOE expenditures. However, in our minds, this view did not justify the creation of a third administrative cost cap, especially because of the substantial overlap between the Contingency Fund MOE expenditures and basic MOE expenditures. Rather, under these rules, we require that State expenditures on administrative costs, for Contingency Fund MOE purposes, must be consistent with the basic MOE administrative cost cap. In other words, in making MOE expenditures for Contingency Fund purposes, States must take care not to spend excess amounts on administrative costs. Their expenditures on administrative costs must be at a level that enables their compliance with the existing 15-percent cap in the basic MOE provisions.

Section 264.76—What Action Will We Take if a State Fails To Remit Funds After Failing To Meet Its Required Contingency Fund MOE Level? (§ 274.75 of the NPRM)

PRWORA established a penalty at section 409(a)(10) that provides that, if a State does not meet the Contingency Fund MOE requirement and remit funds as required, we must reduce the State's SFAG payable for the next fiscal year by the amount of funds that the State has not remitted. The statute prohibits us from waiving or reducing this penalty based on reasonable cause or corrective compliance. However, the State may appeal our decision to reduce the State's SFAG pursuant to the regulations at § 262.7.

Section 264.77—How Will We Determine if a State Has Met Its Contingency Fund Expenditure Requirements? (§ 274.76 of the NPRM)

ACF has created a TANF Financial Report, the ACF–196. States will use the ACF–196 to report their use of Federal TANF funds, including contingency funds. We will use this report to verify the State's annual reconciliation after the end of the fiscal year. We will review it to ensure that expenditures reported are consistent with the statute and these rules. Please see the discussion of part 265 for additional information.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

In the preamble to the NPRM, we noted that section 103(b) of PRWORA amended section 1108. Section 1108 establishes a funding ceiling for Guam, the Virgin Islands, American Samoa and Puerto Rico. Prior to PRWORA, the following programs authorized in the Act were subject to this ceiling: AFDC and EA under title IV–A; Transitional and At-Risk Child Care programs under title IV–A; the adult assistance programs under titles I, X, XIV, and XVI; and the Foster Care, Adoption Assistance, and Independent Living programs under title IV–E. The ceiling excluded funding for the JOBS program, which also covered AFDC/JOBS child care.

Under the amendments in PRWORA, the funding ceiling at section 1108 applies to the TANF program under title IV–A, the adult programs, and title IV–E programs. Section 1108(b) provides a separate appropriation for a Matching Grant, which is also subject to a ceiling. The Matching Grant is not a new program; rather it is a new funding mechanism that Territories can use for expenditures under the TANF and title IV–E programs.

Prior to PRWORA we had not regulated the provisions of section 1108. However, in light of this new MOE requirement within section 1108, we thought that we needed to regulate to clarify the requirements and the consequences if a Territory failed to meet the new section 1108 requirements. We have authority to issue rules on this provision under section 1102, which permits us to regulate where necessary for the proper and efficient administration of the program, but not inconsistent with the Act. (The limit at section 417 does not apply to this section of the Act.) In addition, we prepared a program instruction for the Territories to provide additional guidance on receiving funds under section 1108.

In February 1997, we provided to the Territories: (1) Their FAG annual allocations; (2) their basic MOE levels under section 409(a)(7); (3) their Matching Grant MOE levels; (4) their section 1108(e) MOE levels (which were created by PRWORA and were subsequently eliminated by Pub. L. 105–33); and (5) a detailed explanation of the methodology and expenditures we used to determine each of these amounts.

Section 264.80—If a Territory Receives a Matching Grant, What Funds Must It Expend? (§ 274.80 of the NPRM)

Section 1108(b) provides that Matching Grant funds are available: (1) To cover 75 percent of a Territory's expenditures for the TANF program and the Foster Care, Adoption Assistance and Independent Living programs under title IV–E of the Act; and (2) for transfer to the Social Services Block Grant program under title XX of the Act or the Child Care and Development Grant (CCDBG) program (also known as the Discretionary Fund of the Child Care and Development Fund) pursuant to section 404(d) of the Act, as amended by PRWORA and Pub. L. 105–33. However, Matching Grant funds used for these purposes must exceed the sum of: (1) The amount of the FAG without regard to the penalties at section 409; and (2) the total amount expended by the Territories during FY 1995 pursuant to parts A and F of title IV (as so in effect), other than for child care.

Under the first requirement, the Territory must spend an amount up to its Family Assistance Grant annual allocation using Federal TANF or Federal title IV–E funds or funds of its own for TANF or title IV–E programs.

The second requirement establishes an MOE requirement at 100 percent of historic expenditures, based on the Territory's FY 1995 expenditures. This second requirement is separate from the basic MOE requirement and is applicable only if a Territory requests and receives a Matching Grant. Historic expenditures include 100 percent of State expenditures made for the AFDC program (including administrative costs and FAMIS), EA, and the JOBS program. Territorial expenditures made to meet this requirement include Territorial, not Federal, expenditures made under the TANF program or title IV–E programs.

Territorial expenditures can only be counted once to meet the FAG amount requirement, the MOE requirement, or the matching requirement. In other words, any given expenditure cannot be counted more than once to meet these three different expenditure requirements. We believe this policy is appropriate because our interpretation of the statute is that Congress intended that the provisions on spending up to the FAG amount, meeting the MOE requirement, and meeting the matching requirement be separate requirements.

Comment: One commenter pointed out that this section of the rule would more closely correspond to section 1108(b)(1)(B)(i) of the Act if we added the phrase ''without regard to any penalties applied in accordance with section 409'' to the regulation. Another commenter suggested that we needed to clarify what the historic expenditures were for the Territories.

Response: As suggested, we have added the phrase about disregarding penalties to the regulations. We also have added an explanation to the preamble that the historic expenditures for the Territories are the amounts spent above their Federal funding for the AFDC and EA programs up to, but not exceeding, the 25-percent Territorial match, plus the amount of matching funds spent for the JOBS program.

Section 264.81—What Expenditures Qualify for Territories To Meet the Matching Grant MOE Requirement? (§ 274.81 of the NPRM)

As stated in the NPRM, for the basic MOE, section 409(a)(7) includes specific provisions on what States and Territories may count as ''qualified State expenditures'' (i.e., expenditures that may count towards the basic MOE requirement).

However, the statute provides little guidance on what expenditures a Territory may count toward its Matching Grant MOE for IV–A expenditures. Because the Matching Grant is intended to be used for the TANF program, we decided to apply many of the basic MOE requirements in part 263, subpart A, to the Matching Grant MOE. These sections are: § 263.2 (What kinds of State expenditures count toward meeting a State's annual spending requirement?); § 263.3 (When do child care expenditures count?); § 263.4 (When do educational expenditures count?); and § 263.6 (What kinds of expenditures do not count?). Section 263.5 (When do expenditures in separate State programs count?) does not apply because section 1108(b)(1)(B)(ii) requires that the matching Grant MOE expenditures must be expenditures under the TANF program. Thus, expenditures to meet the Matching Grant MOE requirement may not be expenditures made under separate State programs. (Because Territories do not receive Matching Child Care funds, the limit on child care expenditures in § 263.3 does not apply.)

Also, Territorial expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the State share of IV–E expenditures and expenditures funded with the State's own funds that meet Federal title IV–E program requirements.

The Territories may count expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

Territories may also count toward their Matching Grant MOE requirement expenditures made under the TANF program that meet the basic MOE requirement.

We received no comments on this section and made no changes to the regulation.

Section 264.82—What Expenditures Qualify for Meeting the Matching Grant FAG Amount Requirement? (§ 274.82 of the NPRM)

The statute intends that expenditures made to meet this requirement must be TANF or title IV–E expenditures. For TANF expenditures, the Territories may count allowable expenditures of Federal TANF funds to meet this requirement. They may count amounts that they have transferred from TANF to title XX and the Discretionary Fund in accordance with section 404(d). (See § 263.11, which describes the proper uses of Federal TANF funds.) Also, a Territory may count its own expenditures under the TANF program, for this purpose. Because IV–A expenditures made with the Territories' own funds must be for the TANF program, it is reasonable that we apply the MOE requirements applicable for the Matching Grant to this FAG amount requirement.

For IV–E expenditures, as with the Matching Grant MOE, expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the Federal share and the Territories' share of IV–E expenditures and expenditures funded with the Territories' own funds that meet Federal IV–E program requirements.

We received no comments on this section and made no changes to the regulation.

Section 264.83—How Will We Know if a Territory Failed To Meet the Matching Grant Funding Requirements at § 264.80? (§ 274.83 of the NPRM)

We are developing a separate Territorial Financial Report for the Territories. We will require this report to be filed quarterly and to cover all programs subject to the section 1108 caps. This report will cover basic MOE and Matching Grant MOE requirements. For the Matching Grant, Territories must report expenditures claimed under title IV–E and IV–A and the total expenditures (including Federal) they make to meet the requirement that they spend up to their Family Assistance Grant annual allocations.

We would not require Territories to file the TANF Financial Report; however, they must report comparable information on the Territorial Financial Report. Furthermore, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, we would treat it like a State that fails to file its TANF Financial Report and make it subject to the penalty for failure to report at § 262.1(a)(3).

We received no comments on this section and made no changes to the regulation.

Section 264.84—What Will We Do if a Territory Fails To Meet the Matching Grant Funding Requirements at § 264.80? (§ 274.84 of the NPRM)

The statute does not address the consequences for a Territory if it fails to meet the Matching Grant MOE and the FAG amount requirements. The proposed and final rules provide that we would disallow the entire amount of a fiscal year's Matching Grant if the Territory fails to meet either requirement. This is because the statute provides that the Matching Grant funds are only allowable if a Territory meets both requirements. Thus, if a Territory does not meet either one or both of the requirements, it must return the funds

to us. We will get the funds back by taking a disallowance action.

A disallowance represents a debt to the Federal government. Therefore, we will apply our existing regulations at 45 CFR part 30. Once we issue a disallowance notice, we can require a Territory to pay interest on the unpaid amount.

We received no comments on this section and made no changes to the regulation.

Section 264.85—What Rights of Appeal Are Available to the Territories? (§ 274.85 of the NPRM)

The Territory may appeal a disallowance decision in accordance with 45 CFR part 16. As these are not penalties, the reasonable cause and corrective compliance provisions of section 409 do not apply. Section 410, covering the appeals process in TANF, also does not apply.

We received no comments on this section and made no changes to the regulation.

X. Part 265—Data Collection and Reporting Requirements (Part 275 of the NPRM)

A. Background

The TANF block grant legislation reflects a new emphasis on program information, measurement, and performance. This final rule specifies the data collection and reporting requirements that serve as the major mechanism to measure State accomplishment and performance.

We received many comments in response to the NPRM concerning the nature and scope of the data collection and reporting requirements.

In the preamble to the NPRM, we addressed two major purposes of data collection: to determine the success of the TANF program in meeting the purposes of the Act and to assure accountability under the Act. We also emphasized that it was critical to collect data that were comparable across States and over time and that would enable us to calculate participation rates.

We based the proposed reporting requirements primarily on section 411 of the Act (Data Collection and Reporting). We proposed quarterly reporting of both disaggregated and aggregated data on TANF recipients and some others in the household. We proposed similar reports of data on closed cases and on participants in separate State programs. We also proposed a quarterly financial report (with an annual addendum) and an annual program and performance report. Also included in this section of the NPRM were proposed provisions on reporting penalties, due dates, sampling, and electronic filing.

To enable the public to comment with full understanding of the reporting requirements, the NPRM included eleven appendices that contained the specific data elements, instructions for filing the information, sampling specifications, and the statutory reference for each data element. In the preamble, we also called readers' attention to the proposed data elements that were not specified in the statute, including break-outs of statutory requirements.

B. Overall Summary of Comments

While most commenters agreed on the need for data collection and reporting, States (including Governors, State legislators, State executive branch agencies, and national agencies representing State interests) expressed strong views that the proposed TANF data collection requirements were excessive. Other commenters did not generally share this view.

There was broader agreement among all commenters, however, that the proposed reporting requirements on separate State programs were excessive.

Several national, legal, and local advocacy organizations; private individuals; and Federal agencies strongly supported the data collection proposals as appropriate for tracking the effects of welfare reform and made recommendations for additional elements that they believed should be added. Likewise, other national organizations, States, and local public and private entities offered alternative recommendations. These recommendations included additional MOE expenditure data; expanded and more specific case closure data; information on applications approved, denied, and voluntarily withdrawn; and data to track longer term outcomes of recipients.

Many commenters provided detailed analysis and review of the NPRM, including the regulatory text, the preamble language, and the specific content of the Appendices.

The overwhelming majority of States objected to the increase in the number of data elements (in comparison to the number of elements in the Emergency TANF Data Report); claimed that we had underestimated the administrative burden and cost of collecting and reporting these data; and asserted that we lacked statutory authority for these expanded reporting requirements. They particularly objected to reporting on participants in separate State programs, the information on closed cases, and the annual program and performance report. (As discussed later, we believe that the objections to the case closure data were due largely to a misunderstanding of our expectations. In the final rule, we clarify that we are only requiring data for the month of closure, not longer tracking of former recipients.)

Almost all comments on the reporting requirements for the separate State programs found them to be excessively burdensome, contrary to the intent of the legislation, and inappropriate for some types of MOE programs. Commenters believed that such reporting requirements would limit the involvement of community-based organizations in the delivery of program services and have a chilling effect on State flexibility and the development of future innovative programs.

States were also concerned about sample sizes, sampling requirements, and the standards for ''complete and accurate'' reports that we proposed to apply in relation to the reporting penalty. A very few States reported an inability to report many of the specific data elements proposed in the NPRM based on long-standing problems in developing their information systems (although all States are reporting the data required in the Emergency TANF Data Report). Also, some States reported continuing problems in submitting standardized reports due to the autonomy of local jurisdictions.

C. Summary of Departmental Response

We continue to be committed to gathering information that is critically important in measuring the success of the TANF program and meeting the statutory requirements for program accountability.

We have seriously considered all comments and concerns of commenters in making changes to this rule. We appreciate the partnership approach many commenters demonstrated in developing their comments and the careful analysis evident in the extensive and detailed comments we received. These comments led to numerous refinements in the requirements that should help reduce burden, while maintaining the integrity and value of critical data.

In preparing this final rule, we have worked to ensure that our rules support the creativity and commitment that States and communities have shown in supporting families and moving them to work. As a result, we have accepted many of the recommendations to eliminate or reduce the burden of reporting, and we have made several substantive changes in this part. We

have also modified or expanded a very limited number of data elements.

We address the specific changes in detail in the section-by-section discussion below. Briefly, however, we have:

(1) Provided a phase-in period for the implementation of the data collection and other requirements; in the interim, the Emergency TANF Data Report (ETDR) will remain in effect (§ 260.40);

(2) Reduced the total number of data elements in the TANF Data Report from 178 to 124 and in the SSP–MOE Data Report from 160 to 108.

(3) Retained the definition of ''family'' for reporting on the TANF and the separate State programs, but made reporting of some data elements optional for certain members of the family (§§ 265.2 and 265.3(e));

(4) In section one of the TANF Data Report, reduced the number of and modified some data elements (disaggregated data on TANF recipients, Appendix A) (§ 265.3(b));

(5) In section two of the TANF Data Report, reduced the number of data elements; to address a misreading of the NPRM, clarified that we do not expect States to track closed cases, but only to report data on the last month of assistance; and modified the data element on reasons for case closure to include additional break-out items (disaggregated data on closed cases, Appendix B) (§ 265.3(b));

(6) In section three of the TANF Data Report, reduced the number of data elements (aggregate data, Appendix C) (§ 265.3(b));

(7) Changed the name of the TANF–MOE Data Report to the SSP–MOE Data Report to reflect the specific focus of the data collection in this report and reduced the number of data elements to be reported (Appendices E through G). Also, as the result of the revised definition of assistance, reduced the types of separate State programs covered by the SSP–MOE Data Report (265.3(d));

(8) In the TANF Financial Report, significantly revised the ACF–196 (the financial reporting form) by adding several categories of expenditures to reflect our new definition of assistance and modified the instructions to clarify reporting on expenditure data.

(9) Dropped the provision that required disaggregated and aggregated reporting on separate State programs as a condition for penalty reduction (§ 265.3(d));

(10) Clarified that States have considerable flexibility in designing their sampling plans (§ 265.5);

(11) Consolidated the annual reporting requirements on program definitions and State MOE program(s), as proposed in the Addendum to the fourth quarter TANF Financial Report, in a new Annual Report and added a number of new reporting requirements on State activities under the Family Violence Option, State diversion programs, and other program characteristics (§ 265.9);

(12) Eliminated, as separate reports, the annual program and performance report, intended to gather additional information for the Secretary's report to Congress and the fourth quarter Addendum to the TANF Financial Report; and

(13) Clarified our policies on issues such as reporting on noncustodial parents and penalty relief for less than perfect (''complete and accurate'') reporting (§§ 265.3(f), 265.7, and 265.8).

D. Section-by-Section Summary of and Response to Comments

Cross-Cutting Issues

Before we discuss the comments associated with specific sections of the regulatory text or the Appendices, we want to respond to three cross-cutting issues.

(a) Phase-in/Transition Period

Comment: More than 36 States and other commenters recommended a phase-in period to meet the reporting requirements. Commenters cited the administrative burden and the time needed to carry out the complex processes involved, e.g., making changes to State information systems, training staff, and synthesizing and reporting data with acceptable levels of confidence. States also saw this task made more difficult in the context of the need to make their systems Year 2000 (Y2K) compliant.

Response: We agree with the need for a phase-in period and have made the effective date of these and other requirements October 1, 1999. We believe this date gives States an adequate time period for implementation, in view of the reduced reporting burden and reduced number of data elements in the final rule, our positive experience with States in resolving initial data layout and transmission problems, and the fact that the States have 90 days after the end of the quarter to submit the data without risk of a penalty.

Regarding the Y2K compliance issues, we have taken a number of actions to raise awareness of the problem and respond to questions from human service providers. For example, we have established an Internet e-mail address and phone line and a Y2K web page. We have also distributed information packages to more than 7,000 human service providers and representative organizations, and we have added a reasonable cause criterion related to Y2K compliance. This new criterion provides penalty relief to a State if it can clearly demonstrate that addressing Y2K issues prevented it from meeting the reporting requirements for the first two quarters and it reports the first two quarters of data by June 30, 2000.

In addition, we encourage States to consider the use of sampling as a viable option while resolving such issues. There are advantages and disadvantages to sampling, as detailed in our response to comments later in this discussion.

In the interim, the Emergency TANF Data Report (ETDR) will remain in effect. The last ETDR will be due November 14, 1999. States will begin reporting data under this final rule beginning with the first quarter of FY 2000. The first TANF Data and Financial Reports under these new requirements are due February 14, 2000. See further discussion regarding the effective date of these rules in the preamble section relating to § 260.40.

(b) Extent of Reporting Requirements

As we developed the reporting requirements for the NPRM, we were conscious of the importance of data for program management purposes as well as for meeting statutory requirements. At the same time, we also were conscious of our direct authority to regulate on data collection and of those sections of the Act that provided the legal basis for the NPRM.

Section 417 provides that the Federal government may not ''regulate the conduct of the States under this part, or enforce any provision of this part, except to the extent expressly provided in this part.'' We believed at that time, and still believe, that this language provides authority to regulate what States must report in light of section 411(a)(7) of the Act. This section provides that,

> the Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection * * *

We believed at that time, and continue to believe, that section 411(a)(7) clearly gives the Department authority to create and define data elements to administer the law.

We were conscious of other responsibilities as well. Not only must we collect the information specified in section 411 of the Act, but the information must be comparable and reliable in order to make decisions implementing other provisions of the

law, e.g., calculating the work participation rates, implementing penalties, ranking States, and reporting to Congress. We cannot perform these functions without adequate information. Unless the reported data meet certain standards, we cannot adequately meet our responsibilities under the law. Since States are the primary repository and only realistic source of this information, we must rely on them to supply the information we need.

Comment: Despite the inclusion in the NPRM of the Statutory Reference Tables, which provided the specific statutory citation or basis for each data element, and our explicit preamble discussion of, and rationale for, the few data elements not in the statute, there were a number of comments alleging that we lacked statutory authority to impose data collection requirements, even for the TANF recipient population. As evidence of their position, commenters pointed to the number of data elements in the ETDR (68) compared to the number of elements in Appendices A-C of the NPRM (178). They variously asserted that:

(1) We had statutory authority to collect only the 16 to 18 data elements in section 411(a)(1)(A);

(2) We had authority to collect only the data elements in the ETDR;

(3) We had no authority to add, define, or further specify or break-out the data elements in section 411(a)(1)(A); and

(4) It was not within our authority to collect data based on sections 409 (penalties), 413 (annual rankings of States), or 411(b) (reports to Congress).

Many commenters urged us to limit our data collection to the elements in the ETDR.

Some commenters did not identify the specific data elements of concern or the basis for their objection. Also, some did not distinguish between those data to which the reporting penalty applied and other data.

Some commenters rejected collection of any data that would be used for research and evaluation purposes and argued that the increased reporting requirements were due to the collection of information the Department thought it would be ''interesting to know.'' As an alternative, a few commenters recommended that we develop all reporting requirements using a collaborative approach that would identify outcome measures and performance indicators from which the data elements would then be derived.

Regarding the proposed annual program and performance report, many commenters stated that we had merely shifted to States the responsibility for preparing reports to Congress. They suggested that we obtain data needed for these reports by means of a national sample or other mechanism.

A number of commenters presented objections to the proposed data collection based on specific administrative and/or programmatic concerns. The data collection that raised the most concerns was the proposed reporting of data on closed cases and on participants in separate State MOE programs. Commenters said that the proposals on MOE reporting illustrated the distrust that States found throughout the NPRM and viewed it as an attempt to control State programs.

Response: We generally disagree with the comments indicating we lack authority to impose the proposed data collection requirements. The statute authorizes the Secretary to define the data elements and to specify the data elements needed to determine work participation rates. It also specifies that these definitions and data elements be established under regulations. Therefore, we were not able to include them in the ETDR. The additional data elements that go beyond the ETDR reflect our explicit rulemaking authority under section 411(a)(7) of the Act and the authority implicit in sections 409, 411(b), and 413 of the Act. We continue to believe that States are the primary source of the data needed for the report to Congress.

The ETDR collects only that information that was clearly specified in the statute. By necessity, it contains a streamlines list of data elements that we can use in the interim period until final regulations are in effect. It is not sufficient as a long-term data collection instrument. For example, it does not provide clear uniform definitions of data elements and does not include some critical elements, e.g., the social security number.

In developing the final rule, we have re-doubled our efforts to reduce unnecessary reporting burdens on the States and have carefully reviewed the justification for, and value of, each data element that we had proposed. Based on that review, and in response to the comments we received, we have eliminated or streamlined many data elements in the Appendices published with this final rule. See the chart below and a further description of the changes we have made in the section-by-section discussion of § 265.3. We believe this reduced set of data represents a reasonable balance between the requirements for data, our statutory authority, and the burden placed on States in providing this information.

TOTAL NUMBER OF DATA ELEMENTS—DATA REPORTS

Type of report	ETDR	NPRM	Final rule
TANF Data Report: Disaggregated data on TANF recipients	55	106	76
TANF Data Report: Disaggregated data on closed cases	6	53	30
TANF Data Report: Aggregated data	7	19	18
Subtotal	68	178	124
SSP–MOE Data Report: Disaggregated data on recipients	.....	96	69
SSP–MOE Data Report: Disaggregated data on closed cases	.....	49	27
SSP–MOE Data Report: Aggregated data	.....	15	12
Subtotal	.....	160	108
Total	68	338	232

Note: States must report on these data elements for all persons receiving assistance. Some data elements are optional for other persons in the family.

(c) Publishing the Appendices As a Part of the Rule

Comment: We received two types of comments on this issue. A few commenters urged us to publish the specific data elements as a part of the final rule and to codify them as a part of the Code of Federal Regulations (CFR). This approach, they believed, would help ensure that States would not only have early access to the requirements but, once they were codified, the requirements would be less subject to change, given the time it takes to revise Federal rules.

Other commenters urged us to publish the data elements in the **Federal Register** at the same time we published the final rule for the purpose of advance notice to the States of the specific data requirements, but they did not recommend that they be a part of the final rule in the CFR.

Response: We agree with the importance of giving States early access to the specific data elements and have published seven appendices, including all data elements and instructions, in today's **Federal Register** along with the final rule.

It was never our intention, however, that these data collection requirements become a part of the rule itself or be codified in the CFR. We believe data collection needs may change over time, in part because the program is a dynamic one and because Congress may modify the reporting requirements. Therefore, we would want to be able to respond to those changes as quickly as possible. Since changes in reporting requirements require Paperwork Reduction Act (PRA) approval, the public is guaranteed an opportunity to comment on any future changes to the TANF Data and Financial Reports as a part of the PRA review process.

Section-by-Section Discussion

Section 265.1—What Does This Part Cover? (§ 275.1 of the NPRM)

This section of the NPRM provided a summary of the contents of this part. We received no substantive comments on this section apart from the general objection to the scope and content of the data collection requirements as a whole.

However, we have made two changes in this section. First, we have deleted paragraph (b)(4) of this section to reflect the elimination of the annual program and performance report. Second, to prevent a misunderstanding that a major purpose of these data collection requirements is research, we have deleted the word ''research'' in paragraph (a) from the term ''section 413 (research and rankings).'' We had included it in the NPRM to fully describe the content of section 413 of the Act. However, we believe it is misleading to reference ''research'' in this context because our research agenda relies, for the most part, on other sources of information.

Section 265.2—What Definitions Apply to This Part? (§ 275.2 of the NPRM)

This section of the NPRM proposed a definition of ''TANF family'' for reporting purposes only and made the definition applicable to both TANF and MOE programs. Our rationale for proposing a definition for reporting purposes was the critical importance of developing comparable data across States, given the fact that, under the TANF statute, a State may develop and use its own definition of ''eligible family'' for program purposes.

In the NPRM, we proposed that information be collected and reported on all persons receiving TANF assistance plus, for any minor child receiving assistance, information on any parent(s) or caretaker relative(s) and minor siblings in the household. We also proposed that information be reported on any person whose income and resources would be counted in determining eligibility for, or the amount of, assistance.

In the preamble to the NPRM, we explained the importance of information on these persons in understanding the effects of TANF on families, the variability among State caseloads, the circumstances that exist in no-parent families, and the paths by which families avoid dependence.

Comments: Two national advocacy organizations supported this proposal. One commented that ''HHS has appropriately defined ''family'' for purposes of data collection requirements to ensure that differences in States' definitions of the assistance unit do not make cross-state comparisons difficult.'' Although commenting on the overall TANF reporting requirements, another national organization found them reasonable and within our authority; it urged that they not be ''watered down.''

On the other hand, many commenters objected to this definition. Commenters expressed particular objection to our proposal to collect information on persons outside the assistance unit or persons not affected by work participation or time-limit requirements. Some commenters asserted that the definition exceeded our statutory authority; others found it intrusive and in conflict with a State's prerogative to define the TANF family. Some States questioned their own legal authority to collect data on nonrecipients and were concerned about possible ethical considerations. Others objected on the grounds of administrative burden, i.e., that such data were not now being collected on these persons, and it would be both costly and burdensome to set up ''a duplicate reporting system'' or require a ''massive modification'' to their present reporting system. One State commented that it appeared this proposal was for evaluation purposes only and claimed that States should not be required to use scarce resources for this purpose.

Some commenters made specific recommendations that conflicted with those of other commenters, as follows:

(1) Allow States to report data based on each State's definition of TANF family;

(2) Limit reporting to persons for whom assistance is provided;

(3) Limit reporting to persons receiving assistance, parents, caretaker relatives and minor siblings, but do not collect data on persons whose income or resources are considered in determining eligibility;

(4) Collect information on persons receiving assistance and persons whose income or resources are counted in determining eligibility, but do not collect information on parents, caretaker relatives, or minor siblings; or

(5) Collect only very limited information on persons not receiving assistance, e.g., information on their relation to the TANF recipient, but no personal data.

Response: We considered these comments carefully in attempting to see how to reduce the reporting burden on States while ensuring that we obtain the necessary and comparable data to meet the requirements of the Act. We have taken the following actions in response to commenter objections:

First, we retain the definition of ''family'' as proposed in the NPRM. For editorial purposes, we have dropped the word ''TANF'' from the proposed term ''TANF family'' in this definition as the term ''family'' is applicable to both the TANF and the separate State programs. However, we are continuing to use the terms ''TANF family'' and ''State MOE family'' in the respective Data Reports, for clarity.

We responded earlier in this section of the preamble to comments that we exceeded our statutory authority in proposing these data collection requirements, including the definition of ''family'' used for reporting purposes. We do not agree that, in creating this definition, we have interfered with a State's prerogative to define ''family'' for program purposes. As we explained in

the preamble to the NPRM, the statute uses various terms to define persons receiving benefits and services under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under TANF. Therefore, each State will establish its own definition of ''eligible family.'' These definitions will not be comparable across States, however, and comparable data are necessary to carry out the accountability provisions and other objectives of the Act, e.g., calculating work participation rates.

Second, within the definition of family, we retain all the categories of persons for which we proposed to collect information in the NPRM. However, in response to the various recommendations for elimination or reduction in data collection for these categories of individuals, we have reduced the overall number of data elements and made the reporting of some data elements for certain categories of persons optional. (The State must report all data elements on all persons receiving assistance.) In addition, with the change in the definition of assistance, the burden associated with this reporting may be reduced because it will not generally apply to programs that have traditionally fallen outside the welfare reporting system.

Again, as we explained in the preamble to the NPRM, we believe that information on these additional categories of persons is critical to understanding the effects of TANF on families. For example, we need information on the parents and caretaker relatives (i.e., any adult relatives living in the household and caring for minor children, but not themselves receiving assistance) to understand the circumstances that exist in child-only cases. We need information on minor siblings to understand the impact of ''family cap'' provisions. We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependency. We believe that we have addressed commenters' recommendations for reduced reporting by making many of the data elements optional for these categories of families.

We have added paragraph (e) to § 265.3 to reflect this decision on reporting for other individuals. The Instructions to each Data Report indicate which data elements are optional for which category of person(s).

Comment: In the NPRM, we had proposed that information on the noncustodial parent (NCP) be reported as a part of a family receiving TANF assistance since, under the statute, States may serve NCPs only on that basis. We received a number of comments objecting to, or requesting clarification of, these reporting requirements.

Some States agreed that data should be collected on NCPs; others argued that we lacked statutory authority for this proposal. Some commenters objected to considering NCPs as a part of an assistance unit on the grounds that it complicates both data collection and the State's definition of ''eligible family.''

They asked for clarification of whether reporting information on the NCP meant that the NCP was a member of the TANF-eligible family and if the reporting requirements meant that the family then became a two-parent family. They also asked for clarification of how reporting on NCPs would affect the family for the purpose of meeting work participation or time-limit requirements.

Some States recommended that information on the NCP be reported separately (not as a part of a TANF family); others recommended that we require only an annual aggregated report, e.g., a report containing the number of NCPs who received assistance and the amount of funds expended annually on their assistance.

Response: We believe some clarification of this proposal is needed.

First, regarding the matter of our legal authority, our interpretation of the statute is that TANF ''assistance'' may be provided only to ''eligible families.'' Therefore, States may provide assistance to NCPs only when they are a member of an eligible family. In other words, in order to receive assistance or MOE funded services, the NCP must be associated with an eligible family. We also have the authority to define ''family'' for reporting purposes pursuant to section 411(a)(7) of the Act.

Second, we have added a definition of a NCP in § 260.30. This definition clarifies that the NCP is a parent of a minor child receiving assistance who lives in the State and who does not live in the same household as the child. We adopted this definition based on section 411(a)(4) of the Act, which requires reporting on NCPs ''living in the State'' and to distinguish the NCP from a parent who is living in the household.

If an NCP is related to children in more than one TANF family, the State may decide for which ''eligible family'' the NCP data will be reported. A State should not report information on the NCP in relation to more than one family.

Third, we have provided further clarification regarding NCPs by adding a new paragraph (f) in § 265.3 to specify the three circumstances when a State must report information on a NCP:

- If the NCP is receiving assistance as defined in § 260.31;
- If the NCP is participating in work activities as defined in section 407(d) of the Act; or
- If the NCP has been designated by the State as a member of a family receiving TANF assistance.

See § 265.3 for further discussion of this provision.

Finally, we discuss the questions regarding how the NCP is counted for work participation rate and time-limit requirements in §§ 261.24 (work participation) and 264.1 (time limits).

Section 265.3—What Reports Must the State File on a Quarterly Basis? (§ 275.3 of the NPRM)

In the NPRM, we proposed the specific data collection and reporting requirements for the TANF program and, under certain circumstances, the TANF–MOE (separate State MOE) programs. We proposed a quarterly TANF Data Report, a quarterly TANF–MOE Data Report, and a quarterly TANF Financial Report, or, as applicable, a Territorial Financial Report. We also proposed an annual addendum to the fourth quarter TANF Financial Report that would collect information on the TANF program, such as the State's definition of work activities, and descriptive information on the State's MOE program(s) (by cross-reference to § 273.7).

The NPRM included 11 data-related Appendices. Six of the Appendices contained all of the proposed disaggregated and aggregated data elements and the instructions for filing these data. The proposed reporting requirements applied to families receiving State-funded assistance and families no longer receiving such assistance in both TANF and separate State programs. The other Appendices contained the TANF Financial Report and instructions, sampling specifications, and three statutory reference tables.

As noted in the earlier discussion of comments on the extent of the reporting requirements, we received a mixed reaction to the proposed data collection requirements. A number of commenters supported our general approach and recommended the addition of new data elements, including, for example, requiring States to match participant data with Unemployment Insurance (UI) data in order to obtain better information on persons no longer receiving assistance. Many States and commenters representing State interests,

however, objected to a large number of the proposed requirements.

Commenters frequently provided extensive and detailed comments, including charts and tables as attachments to their letters commenting, in a parallel manner, on each of the data elements in the Appendices. We found these comments, particularly those raising programmatic or administrative concerns, very helpful.

Summary of Changes Made in This Section of the Final Rule

We have made several substantive changes in this section of rule and in the data elements in the appropriate Appendices. In making our decisions, we followed the general principles noted earlier, i.e., to collect the information required by statute; to carry out our responsibilities under the statute to assure accountability and measure success; and to obtain data that are comparable across States and over time.

First, we carefully considered each data element in each data collection instrument. Where possible, we have eliminated, reduced the number of, or simplified the data elements or the break-outs within the data elements. In a few instances, we have modified the data collection instrument to expand a data element. (See the revised TANF Data Report and the SSP–MOE Data Report in Appendices A through C and E through G.) We discuss some of the specific changes and deletions below.

Second, we eliminated the requirement for an Addendum to the fourth quarter TANF Financial Report, but moved the content of the proposed Addendum, in paragraph (c)(2) and (c)(3), to § 265.9—the annual reporting requirements.

Third, we accepted commenters' recommendations to revise our approach to and reduce the burden of the TANF–MOE (now the SSP–MOE) Data Report. We have:

- Reduced the types of separate State programs covered by that report (This was an indirect effect of the changes to the definition of assistance, at § 260.31);
- Retained the requirement for reporting both disaggregated and aggregate data on recipients of assistance under separate State programs under certain circumstances, but have reduced the number of data elements that must be reported;
- Deleted the provision that would have denied a State consideration for a reduction in the penalty for failing to meet the work participation requirements unless data on separate State programs was submitted; and
- Reduced the SSP–MOE data a State must file if it wishes to receive a high performance bonus (by eliminating the requirement to submit section two of the SSP–MOE Data Report, on closed cases). See § 265.3(d)(1).

Fourth, based on the general principles above, we have determined that a State has the option to NOT report some data elements for some individuals in the family. We specify these optional data elements in the instructions to the TANF Data Report and the SSP–MOE Data Report. We have added a new paragraph (e) to § 265.3 to reflect this provision.

Fifth, we added new paragraph (f) to specify the three circumstances when a State must report on a NCP. The three circumstances are:

- When the NCP receives assistance as defined in § 260.31;
- When the NCP participates in work activities, as defined in section 407(d) of the Act, that are funded with Federal TANF funds or State MOE funds; this would include work activities that fall under the definition of ''assistance'' and those that do not; or
- When the State has designated the NCP as a member of a family receiving assistance.

This latter circumstance addresses those States that wish to consider the NCP a member of a family receiving assistance in order to assist the NCP by providing services or other activities that do not meet the definition of assistance in § 260.31 or the definition of work activities in § 261.30. We have included a requirement for reporting on these NCPs in order to obtain data for policy, oversight, and other purposes.

Where a State counts the NCP in calculating the work participation rate, it should reflect its treatment of the family in its coding of three data elements: ''Type of Family for Work Participation Rate Purposes, Work Participation Status, and Work Activities.'' We have added an element in the data instrument to capture such information about NCPs.

Specific Changes Made in the Data Reports

The following changes are subject to review and approval under the Paperwork Reduction Act.

(a) TANF Data Report—Section One—Disaggregated Data on Families Receiving Assistance (Appendix A)

(1) We reduced the number of data elements that must be reported from 106 in the NPRM to 76 in the final rule. Some of the deleted data elements include:

- Four data elements related to child care—Amount of Child Care Disregard, Type of Child Care, Total Monthly Cost of Child Care, and Total Monthly Hours of Child Care Provided During the Reporting Month; and
- Five types of Assistance Provided—Education, Employment Services, Work Subsidies, Other Supportive Services, and Contributions to an Individual Development Account.

Regarding the deleted data elements on child care, in the NPRM, we proposed to collect information required by the Child Care and Development Block Grant Program (CCDBG). Upon further analysis of that statute, we find that the data that must be collected and reported are aggregate data on the number of child care disregards funded by type of child care service provider. Thus, we have made the revised collection of this information a part of the annual report in § 265.9(b)(4).

(2) We further reduced the reporting burden by revising several data elements. For example, in the data element on Sanctions, we deleted the proposed requirement for expenditure data and, in the final rule, ask for a yes/no response. We also collapsed data elements such as the Number of Months Countable Toward Federal Time Limits.

(3) We clarified the definition of ''new applicant'' and clarified reporting on waivers and noncustodial parents.

(4) We provided flexibility in permitting States to report some data elements based either on the reporting month or on the budget month. However, we require the State to be consistent in reporting these data.

In developing the NPRM, we proposed that all data elements be reported based on the ''reporting month.''

However, based on a considerable number of comments and a review of the variation in State practice and State data collection and processing systems, we concluded that, in some cases, information on the budget month would be a good proxy for information on the reporting month. Therefore, the final rule provides that States may report information on five data elements based on either the reporting month or the budget month.

We made this change for data elements that are relatively stable, e.g., amount of Food Stamp assistance and that otherwise might not be reflected in the State data systems. We believe that, as long as States report these data consistently over time, this flexibility in reporting will not compromise the usefulness of the information. We are continuing to require that seven data elements (e.g., amount of assistance) be reported based on the reporting month

because States will have these data elements on that basis.

(5) We simplified or modified certain data elements, e.g., Received Subsidized Housing, Received Food Stamps, Received Subsidized Child Care, Reasons for and Amount of Assistance, Highest Level of Education Attained and Highest Degree, and Citizenship/Alienage.

(6) We revised the data element on Race to comport with the OMB standard for coding multiple race and ethnic information.

(7) We added a new data element to identify families converted to ''child-only'' cases and a new data element to identify a family in which the State provides for the needs of a pregnant woman.

(8) We made technical and editorial changes, e.g., adding coding for some data elements to allow for unknown Social Security Numbers, birth dates, citizenship status, or educational levels; and revised other data elements such as changing the data element on ''Teen Parent'' to ''Parent'' in order to more accurately calculate the two-parent work participation rate.

(9) As noted in our discussion of § 265.2, the instructions also give States the option to not report certain data elements for one or more groups of individuals.

(b) TANF Data Report—Section Two—Disaggregated Data on Closed Cases (Appendix B)

(1) We reduced the number of data elements from 53 in the NPRM to 30 in the final rule, in part by combining several data elements.

(2) We made the same clarifications, modifications, and simplifications in the data elements in this Appendix as we made for the corresponding data elements in Appendix A.

(3) We clarified that States are not expected to track closed cases in order to collect information on families after the family is no longer receiving assistance. States should report the case-record information as of the last month of assistance.

(4) We re-configured the data element on Reasons for Case Closure to add a few break-out categories, partly in response to strong recommendations from commenters. We believe the refinement of these codes will provide better data and significantly increase our understanding of the circumstances of recipients who leave assistance, without increasing the data collection burden.

We understand that many States already collect detailed reasons for case closure, although the information varies across States. Some States are also participating in studies of persons leaving TANF (i.e., ''leavers'' studies) which will provide information on the circumstances of families after they leave TANF.

In addition, we want to respond more specifically to some commenters' objections to reporting data based on section 411(b) of the Act. (We explained in the NPRM that most of the data elements in Appendix B were based on section 411(b) (annual report to Congress).)

Section 411(b) is specific in requiring information on ''* * * the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance * * *.''

As we said earlier in the preamble discussion to this section, we believe that we have authority to collect data based on section 411(b), and have designed a data collection procedure for closed cases that places minimal burden on States by drawing on the information they have as of the last month the family received assistance. We believe that we have also responded to commenters' concerns by reviewing each data element and reducing by almost one-half the number of data elements in this section of the TANF Data Report.

(c) TANF Data Report—Section Three—Aggregated Data (Appendix C)

We eliminated one data element in this section of the TANF Data Report: Total Number of Minor Child Head-of-Households.

(d) SSP–MOE Data Report—Sections One, Two, and Three—Disaggregated and Aggregated Data (Appendices E, F, and G)

(1) We reduced the total number of data elements in this report from 160 in the NPRM to 108 in the final rule.

(2) Because the data elements in the SSP–MOE Data Report are similar to the data elements in the TANF Data Report, we incorporated into this Report the same clarifications, simplifications, and modifications that we made in the TANF Data Report.

(3) We deleted the proposed requirement that a State must report SSP data if it wants to be considered for a reduction in the penalty for failure to meet work participation requirements.

(4) The final rule narrows the types of separate State MOE programs on which States must report disaggregated and aggregated data. If the State opts to report data on separate State programs, it must report:

- Only on separate State programs for which MOE expenditures are claimed;
- Only on those persons served by separate State programs whose expenditures are claimed as MOE expenditures; and
- Only on separate State programs that provide assistance. (The narrowed definition of assistance at § 260.31 reduces the types of programs subject to reporting.)

(5) We reduced the reporting burden in § 265.3(d)(1)(i) by specifying that, if a State wishes to receive a high performance bonus, it must file only sections one and three of the SSP–MOE Data Report.

Changes Made in the TANF Financial Report (Appendix D)

In the NPRM, we proposed to collect TANF expenditure data in the ACF–196 TANF Financial Report. This reporting form and instructions were in Appendix D. We also proposed an annual addendum to the fourth quarter TANF Financial Report.

As a result of comments received and to clarify some of our policies, we have made several changes in § 265.3(c) and to the ACF–196. One substantive change that we made in response to comments was to delete the requirement that States submit program information as an annual addendum to the TANF Financial Report. These requirements now appear in the annual report described at § 265.9.

We outline the other changes to the ACF–196 TANF Financial Report below:

(1) We have modified the instructions to reflect our clarification about allowable expenditures of carry-over funds and to note the change in SSBG transfer authority (reducing the maximum transfer of 10 percent to 4.25 percent, beginning in FY 2001). This latter change was made by the Transportation Equity Act for the 21st Century, Pub. L. 105–178.

(2) We have added several categories of expenditures on which States must separately report—including transportation (Job Access and other), refundable earned income tax credits, other refundable State and local credits, activities related to purposes three and four of TANF, IDA's, and assistance authorized only on the basis of section 404(a)(2) of the Act. For Other Expenditures (Lines 5d, 6e, and 7), we have asked States to submit footnotes describing what activities are funded under this category.

Also, we have shifted work subsidies from the assistance section of the report to the nonassistance section to reflect our decision to revise the definition of assistance. We include child care and

other supportive services in both sections, and we provide for separate aggregate reporting on transitional services. We have also revised the instructions substantially so that they more clearly identify how States would report particular types of expenditures and they provide some additional guidance on allowable Federal and MOE expenditures.

In general, the additional reporting is designed to give us better information on where States are focusing their resources. We will use this information as part of our strategy to monitor whether expenditures of Federal and States funds are consistent with the purposes of the program and to help identify any policy areas or States that might need further attention. We will also use the data to tell us more about the nature and scope of both TANF programs and separate State programs. State plans and the annual reporting will provide some characteristics information, but the expenditure data are critical for determining where States are focusing their resources. Thus, the data on State spending patterns provide valuable supplemental information about what is happening under welfare reform, and we intend to include summary information from these reports as part of our discussion of State program characteristics in the annual report to Congress.

(3) For State expenditures reported as Administrative Costs in columns (B) and (C), we have changed the language to clarify that the 15-percent administrative cap applies to the cumulative total of (B) and (C) rather than separately to MOE and Separate State Programs.

(4) We have added a statement that States must determine the administrative costs of contract and subcontracts based on the nature or function of the contract.

(5) We have added language to provide that the systems exclusion for tracking and monitoring purposes applies to MOE expenditures as well as the TANF grant. (See prior discussion regarding MOE in the preamble discussion relating to § 263.2.)

The Territorial Financial Report is under development. We are sharing a preliminary version of this Report with the Territories and will be considering their comments before issuing it in final.

Section 265.4—When Are Quarterly Reports Due? (§ 275.4 of the NPRM)

In the NPRM, the language in paragraph (a) of this section reflected the statutory requirement that quarterly data reports are due 45 days after the end of each quarter.

In paragraph (b) of the NPRM, we proposed to give States two options in the timing of the submittal of their TANF–MOE (now SSP–MOE) Data Report.

Paragraph (c) of the NPRM proposed the due dates for the State's initial TANF reports. (Because these are no longer applicable, we have deleted the content of this paragraph from the final rule.)

Comment: Two commenters found it confusing to have ''two due dates for reporting'' in the NPRM. The second due date they referred to was in § 275.8(d). There, we had proposed that we would not impose a penalty for late reporting if a State filed its complete and accurate quarterly report by the end of the quarter immediately following the quarter for which the data were due. (This is a statutory provision found in section 409(a)(2)(B) of the Act.)

Response: For clarity, we have revised the language in paragraphs (a) and (b). With the new language, it is clearer that the statutory due date for the penalty is 45 days after the end of the reporting quarter, but States will not actually incur any penalty liability as long as they submit their reports by the end of the quarter following the reporting quarter.

Although States will incur penalties only if they fail to file their data by the end of the succeeding quarter, we strongly encourage States to submit their reports on the due date. This will provide an opportunity to identify and correct any potential problems or omissions that could otherwise result in a State penalty.

We have made two other changes in this section. First, as noted above, we deleted paragraph (c), as the due dates for the State's initial TANF reports are no longer applicable. Second, we made minor editorial changes in paragraph (b) of the NPRM (regarding timing options for States to submit the SSP–MOE Report) and re-designated it as a new paragraph (c).

Section 265.5—May States Use Sampling? (§ 275.5 of the NPRM)

Most of the comments on this section of the NPRM raised questions about the sampling specifications found in Appendix H of the NPRM.

The statute, in section 411(a)(1)(B)(i), gives States the option of using scientifically acceptable sampling methods to comply with the data collection and reporting requirements of section 411(a). Under section 411(a)(1)(B)(ii), the Secretary must provide the States with case-record sampling specifications and data collection procedures necessary to produce statistically valid estimates of the performance of State TANF programs.

The NPRM at § 275.5(a) specified the option that States have to report data based on sampling or to report data on the entire population (universe) of recipients. In paragraph (a), we also stated that States could use samples to report only disaggregated, not aggregated data. In paragraph (b), we proposed a definition of ''scientifically acceptable sampling method.''

The majority of comments (from more than 25 States and national State-based organizations) urged us to consider greater flexibility in the sampling specifications. In general, they recommended that we:

(1) Eliminate the monthly sample size requirements because they would restrict the State's flexibility provided under the statute;

(2) Allow smaller sample sizes, particularly for smaller States;

(3) Permit States to file some information using sampling and other information using universe reporting; and

(4) Allow States to use alternative sampling methodologies when they can demonstrate that other methods produce equally valid samples.

We disagree with the recommendations to eliminate the monthly sample size requirement but, as discussed below, we have clarified the flexibility States have in designing their sampling plans. We discuss these and other recommendations in the response to comments below.

Comment: Two commenters asked us to confirm that a State can submit universe data if a State does not have enough cases to meet the sample size requirements, e.g., the State does not have 600 two-parent families in its caseload (This was explicitly stated in the instructions to the ETDR, but was not included in the NPRM.)

Response: In the NPRM, we proposed an annual sample size of 600 two-parent families, i.e., an average monthly sample size of 50 two-parent families. We confirm that, if a State has less than 50 two-parent families for a month, the State must report data on all such families.

Comment: In recommending changes to sample sizes, several commenters (i.e., about 10 States) stated that the sample sizes proposed in the NPRM (3,000 annual cases for active cases and 800 annual cases for closed cases for both the TANF and separate State programs) were far in excess of the sample size of 1200 cases that we allowed many States to use under the AFDC-Quality Control (QC) system. The

proposed sample sizes, they believed, would result in a dramatic increase in State data collection workload. For some States, the sample size would equal or exceed the entire caseload.

Commenters also questioned the significance of using the same sample size for large States as for smaller States. Some commenters also objected to the two-parent sample size (600 cases) because two-parent families were a very small percentage of their caseload.

Commenters recommended an overall reduction in sample sizes and/or the use of a finite correction factor that would take into account the size of the caseload in smaller States.

Response: First, in response to the question of the smaller sample size permitted for the AFDC–QC data collection, we believe the differences in these two programs dictate larger sample sizes. The nature of the programs are different and the purpose for which the data are collected is also different.

Under the AFDC program, States had much less flexibility; the major purpose of data collection was focused on determining payment accuracy and charting national trends. Under the TANF program, States have greatly increased flexibility, and data collection is critically important for monitoring and measuring program accountability and program performance.

Second, we agree that a finite population correction factor may be useful, particularly to States with small TANF populations. Thus, we will incorporate this provision in the TANF Sampling Manual.

Third, the recommendations to reduce sample sizes raised more difficult and serious issues. We considered all comments very carefully in evaluating the possible effects of various sample size options. On balance, we are retaining the sample sizes proposed in the NPRM for the reasons discussed below.

In the NPRM (Appendix H, Sampling Specifications), we proposed the following annual minimum required sample sizes:

(1) For families receiving TANF assistance, 3000 families, of which 600 (approximately 25 percent) must be newly approved applicants.

(2) Of the 2400 families that have been receiving TANF assistance, 600 (approximately 25 percent) must be two-parent families.

(3) For families no longer receiving TANF assistance (closed cases), the minimum required sample size is 800 families.

(4) The same sample sizes apply to families receiving assistance and families no longer receiving assistance under separate State programs.

Clearly, reduced sample sizes would increase State flexibility and reduce reporting burden; on the other hand, reduced sample sizes will also reduce the precision of and provide less reliable data for computing State work participation rates.

As we stated in the NPRM, these sample sizes will provide reasonably precise estimates for the overall (i.e., the all-family) and the two-parent work participation rates. The overall rate has a precision of about plus or minus two percentage points at a 95-percent confidence level. The two-parent rate has a precision of about 2.3 percentage points at a 95-percent confidence level. (We could have improved the precision of the two-parent rate to plus or minus two percentage points with an annual sample size of 800 families.) We believe this precision is important to States as the basis for the computation of reliable work participation rates.

In addition, we believe the larger sample sizes are needed to monitor State TANF programs and to enable us to answer key questions of concern to both the Administration and Congress. As we discussed in an earlier section of the preamble, the Secretary is responsible for discerning what is happening at the State level to sub-groups for which we have monitoring responsibility or a major interest, such as child-only cases, sanctioned cases, and immigrants. For example, under a reduced sample size, we would not be able to detect an increase in the percentage of child-only cases until the increase is quite substantial. States could attribute smaller increases to sampling variation.

Furthermore, a smaller sample size hampers our ability to explore the underlying causes of any detected trends. For example, in addition to tracking child-only cases, we might wish to investigate changes in the number of such cases with sanctioned adults in the household. Under the sample sizes proposed in the NPRM, we might be able to study about 150 such families. Using smaller sample sizes, we would be less confident in drawing conclusions based on correspondingly smaller numbers.

We believe that the specific burden and cost of reporting will be different for each State depending on multiple factors. Initial decisions a State must make concern whether to enter the TANF and the SSP–MOE data elements into the State's automated management information system, whether to report these data on a sampling basis, or whether to use a combination of both mechanisms.

For some States, it may be more efficient to automate all data reporting, particularly those States that choose to report universe data. (Currently, 30 States report universe data in their ETDR.) Clearly, as States move to an automated data collection system, the cost and burden of data collection will decline.

For other States, sampling will be the most practicable, efficient, and feasible method. For example, under the sampling specifications in the sampling manual to be issued, the State would select one/twelfth of the minimum annual required sample each month, i.e., approximately 250 cases. (One-twelfth of 3000 is 250.)

Comment: Several commenters also expressed concern that the scope of the proposed data collection was particularly burdensome in light of the changes needed to make State information systems Y2K compliant. They contended that, since States had limited system personnel resources, they could not effectively manage Y2K efforts and major modifications of their systems as a result of final TANF data collection rules at the same time.

Response: Where Y2K problems exist, we suggest that States consider the sampling option in reporting TANF data. (The TANF statute at section 411 provides States with the option of furnishing the disaggregated TANF data via sample. The NPRM provided sampling specifications, and we will be issuing a sampling manual providing States with detailed options.)

With respect to Y2K issues, in general, sampling offers both advantages and disadvantages. On the one hand, the use of samples provides better data (i.e., data that are more readily verified) and uses fewer State and Federal resources. On the other hand, sampled data does not allow States or the Department to track individuals over time. It also does not provide the same precise information on population subgroups within a State, such as child-only cases, or allow matching of TANF recipient data with WtW recipient data. If States use a sample, along with the pc-based software we provide for the creation of their transmission files, they will not need to make major system changes while they work on Y2K problems. In this instance, the use of samples has a number of advantages for a State:

(1) It can devote different personnel resources to conducting samples than to working on the Y2K effort.

(2) It can limit its data collection efforts to the cases or individuals in the sample; it would not have to collect new

information from the entire caseload that it may not find useful or relevant.

(3) Sample information may be more current.

(4) Using a sample, it could extract required information that is already in its computer files and manually collect additional information.

(5) After solving its Y2K problems, a State could reassess whether reporting on a sample basis is still in its best interest.

Even though sampling might make it easier for States to implement the new reporting requirements, we recognize that: (1) the effective date of new reporting requirements comes at a particularly inopportune time for States that have not fully resolved their Y2K issues; and (2) the first responsibility of States is to ensure that their automated systems are capable of maintaining benefits to their neediest citizens. Thus, we have added an additional criterion for reasonable cause at § 262.5(b)(1) related to this issue. Under this new provision, States that miss the deadlines for submitting complete and accurate data for the first two quarters of FY 2000 will receive reasonable cause if: (1) they can clearly demonstrate that their failure was attributable to Y2K compliance activities; and (2) they submit the required data by July 1, 2000.

Comment: Several commenters recommended that States be permitted to report some data based on sampling and other data based on universe data. One State described its TANF program as made up of sub-programs; it wanted the option of reporting sample data on some sub-programs and universe data on others.

However, two States said that we should not allow States to ''mix sample and universe reporting.'' They believed that, in order for data to be meaningful for evaluating policy or performance, States had to use a single method of reporting.

Response: We have decided not to allow a State to submit some disaggregated data based on universe reporting and other data based on sampled information because we do not believe it would be feasible. Not only would it be difficult to analyze such data at the Federal level, it would also be impossible to set up a systematic procedure for estimating totals, proportions, averages, etc., across States. Depending on how fractured the State's reporting is, such mixed reporting might even make within-State estimates impossible. Each data element could have its own weight rather than a weight being associated at the case level.

In addition, States were not in agreement as to what data would be reported on a sample basis and what data would be reported on a 100-percent basis.

Comment: Two States asked us to clarify whether a State could propose the use of an alternate sampling plan as long as it met precision requirements. One State asked for directions on how we will approve the State's sampling methodology.

A few commenters recommended that we allow alternative sampling methodologies when a State could demonstrate that other methods produce equally valid samples. One State, for example, described and recommended approval of a longitudinal sampling design and a rolling-panel design currently in use in its State.

Response: In Appendix H of the NPRM, ''Sampling Specifications,'' we proposed to give States a substantial amount of flexibility in designing sampling plans. In general, we proposed that monthly cross-sectional probability samples be used. Within this broad class of sampling designs, States would have considerable flexibility to formulate their plans. We also suggested that simple random sampling or systematic random sampling design would be easier to implement. However, we did not propose to require that States use one of these designs. We will issue a sampling manual that will incorporate Appendix H, reflect the other decisions in the final rule, and describe, in more detail, the sampling specifications and requirements for States that opt to report based on samples of TANF families and families in separate State programs. Under this TANF Sampling Manual, States will be free to propose other designs for our consideration, as long as their designs reflect cross-sectional monthly probability sampling. We need such samples to calculate monthly work participation rates. We will publish the Sampling Manual in the **Federal Register** and submit it for approval under the Paperwork Reduction Act.

We have added a new paragraph (c) to this section to advise States that they will find the sampling specifications and procedures that they must use in the TANF Sampling Manual.

We reject the specific proposal that we allow longitudinal or rolling-panel designs, primarily because these designs are inappropriate for measuring the work participation rate. These types of study designs predict or reveal the composition of future samples. Thus, a State would know its sample cases for future months and could concentrate on boosting the participation rates of sample cases. In this instance, the sample would no longer be representative of the caseload as a whole and a bias in the resulting estimates would occur. As noted earlier in this discussion, States will be free to propose other sample designs as long as the designs meet cross-sectional monthly probability sampling criteria.

Comment: One commenter recommended that we count sample cases as long as States have sufficient data to satisfy core elements for work participation calculations and make other responses optional.

Response: If a State opts to collect and report data for a sample of families receiving TANF assistance, it must report all section 411(a) data on all families selected into the sample. When samples are used to make estimates about the universe from which the sample was selected, each sample unit has valuable information to contribute to the estimate.

Comment: Two commenters objected to item #4 in the sampling specifications, which proposed that States must submit a monthly list of selected sample cases within 10 days of selection. They stated that this requirement was not in the statute, and it was burdensome on States. They recommended that each State keep a record of the cases pulled and provide a reason for dropping cases, if this occurs.

Response: We need the list of selected cases to ensure that we receive data for all selected cases for each reporting month (i.e., that there are no missing cases). Furthermore, States need such a list for control of their sample. This reporting is not a new requirement; States previously provided such a listing under the AFDC–QC system.

Comment: Two commenters questioned a provision in § 272.3(b)(2) of the NPRM, dealing with ''How will we determine if a State is subject to a penalty?'' This paragraph proposed to prohibit a State from revising its sampling frames or program designations for cases retroactively.

Response: In constructing the sample frame for the reporting month, States must include all families that received assistance for the reporting month through the end of the month. Once the State constructs its frame and selects its sample cases, it would be improper to allow it to redesignate a TANF case as a SSP–MOE case, for example. However, if a family in a sample did not receive assistance for the reporting month, the State would use code (2)—''Listed in error'' under the *Disposition* data element.

Comment: One State commented on sampling and stratification concerns

and recommended that States be allowed different sampling schemes based on local conditions, e.g., different sample sizes for the different monthly strata. It claimed that the proposed sampling specifications effectively created a de facto stratification by month. However, it believed that States gained no advantage by the stratification. Its recommendation, it believed, would be especially helpful for States using monthly samples and would help with work flow and data processing issues.

Response: States have considerable flexibility in designing their sampling plans, including designing strata to accommodate local conditions. Within that flexibility, however, the sampling specifications require that a State select about one-twelfth of the minimum annual sample size each month in the fiscal year. (One-twelfth of 3000 is about 250 families.) This minimum size is important in order to ensure an adequate number of families for calculating a monthly work participation rate, as required by statute.

Comment: One commenter stated that there is no reason, in theory or logic, to assume that systemic random sampling is as good or better than simple random sampling. (The sampling specifications in the NPRM suggested that the former was the preferred approach.)

Response: We had suggested systematic random sampling in the NPRM because most States had used that method in selecting samples for the AFDC–QC program. However, we agree that simple random sampling is an acceptable method for selecting the State's TANF and MOE samples. There are a wide variety of methods that could be used to select monthly samples. These methods include both simple random sampling and stratified random sampling.

Comment: One State suggested that we work with States to develop a more workable approach to sampling. For example, they suggested that it might be useful to permit States to oversample in the first two months of the quarter and undersample in the third month, given the strict requirements for the submission of timely data.

Response: Annual participation rates are based on monthly work participation rate samples. To assure a reliable annual work participation rate, we believe that the samples for each month need to be sufficiently large to calculate a reasonably precise monthly estimate. Therefore, we believe it is reasonable to require States to select 1/12th of its sample each month. Months in which a sample is relatively small (i.e., less than 1/12th the annual required sample size), adversely impact the calculation of the annual work participation rate.

Comment: Two commenters appeared to believe (although we had not specified this in the NPRM) that it was permissible to report aggregate data by sampling, and one commenter recommended that we permit this.

Response: The statute at section 411(a)(1)(B) refers to sampling for disaggregated case-record information. It does not provide specific authority to sample aggregate data. Based on the comments, however, we have determined that it would be appropriate to allow sampling for some aggregate nonexpenditure data elements. (Expenditure data is never reported based on sampling.) We have amended paragraph (a) of this section to reflect this option. We also indicate in the instructions to section three of the TANF Data Report (Appendix C) and section three of the SSP–MOE Data Report (Appendix G) those data elements that may be reported based on sampling.

Section 265.6—Must States File Reports Electronically? (§ 275.6 of the NPRM)

The NPRM proposed to require that States file all quarterly reports electronically, based on format specifications that we would provide.

Comment: We received comments from States and national organizations on this provision.

Several commenters expressed general support for the proposed requirement (e.g., saying ''the law does not expressly require electronic reporting, but it will greatly facilitate the analysis of data.''), and most States that commented believed that they had the capacity to report electronically.

However, some expressed concern that circumstances might occur that would prevent a State from reporting electronically in a timely manner or would prevent electronic reporting of some, but not all, data. They recommended that the final rule allow alternative reporting methods and give States the flexibility to report data in whatever format is feasible for them, given the varying levels of automation. In addition, a few States commented that they had problems with the current electronic reporting process and software.

Response: As we said in the NPRM, State representatives supported electronic submission of both recipient and financial data in our pre-NPRM external consultation meetings, and we believe all States have electronic reporting capability (as evidenced by their use of electronic reporting under previous programs). We continue to believe that electronic submission of reports will reduce paperwork and administrative costs, be less expensive and time consuming, and be more efficient for both the States and the Federal government.

We would take into account any catastrophic events or one-time-only circumstances that prevented a State from filing its reports electronically, on a timely basis, but we see no reason to change the final rule or give States general authority to submit reports in a variety of formats.

If a State has initial problems in using the reporting processes and software that we will make available, we are committed to working with the State to resolve these problems.

Comment: A few States pointed out that there was no basis in the statute for the electronic reporting requirement. One State recommended that we delete the provision from the rule and issue instructional material separate from the regulations.

Response: We agree that this requirement does not appear in the statute. However, for the reasons stated above, we believe that it will not be an onerous administrative requirement, is programmatically justified, and is within our authority to regulate. Therefore, we have made no change in § 265.6.

Comment: One commenter asked what efforts are underway to ensure compatibility of the proposed software with the many different systems States are using.

Response: As a part of the ETDR, we provided States with a data reporting system, including file layout and transmission specifications. States with a variety of systems and file structures were able to provide the specified data in the format required. We plan to modify this system to capture the data required in the final rule. States will be able to enter data and create transmission files using our pc-based software. It incorporates a free-form capability to help prevent any future system incompatibility problems.

Section 265.7—How Will We Determine If the State Is Meeting the Quarterly Reporting Requirements? (§ 275.7 of the NPRM)

and

Section 265.8—Under What Circumstances Will We Take Action To Impose a Reporting Penalty for Failure To Submit Quarterly and Annual Reports? (§ 275.8 of the NPRM)

We are discussing these two sections together because, as the commenters

pointed out, the proposed penalty provisions in § 275.8 were tied, in part, to the definition of a ''complete and accurate report'' in § 275.7 of the NPRM.

Section 409(a)(2)(A) of the Act provides that the grant of any State that fails to report data under section 411(a) of the Act within 45 days following the end of the fiscal quarter shall be reduced by four percent. However, in accordance with section 409(a)(2)(B), we would not apply this penalty if the State submits the report by the end of the quarter following the quarter for which the data were due. The statute does not specifically address ''complete and accurate.'' We have used these terms to clarify for States what is required in order for a State to be considered to have filed the report required by section 411(a) of the Act.

How Will We Determine if the State Is Meeting a Reporting Requirement? (§ 275.7 of the NPRM)

In this section of the NPRM, we proposed definitions of what would constitute a ''complete and accurate report'' for disaggregated data reports, aggregated data reports, and financial reports, i.e., the TANF Data Report, the TANF–MOE Data Report (now known as the SSP–MOE Data Report), and the TANF Financial Report (and, as applicable, the Territorial Financial Report). We also proposed to review State data to determine if the data met these standards and to use audits and reviews to verify the accuracy of the data filed. We reminded States of the need to maintain records to support all reports filed.

The proposed definition of ''complete and accurate'' was a stringent one. In simple terms, it meant that States must report all elements for all families (or all sample families) with no arithmetical errors or inconsistencies. We proposed to use this definition as a standard against which we would determine if the State was subject to a reporting penalty. For example, we proposed that the data reported to us must accurately reflect the information available to the State; be free from computational errors and internally consistent; be reported for all elements (e.g., no missing data); be provided for all families (universe data) or for all families selected as a part of the sample; and, where estimates are necessary, reflect reasonable methods used by the State to develop its estimates.

We based these proposals on the critical importance of the data and the multiple purposes that the data would serve—the most important of which is meeting the accountability requirements of the statute. We also referred to problems in obtaining complete and accurate data under previous programs and specifically requested additional comments and suggestions on ways to help assure better data, without creating an undue burden on States.

Most of the comments on this issue came from States and national advocacy organizations. Many said that the definition of ''complete and accurate'' was too restrictive; it would be difficult for States to meet both the ''timely'' and the ''complete and accurate'' requirements; 100 percent error-free reporting was unfair (in view of the severe penalty provision) and unrealistic (based on past experience); and the final rule should allow States both a reasonable margin of error and an opportunity to correct or revise their data in appropriate circumstances.

Under What Conditions Will a State Be Subject to a Reporting Penalty for Failure To Submit Quarterly Reports? (§ 275.8 of the NPRM)

In this section of the NPRM, we described the circumstances and conditions under which we would impose a reporting penalty.

We proposed that we would impose the penalty if a State did not file the reports on a timely basis (a statutory requirement) and if the data in the TANF Data Reports and the TANF Financial Reports were not complete and accurate. We specified, however, that the penalty would not apply in several situations:

(1) It would not apply to the TANF–MOE (now the SSP–MOE) Data Report or to the annual program and performance report; and

(2) It would not apply to all data elements.

For example, for disaggregated data on TANF recipients, it would apply only to the data elements in section 411(a) (other than section 411(a)(1)(A)(xii)) and to the nine data elements necessary to carry out a data collection system. For aggregated data, it would apply only to the data elements in section 411(a), the data elements necessary to carry out a data collection system, and those elements necessary to verify and validate the disaggregated data.

We did not specify each step of the penalty process but referred readers to §§ 272.4 through 272.6 of this chapter (now §§ 262.4 through 262.6 of this chapter).

Many commenters appeared to believe that all data elements in all data and financial reports were subject to a penalty and that one missing data element in any one of these reports would trigger an automatic penalty. Others questioned the Secretary's authority to ''penalize States for data not required in the statute.'' Still others appeared to be unaware of the penalty process, e.g., consideration of reasonable cause, submittal of a State's corrective compliance plan, and reduction or recision of the penalty under certain circumstances.

We agree that the language of the NPRM did not provide for flexibility or exceptions. Our intent in proposing these two sections was to define a performance standard for all reports. In addition to the statutory requirement for a timely report, the definition of ''complete and accurate'' would constitute the standard against which we would review the reports submitted; work with States to resolve problems; and, if necessary, move through the steps of the penalty process.

We envision several steps in an implementation process that would lead to full compliance with the data collection and reporting requirements.

(a) Step one: Initial implementation.

In the final rule, we have reduced the overall reporting requirements, including the number of data elements, and we have delayed the effective date of the rule to give States additional time to adjust to these reporting requirements. Once States begin to transmit the data specified in the final rule, we anticipate a temporary transition period to work out any problems, but we would hold States to the complete and accurate standard. For example, if States report their data within 45 days of the end of the quarter, as the statute requires, we could have the opportunity to resolve any data problems before the end of the quarter. Thus, submittal by the 45-day deadline could reduce the risk of penalty action against the State.

We would continue the same partnership approach with States that is currently in place to resolve problems that have occurred in the transmission of the ETDR data. We are referring here to nonrecurring and nonsystemic problems such as inadvertent errors, missing data elements, occasional technical glitches, and isolated or unintentional errors.

In addition, we would not prohibit a State from re-transmitting corrected elements in their Data or Financial reports, both during or after a reporting period, as long as retransmission does not become a habitual practice.

(b) Step two: On-going operation.

In this step, all States are able to transmit successfully, and most are able to transmit the data generally without errors. We would continue to hold to the complete and accurate standard and

work with States if any problem arises. However, if a State has not filed a complete and accurate TANF Data Report or Financial Report by the end of the quarter, we would give the State an opportunity to dispute our determination that it had failed to file a complete and accurate report and to provide a ''reasonable cause'' explanation. We would also take into consideration the extent of the incompleteness or unreliability of the data. See § 262.5, ''Under what general circumstances will we determine that a State has reasonable cause?''.

(c) Step three: Penalty liability.

We would provide notice to the chief executive officer of the State if the State has not met the complete, accurate, and timely reporting requirements without reasonable cause. We would take this action, for example, following a pattern of serious omissions, chronic delays, failure to respond, or disregard of requirements. See § 262.6, ''What if a State does not demonstrate reasonable cause?''. The State may accept the penalty or enter into a corrective compliance plan.

We do acknowledge, however, that it is inevitable that there will be occasional missing data elements and nonsystemic reporting errors in any stage of a data reporting system, regardless of how long the system has been in operation, whether the State reports universe or sampled data, or how sophisticated or well-operated the system is. We want to emphasize that it is not our intent to penalize a State for these kinds of occasional errors.

Changes Made in the Final Rule

We have made two changes in § 265.7 of the final rule. First, in paragraph (b)(4)(ii), we have deleted the words ''* * * selected in a sample that meets the minimum sample size requirements * * *'' and inserted the words ''* * * meets the specifications and procedures in the TANF Sampling Manual * * *.'' This language clarifies that a State must meet the sampling requirements as specified in the TANF Sampling Manual as a part of the definition of a ''complete and accurate'' data report, not just the minimum sample size requirements.

Second, we have deleted the word ''its'' from the sentences ''The reported data accurately reflects information available to the State in its case-records, financial records, and automated data systems'' in paragraphs (b)(1), (c)(1), and (d)(1). In deleting this word, we intend to emphasize and clarify that we hold the State accountable for the correctness of the data reported to us, not just the data that may be available at the State-level. Some commenters seemed to believe that States should not be held accountable for data that originated from local jurisdictions or from other agencies. Our purpose in making this change is to convey that, regardless of the source, the State is responsible for reporting complete and accurate data.

We have made several changes in § 265.8 of the final rule. First, we have revised the title to better comport with the content of this section. The new title of § 265.8 is ''Under what conditions will we take action to impose a reporting penalty for failing to submit quarterly and annual reports?''

Second, in response to commenters' concerns, we have specified in paragraph (a) of this section the data that are subject to the penalty.

Third, in paragraph (a)(1), in response to requests for greater clarity and specificity, we have deleted the words ''on a timely basis'' and inserted the words of the statute ''within 45 days of the end of the quarter.'' This responds to commenters who were confused by what they described as ''two due dates'' for these reports.

Finally, we have made editorial changes in paragraph (a)(3) for clarity; in paragraph (a)(5) to delete references to the annual program and performance report (which we have eliminated from part 265) and to reflect the changes made in the annual report under § 265.9; in paragraph (d) to clarify that we will not impose the reporting penalty if the State files the quarterly reports or the annual report by the end of the quarter that immediately succeeds the fiscal quarter for which the reports were required; and in paragraph (f) to add a conditional phrase in relation to the application of the penalty.

We did not agree with commenters who recommended that we:

(1) Delete the definition of ''complete and accurate'' in its entirety;

(2) Delete the proposed definition of ''complete and accurate'' and enter into discussions with States to develop standards for complete and accurate reports;

(3) Apply penalties only for the data elements pertaining to the work participation rates;

(4) Accept the State's best effort to meet reporting requirements on a temporary basis and apply no penalty;

(5) Automatically assume all reporting errors are in good faith and forgive them; and

(6) Waive the penalties when a State is in ''substantial compliance'' even though not all data elements are reported. (It was not clear what the commenter meant by ''substantial compliance.'' However, if the missing data elements met the limited conditions for reasonable cause, as specified in § 262.5, the State may provide a ''reasonable cause'' explanation.)

It is important to reiterate that, as we discussed in the preamble for §§ 260.40, 262.5, and 265.5, we have added a reasonable cause criterion at § 262.5(b)(1) that will provide some penalty relief to States that cannot report their first two quarters of TANF data on time due to Y2K compliance activities.

Comment: Several commenters asked for clarification of the penalty provision. They stated it was unclear in the NPRM whether the penalty was four percent per year or four percent per quarter.

Response: Our interpretation of section 409(a)(2) is that the Secretary is to reduce the grant payable to a State by four percent for each quarter that the State does not submit quarterly reports within 45 days of the end of the quarter. The Secretary is to rescind the penalty if a State submits the data by the end of the quarter.

However, there are other provisions of law that also are applicable and that must be applied. Under section 409(c) of the Act, the Secretary may not impose a penalty until after the State has had an opportunity to correct its noncompliance. If a State submits a corrective compliance plan, carries it out, and achieves compliance, the State is not subject to the penalty. If it submits a corrective compliance plan and fails to carry it out or fails to achieve compliance, the Secretary shall assess some or all of the penalty. Therefore, the State has the opportunity to correct its reporting problems, and the Secretary has the flexibility to reduce the potential impact of a penalty, based on progress achieved.

If, for example, a State failed to correct its quarterly reporting noncompliance for a particular quarter, the Secretary could take into account the State's reporting compliance in other quarters and make an appropriate reduction of the penalty. On the other hand, if the State did not make good faith efforts to comply, the Secretary could impose the full four percent penalty. We have revised paragraph (f) to reflect this process.

Secton 265.9—What Information Must the State File Annually? (§ 275.9 of the NPRM)

This section of the NPRM proposed two annual reports: one annual report as an addendum to the fourth quarter TANF Financial Report (or Territorial Financial Report) and one annual program and performance report.

Paragraphs (a) and (b) of the NPRM proposed the information that States must submit in the annual addendum. Paragraph (a) proposed four items of information on the TANF program. Paragraph (b) proposed eight items of information on separate State programs by cross-reference to § 273.7. Appendix D of the NPRM also contained the proposed content of the annual addendum.

Paragraph (c) proposed that States submit an annual program and performance report containing information on the characteristics and achievements of each State's TANF program, including unique features and innovations, for the Secretary's report to Congress.

Summary of Comments on This Section

A number of States and national organizations provided a variety of both general and specific comments and recommendations on the proposed annual addendum and the annual program and performance report. Generally, commenters objected to reporting these data, because, as some believed, we could find most of the TANF program information in the State TANF plan, and this constituted a duplicate reporting burden. Others believed there was no statutory basis for requiring these data, particularly the data on separate State programs. One national organization representing State interests supported reporting the information on separate State programs in paragraph (b) as a substitute for reporting the disaggregated and aggregated data on separate State programs in the SSP–MOE Data Report. In addition, one State suggested that we should gather information on separate State programs not from States but from other sources, as there ''is a wealth of information on separate State programs from private and academic studies.''

We have made several changes in this section of the final rule, primarily in response to comments. We have eliminated the proposed annual program and performance report in paragraph (c) of the NPRM. (See the detailed discussion of this provision following our discussion of the annual reporting requirements as they appear in the final rule.) We summarize the major changes related to the Annual Report and discuss these and other recommendations in greater detail below.

(1) We no longer require the annual report to be submitted as an addendum to the TANF Financial Report, and we dropped the term ''addendum'' to refer to the annual report.

(2) For clarity, we consolidated the annual reporting requirements in this section. This section now includes all but one of the items of information on the TANF program proposed in paragraph (a) of the NPRM and the items of information on the State's MOE program(s) proposed in paragraph (b) of the NPRM by cross-reference to § 273.7.

(3) We deleted one TANF reporting requirement related to child-only cases in paragraph (a)(1) of the NPRM.

(4) We moved the proposed requirement for information on TANF child care disregards from the quarterly TANF Data Report to the Annual Report. (See comments and responses below for further discussion.)

(5) As discussed elsewhere in the preamble, we added new requirements in paragraphs (b)(5) and (b)(6) for reporting on State strategies and procedures for serving victims of domestic violence and on the nature of nonrecurrent, short term benefits provided under the State's TANF program.

(6) We added an annual reporting requirement for information on State displacement procedures in paragraph (b)(7); on State programs and activities directed at the third and fourth purposes of the TANF program in paragraph (b)(8); and, if available, ''the number of individuals who participated in subsidized employment under § 261.30(b) or (c)'' in paragraph (b) (9).

(7) We revised paragraph (c) to clarify that the annual MOE reporting requirements apply to all State programs for which MOE expenditures are claimed, i.e., both those in TANF and in separate State programs.

(8) We added one data element in paragraph (c)(4) to obtain information on State expenditures claimed as MOE under these programs. (See comments and responses below for further discussion.)

(9) We added a new paragraph (d) to specify the two circumstances when we would not require the re-submission of data in the annual report.

(10) We added a new paragraph (e) to provide that, if a State makes a substantive change in certain data elements in paragraphs (b) and (c), it must file a copy of the changed information with the next quarterly data report or as an amendment to its State Plan. The State must also indicate the effective date of the change.

(11) We made editorial changes for clarity.

Comment: Several commenters urged that we not require States to submit the annual addendum as a part of the fourth quarter Financial Report. They stated that this provision made the State Comptroller accountable for program data that were outside his or her financial expertise. They were also concerned that a program addendum might interfere with a timely filing of the Financial Report, and thus subject the State to a penalty.

As an alternative, almost all commenters on this section recommended that the information in the annual report be included in the TANF State Plan (if it was not already there) or be submitted as a free-standing report. They based this recommendation on the programmatic nature of the information, its similarity to other State Plan information, and the fact that most of the information was relatively stable over time. They also recommended that, because it was relatively stable, we should require that States submit this information on a one-time only basis and allow States to amend it only if the information changed, rather than requiring its re-submittal every year.

Response: We agree with these recommendations. First, we defer to State concerns about the role and responsibility of the State's Comptroller or Chief Financial Officer and have specified in paragraph (a) that a State may submit the annual report either as a free-standing report or as an addendum to the fourth quarter TANF Data Report.

Second, we have specified in paragraph (d) that if the State has submitted the information required in paragraphs (b) and (c) in the State Plan, it may meet the annual reporting requirements by reference in lieu of re-submission.

Third, in paragraph (d), we further provide that if the information has not changed since the previous annual report, the State may reference this information in lieu of re-submission.

We would point out, however, that not all information in the annual report is relatively stable. At a minimum, for example, States will need to develop annual information on child care disregards required under paragraph (b)(4), on the annual total number of families served for which MOE expenditures are claimed in paragraph (c)(5), and on State and MOE expenditures in each TANF–MOE and SSP–MOE program in paragraph (c)(4). The annual report is due at the same time as the fourth quarter TANF Data Report, i.e., November 15 of each year.

Comment: Several commenters urged that we assure that the information in the annual report is current. They were concerned that changes could occur in State definitions of services or program eligibility—information that was important to them for monitoring

purposes—that would not be known until the following annual report, perhaps as much as eleven months later.

Response: We agree and have added new paragraph (e) to this section to require that, if a State makes a substantive change in certain information required as a part of its annual report, it must file a copy of the change with the next quarterly Data Report or as an amendment to its State Plan. The State must also indicate the effective date of the change. This requirement is applicable only to the information in paragraphs (b)(1), (b)(2), (b)(3), (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8).

Comment: As we discussed in the earlier preamble section entitled, ''Child-only Cases,'' a number of commenters objected to reporting the information on certain families excluded from the State's definition of families receiving assistance as proposed in § 275.9(a)(1), i.e., the number of cases excluded from the calculations of the overall participation rate, the two-parent work participation rate, and the time-limit calculations. They believed we had created a time-consuming, costly reporting burden ''to prevent something that HHS has no indication that is actually occurring.'' They also cited a number of legitimate reasons for child-only cases.

Response: We have deleted this provision. However, we will be collecting case-record information on families receiving assistance that will help inform us about the number and nature of child-only cases, as well as new conversions to child-only cases.

Comment: Commenters strongly objected to four items of disaggregated data in the NPRM on child care services.

Response: Our explanation in the NPRM was that this was a requirement of the Child Care and Development Block Grant (CCDBG) statute and that TANF reporting provided the most cost-effective way to collect these data.

However, we reviewed the CCDBG statute and determined that this was not a disaggregated data collection requirement, but an annual aggregate reporting requirement. Therefore, we have removed these data elements from the TANF Data Report and have added this reporting requirement in paragraph (b)(4), to more closely follow the specific provisions of the CCDBG statute. The information in paragraph (b)(4) that States will report parallels the annual information that the State Child Care agency will report in ACF–800, State-level Data Standards, CCIS Technical Bulletin #1, revised January 23, 1998.

Comment: We received many comments on § 273.7 of the NPRM, ''How will we determine State expenditures?'' Because we have moved the annual reporting requirements on State MOE program(s), proposed in § 273.7 to § 265.9(c) of the final rule, we are addressing these comments here.

Some commenters generally supported the collection of these data. Other commenters strongly urged that we require additional data, particularly on expenditures. Others objected to the proposed data collection on the grounds that MOE expenditures are a financial commitment on the part of a State, not a program commitment. They alleged that the program information we proposed to collect went beyond the requirements in the statute. Alternatively, they recommended that only financial information on MOE programs be collected. Still other commenters objected to the reporting burden of specific provisions in § 273.7.

Response: In § 273.7 of the NPRM, we proposed that the State must submit eight items of information on its separate State MOE program(s). This information included descriptive program information, a definition of work activities under separate State programs, eligibility criteria, certain expenditure information, and a certification that families served under separate State programs met the State's criteria for ''eligible families.''

The preamble to the NPRM explained that these data, in addition to the data in the TANF Financial Report, were necessary to our ability to monitor whether State expenditures met the definition of ''qualified expenditures.'' In addition, Congress recognized that State contributions would play an important role in making welfare reform a success. The NPRM and this final rule reflect widespread public interest in learning about the ways in which States help move families toward economic self-support and self-sufficiency. Given this interest, we intend to publish information on our web site regarding State MOE programs.

We disagree that the MOE requirements represent only a financial commitment. We continue to believe that minimal program and expenditure information on State MOE programs is necessary for assessment and monitoring purposes.

Comment: Several commenters requested that we clarify whether the annual reporting requirements on MOE programs apply to only those under the TANF program, to separate State programs, or to both.

Response: We have revised the language in paragraph (c) to clarify that the annual reporting requirements in paragraph (c) apply to any MOE program for which the State claims MOE expenditures.

We also want to clarify that the State must report the information in paragraph (c) only to the extent that the information is applicable to expenditures claimed as MOE. For example, the State need not report on the total number of persons served under an MOE program; only on the number of persons served for whom MOE expenditures are claimed. We believe we have made this clear throughout paragraph (c).

Comment: Two commenters provided detailed analysis and recommendations for additional MOE expenditure data. They believed that, unless the Department obtained these data, we would not be able to determine whether States met MOE requirements, including whether State expenditures claimed for MOE purposes met the ''new spending'' requirement in section 409(a)(7)(B)(II) of the Act. (These provisions limit countable expenditures for certain State or local programs to spending above FY 1995 levels.)

They recommended that States be required to report:

(1) Expenditure data on MOE programs under both the TANF program and separate State programs;

(2) Total State expenditures and total expenditures claimed as MOE under each program for the current year;

(3) Total 1995 expenditures for all programs in which State spending is claimed toward the MOE requirement;

(4) 1995 State spending on eligible families; and

(5) 1995 State expenditures used to draw down Federal AFDC-related matching funds.

Response: We reviewed these recommendations, and we have accepted two of the recommendations as follows:

(1) As noted above, we have revised paragraph (c) to clarify that the annual report requirements apply to both MOE programs under TANF and separate State programs.

(2) We have added a new paragraph (c)(4) to require, for each MOE program, both the total annual State expenditures and total annual State expenditures claimed as MOE.

We agree, in part, with the third recommendation. The NPRM proposed to collect FY 1995 expenditures for each program/activity not authorized and allowable (under title IV–A) as of August 21, 1996. We have retained this provision in paragraph (c)(8). We intend that this provision collect expenditure data on all MOE programs not

previously authorized and allowable under section 403 of prior law and have added that language to paragraph (c)(8).

We disagree, however, with the recommendation to collect FY 1995 expenditure data on all FY 1995 programs. FY 1995 data on programs funded under section 403 are only needed to the extent that the expenditures in the program are claimed for MOE and the ''new spending'' requirements apply.

We also did not accept recommendations four and five. For a full discussion of the issues raised by these recommendations, please refer to the preamble discussion related to § 263.5.

While not accepting all of these recommendations, we have significantly strengthened the reporting on MOE programs under this final rule. The MOE requirements in TANF are central to the success of welfare reform. Under the final rule, we believe that we will be in a good position to ensure that States maintain the investments in needy families that Congress intended.

Comment: One commenter recommended that we allow States to report either the average monthly number or the total number of persons served under State MOE program(s), given the variation in how States collect such information.

Response: We agree and have amended paragraph (c)(5) to reflect this option. The commenter was also concerned that the numbers reported would not be an unduplicated count of persons served. We believe that a requirement for an unduplicated count of persons served for purposes of this report would be unduly burdensome on States and have chosen not to require it.

Comment: Several commenters questioned the need for the certification proposed in § 273.7(b)(8) on the grounds that it was either unnecessary or inappropriate. The NPRM required a certification that the families served under MOE programs met the State's criteria for eligible families.

Response: We disagree that a certification is unnecessary. Under many Federal programs, it is standard procedure to require such a certification, particularly for critical program information needed for accountability and for expenditure data.

We agree, however, that the certification as proposed in paragraph (b)(8) was not intended to apply to all families served under MOE programs but only to those families for which the State is claiming MOE expenditures. We have made this change in paragraph (c)(9) of this section.

We have also accepted the following suggestions for editorial clarity recommended by commenters:

- The description of work activities in paragraph (c)(3) must be reported only if applicable to a State's MOE programs. (Some commenters appeared to believe that this reporting requirement meant that the State must offer work activities as a part of their MOE programs.)

Please note that paragraph (c)(3) is the only requirement in § 265.9(c) that applies only to separate State MOE programs. That is because we ask for a description of the work activities under the MOE program(s) in TANF in paragraph (b)(1).

- We deleted paragraph (a) as it appeared in § 273.7 of the NPRM. Paragraph (a) duplicated the requirement that States submit a quarterly TANF Financial Report in § 265.3(c).

Specific Comments on the Proposed Annual Program and Performance Report

Under section 411(b) of the Act, the Secretary is required to submit an annual report to Congress six months after the end of fiscal year 1997 and every year thereafter. The report is to describe whether the States are meeting the work participation rates; the objectives of increasing employment and earnings of needy families as increasing child support collections and decreasing out-of-wedlock pregnancies and child poverty; the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that became ineligible to receive assistance; the characteristics of each State program funded under this part; and the trends in employment and earnings of needy families with minor children living at home.

In the NPRM, we proposed that States supplement the information that we would obtain through the TANF Data Reports and TANF Financial Reports by providing information in an annual program and performance report. We would include that information in the Department's annual report to Congress on the TANF program.

We proposed that States would describe the characteristics and achievements of each State program; the design and operation of the program; the services, benefits, and assistance provided; and the extent to which the State has met its goals and objectives for the program. We also proposed that States could include additional materials on unique features of their programs, accomplishments and innovations they wished to highlight, or other information appropriate to the report to Congress.

Comment: Without exception, all who commented on this section strongly objected to this requirement. They alleged that we lacked statutory authority for the proposed report and inappropriately shifted the burden of the Secretary's report to States. States also believed that they were also providing much of this information in State plans or that we could obtain it by more efficient and less costly means, e.g., we could conduct national sampling studies in cooperation with the States.

Response: In preparing the NPRM, we were cognizant of the data that we would obtain from the TANF Data and Financial Reports, as well as other sources. We found that State plans varied in the amount of information they contained, and we did not believe we could rely on them as a source of information for the annual report to Congress. We believed that other State and national research and evaluation studies might provide some, but not all, of the information specified in the statute.

We have accepted the recommendation to delete this provision. We will also continue to consider and evaluate multiple sources of data in preparing the report to Congress; for example, we expect to compile information on program characteristics from State plans. If we identify substantive weaknesses in the data we have available through this approach, we will assess our options. We appreciate the offer from States to work together to collect this information in the most efficient way possible.

Additional Reporting Requirements

The discussion above relates to the information now included in the annual report based on the provisions of the NPRM. Following our review of comments and consideration of policy issues that arose in the development of the final rule, we have added five new reporting requirements in § 265.9. While we dropped our proposal for a separate annual program and performance report, we still need information on key aspects of State programs in order to prepare the annual report to Congress. To the maximum extent possible, we will draw upon data available through the State plans and other reports submitted by States.

(1) Family Violence Option

If a State has adopted the Family Violence Option and wants Federal recognition of its good cause domestic

violence waivers under subpart B of part 260 of this chapter, the State must provide: (1) A description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services, and (2) an aggregate figure for the total number of good cause waivers granted.

This new reporting requirement in paragraph (b)(5) of this section will tell us and other interested parties about the activities States are carrying out to ensure that individuals granted waivers receive appropriate attention from TANF staff, access to services, and appropriate consideration of their safety issues. In addition, at §§ 260.54, 260.58, and 260.59, we have specified that a State may receive special penalty consideration under these regulatory provisions if it submits this information.

(2) Nature of Nonrecurrent, Short-Term Benefits

In paragraph (b)(6) of this section, we are asking States to provide a description of the nonrecurrent, short-term benefits they are providing, including:

- The eligibility criteria for these benefits (together with any restrictions on the amount, duration, or frequency of payments);
- Any policies they have instituted that limit such payments to families eligible for assistance or that have the effect of delaying or suspending eligibility for assistance; and
- Any procedures or activities developed under the TANF program to ensure that individuals diverted from TANF assistance receive appropriate information about, referrals to, and access to Medicaid, food stamps, and other programs that provide benefits that could help them successfully transition to work.

To the extent that a State provides the required information, either in the State plan or in the annual report, it would not have to duplicate this information.

As discussed earlier in the preamble, we strongly believe that effective procedures to ensure that diverted individuals access Medicaid, food stamps, or other programs are critical to the success of TANF programs in achieving lasting employment for the families they serve. In addition, such procedures might help States avoid compliance and legal problems in other programs. Given the importance of this issue, the additional information on State practices that we are requiring in the annual report will be extremely helpful in assuring the role TANF agencies are playing with individuals receiving diversion benefits.

For more detailed information, see our discussion on ''Nonrecurrent, short-term benefits'' at § 260.31.

(3) Displacement Procedures

We have added a new reporting requirement in paragraph (b)(7) of this section. Under this provision, each State must include a description of the grievance procedures that are in place in the State to resolve complaints that it receives about displacement.

Each State must create displacement procedures under section 407(f) of the Act. This provision and the related provision at section 403(a)(5)(J) of the Act (which applies to the WtW program) reflects longstanding concern among unions, labor groups, and others about the possibility that welfare recipients being placed at work sites could displace other workers from their jobs. States are also concerned about displacement because of its potential negative effect on their labor force and the long-term success of their TANF programs. Given these multiple concerns, we believe it is important that we monitor State activity in this area. For further discussion, see the preamble discussion on ''Recipient and Workplace Protections.''

(4) Activities Directed at Other Purposes of the Act

It is clear from the statement of findings in section 101 of PRWORA, the stated TANF goals at § 260.20, the preamble discussions on allowable uses of Federal and MOE funds, and activities underway outside the scope of these rules that the TANF legislation recognizes out-of-wedlock pregnancy prevention and family formation as critical components of welfare reform; and, subject to some general restrictions, State may spend Federal TANF and State MOE dollars on such efforts.

Because of the significance of this issue, in paragraph (b)(8), we are asking States to include a description of the activities that they provide under their TANF program to address both these purposes. (We are also asking States annually to provide a break-out of their expenditures on these activities in the TANF Financial Report.)

(5) Number of Individuals in Subsidized Employment

Given our more narrow definition of assistance, we will not be collecting disaggregated information from States on the number of individuals who have participated in subsidized employment under § 261.30(b) or (c). In paragraph (b)(9), we are asking States to estimate this information as an annual aggregate number. We believe this information is highly relevant to understanding the efforts State are making to move individuals, particularly hard-to-place individuals, into employment and accomplishing the second goal of the TANF program.

Section 265.10—When Are Annual Reports Due? (§ 275.10 of the NPRM)

This section of the NPRM proposed due dates for the annual addendum and the annual program and performance report. We received no substantive comments on this section.

In light of the decision to delete the annual program and performance report in § 265,9, we have deleted paragraph (b) of this section as it appeared in the NPRM. We have revised the language of this section to specify that the annual report is due at the same time as the fourth quarter TANF Data Report, i e., November 15 of each year.

XI. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects our response to comments received both on the burden estimates for the proposed data collection and on the NPRM that we issued on November 20, 1997.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials and their representative organizations as well as a broad range of advocacy groups, researchers and others to obtain their views prior to the publication of the NPRM.

We also considered comments received in response to the NPRM and had a small number of meetings with major national organizations that asked for the opportunity to present their comments in person. We respond to the comments that we received in the **SUPPLEMENTARY INFORMATION** section of the preamble and in the discussions of individual regulatory provisions.

To a considerable degree, these rules reflect the comments that we received in response to the NPRM. They also reflect the intent of PRWORA to achieve a balance between granting States the flexibility they need to develop and operate effective and responsive

programs and ensuring that they meet the objectives of the statute. Under the new law, State flexibility is achieved by converting the welfare program into a block grant and limiting Federal rules; ensuring that program goals are accomplished is achieved through a number of penalty and bonus provisions and detailed data collection. The limited scope of this regulation is also consistent with Administration policy, as articulated in Executive Order 12866 and its Regulatory Reinvention initiatives. At the same time, we have created a sufficient regulatory structure to enable enforcement of key statutory requirements.

We support State flexibility in numerous ways—such as by exercising regulatory restraint; giving States the ability to define key program terms; and clarifying that States have the ability to continue their welfare reform demonstrations, serve victims of domestic violence and noncustodial parents, use State funds to provide assistance to certain nonqualified immigrants, provide supports to working families, and operate separate State programs that are not subject to all the TANF requirements.

We support the achievement of program goals by ensuring that we capture key information on what is happening under the State TANF programs and maintaining the integrity of the work and other penalty provisions. We take care, in provisions such as the MOE penalty provisions, sanction penalty provisions, and caseload reduction factor approval process, to protect against negative impacts on needy families.

One of our key goals in developing the penalty rules was to ensure State performance in all key areas provided under statute, including work participation, time limits, State maintenance-of-effort, proper use of Federal TANF funds, and data reporting. The law specified that we should enforce State actions in these areas and also specified the penalty for each failure. Through the ''reasonable cause'' and ''corrective compliance'' provisions in the rules we give some consideration to special circumstances within a State to help ensure that neither the State nor needy families within the State will be unfairly penalized for circumstances beyond their control.

In the work and penalty areas, this rulemaking provides information to the States that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on States, but the basic expectations on States are statutory.

The financial impacts of these rules should be minimal because of the fixed level of funding provided through the block grant. A State's Federal grant could be affected by the penalty decisions made under the law and these rules, and State expenditures on needy families could be affected indirectly by the rules on caseload reduction. (That is, as the result of caseload reduction, a State might meet the required participation rates and expend State funds at the 75-percent MOE level rather than the 80-percent level.) Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

In the area of data collection, the statutory requirements are specific—especially with respect to case-record or disaggregated data. These rules also include data reporting with respect to program expenditures and characteristics and, under certain circumstances, disaggregated and aggregated case-record information on SSP cases. These data collection requirements help ensure that States continue to contribute meaningful amounts of State dollars to programs that assist needy families, monies go for the intended purposes, and the financial integrity of the program is maintained.

We have retained SSP–MOE data collection in order to assess the overall impact of the program and enable us to determine whether the creation of separate State programs could undermine the objectives of the Act. However, consistent with some of the programmatic changes we have made, we have reduced the amount of case-record data we include in this SSP–MOE data collection and (in changing the definition of assistance) have narrowed the types of separate State programs for which States must provide case-record reporting.

The impacts of these rules on needy individuals and families will depend on the choices that a State makes in implementing the new law. Our data collection should enable tracking of these effects over time and across States. Overall, our assessment of these rules indicates that they represent the least burdensome approach consistent with the regulatory objectives.

Based on the comments that we received both on the data collection burden and the NPRM, we reassessed some of our proposed policies. We have identified an approach to certain issues that is less burdensome than we initially proposed, but that is still consistent with our regulatory objectives.

This is a significant regulatory action under section (3)(f)(1) of Executive Order 12866 and, therefore, these final rules have been reviewed by the Office of Management and Budget in accordance with that Order. This rule also has been determined to be a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996.

We have estimated the annualized Paperwork Reduction Act costs to be approximately $30 million, as indicated in section D below, and the penalty costs to be approximately $50 million, beginning in FY 2001, as reflected in the Administration's budget.

These final rules implement the new welfare reform block grant program, the Temporary Assistance for Needy Families program. The legislation and these rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. These rules also strengthen State efforts to develop creative and diverse responses to help recipients become self-sufficient; provide recipients with child care, transportation, and other supportive services they need as they move from welfare to work; and address the many factors that contribute to poverty and dependency.

We believe these objectives are reflected in these final rules and that the benefits to families and children, as well as to States, far outweigh the costs, as reflected in the preamble sections that address the substantive provisions of this rule.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of these regulations justify the costs. The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small nonprofit organizations, and small governmental entities. This rule will affect primarily the 50 States, the District of Columbia,

and certain Territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Government Appropriations Act of 1999. The purpose of the TANF program is to strengthen the economic and social stability of families, in part by supporting the formation and maintenance of two-parent families and reducing out-of-wedlock child-bearing. As required by statute, this rule gives flexibility to States to design programs that can best serve this purpose.

D. Paperwork Reduction Act

This rule contains information collection requirements that have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. If you have any comments on these information collection requirements, please submit them to OMB within 30 days. The address is: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, Attn: ACF/DHHS Desk Officer. The public will have an opportunity to provide comments before OMB makes a final decision.

This final rule incorporates our response to comments regarding the reporting burden that we received in response to the NPRM and the Paperwork Notice we published November 27, 1997. It requires States to submit three quarterly reports and one annual report. In addition, States must provide documentation in support of or related to caseload reduction credit, the reasonable cause/corrective compliance process, the Governor's certification on State waiver programs, and the domestic violence good cause waiver redetermination process.

We are publishing in this issue of the **Federal Register** the quarterly data reports and instructions (including the specific data elements); the quarterly financial report and instructions; and two reporting forms: the Annual Report on State Maintenance-of-Effort Programs and instructions (a part of the annual report information specified in § 265.9(c)) and the Caseload Reduction Report and instructions. We discussed the burden of the content of the latter two reporting forms in the NPRM, but we are publishing the report forms themselves to facilitate compliance.

Quarterly Data and Financial Reports

The three quarterly reports required are the TANF Data Report (Appendices A through C), the SSP–MOE Data Report (Appendices E through G), and the TANF Financial Report (Appendix D) (or, as applicable, the Territorial Financial Report). The TANF Data Report and SSP–MOE Data Report consist of three sections each. Two of the three sections of each Data Report contain disaggregated data elements, and one section of each Data Report contains aggregated data elements.

We need this information collection to meet the requirements of section 411(a) and to implement other sections of the Act, including sections 407 (work participation requirements), 409 (penalties), and 413 (annual rankings).

In the final rule, we have significantly reduced the burden on States of collecting case-record information on current recipients and closed cases. As discussed in the preamble section regarding part 265, we accepted many of the commenters' recommendations to reduce or eliminate burden. For example, we reduced the number of data elements in each Data Report; clarified that States are not required to track closed cases but report only data from the month of closure; and reduced the type of SSP–MOE programs subject to case-record reporting under the revised definition of assistance. At the same time, we also modified, revised, or expanded a very few data elements for clarity or specificity, e.g., adding break-out items on case closure. In deciding which changes to make, we focused on the statutory requirements and the importance of the data in informing us about what was happening to needy families under TANF.

States are required to report MOE expenditure data on the TANF Financial Report; case-record reporting in the SSP–MOE Data Report is optional. However, if a State claims MOE expenditures under a separate State program and wishes to receive a high performance bonus or qualify for caseload reduction credit, it must file disaggregated and aggregated information on a separate State program(s) that is similar to the data reported for the TANF program.

In response to comments and as a consequence of our more narrow definition of ''assistance,'' we have reduced the number of data elements in the SSP–MOE Data Report and the number of TANF and separate State programs that are covered by the SSP–MOE Data Report. (See Appendices E through G for the data elements.)

The TANF Financial Report consists of one form. (See Appendix D.) We need this report to meet the requirements of sections 405(c)(2), 411(a)(2), 411(a)(3), and 411(a)(5) and to carry out our other financial management and oversight responsibilities. These responsibilities include providing information that could be used in determining whether States are subject to penalties under section 409(a)(1), 409(a)(3), 409(a)(7), 409(a)(9), or 409(a)(14); tracking expenditures under our definition of ''assistance''; learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF and SSP cases.

Annual Report

Based on comments, we eliminated the proposed Annual Program and Performance Report (§ 275.9(c) of the NPRM) and the Addendum to the Fourth Quarter Financial Report (§ 275.9(a) and (b) of the NPRM). However, the content of the proposed Addendum is now contained in and required to be reported as a part of the Annual Report in § 265.9. In addition, § 265.9 requires States to report more detailed information on the State's MOE program(s), strategies to implement the Family Violence Option, State diversion programs, and other program characteristics. (We have developed a form for reporting the information on State MOE programs; see Appendix I.)

Other Information Collection Requirements

There are four other circumstances in this rulemaking that will create a reporting burden. The first circumstance concerns instances in which a State wants to qualify for caseload reduction credit. The second addresses a situation in which a State is subject to a penalty under section 409 and wishes to avoid the penalty or receive a reduced penalty. The third is the Governor's certification with respect to waivers, and the fourth is the domestic violence good cause waiver redetermination process.

- If a State elects to request a pro-rata reduction in the minimum participation rates, based on caseload reduction, § 261.41 requires that it must file certain data. We have developed a form for States to report these data at Appendix H.
- If a State wishes to dispute a penalty determination or wants to be considered for a waiver of a penalty based on ''reasonable cause'' or

corrective compliance, § 262.4 requires that the State provide us with certain information. A State must use a similar process if it is seeking a reduced penalty for failure to meet the work participation rates, as discussed at § 261.51.

- If a State is claiming a waiver inconsistency for work requirements or time limits, the Governor must provide a certification (and documentation) to the Secretary on the nature and scope of the waiver and the inconsistency. See § 260.75.
- If a State wants recognition of good cause domestic violence waivers it issues under the Family Violence Option (subpart B of § 260), it must conduct a redetermination of the need for any waivers extending beyond six months. (We estimate that 45 States will conduct between 500 and 600 redeterminations annually. Only a portion of cases receiving waivers will need redeterminations. We estimate that each determination and redetermination will take approximately one hour.)

Changes in the Estimate of Burden

In the NPRM, the respondents for the TANF Financial Report were listed as the 50 States of the United States and the District of Columbia. (We proposed that the Territories would report expenditure data on the Territorial Financial Report.) The respondents for the remaining reporting requirements, i.e., the TANF Data Report, the SSP–MOE Data Report, the annual program and performance report, the Caseload Reduction Credit documentation process, and the Reasonable Cause/Corrective Compliance documentation process, were listed as the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands. (American Samoa is eligible for the TANF program and could use funds that it receives under section 1108 to operate the TANF program. However, it did not elect to operate a TANF program, and we did not include this jurisdiction in our calculation of State burden.)

In the final rule, we have generally assumed the same number of respondents for most of the quarterly Data Reports, the quarterly Financial Report, and the new Annual Report. However, because we reduced the scope of the SSP–MOE reporting, we also reduced the number of respondents to the SSP–MOE Data Report from 54 to 17. This is the current number of States that we believe will have programs that meet the definition of ''assistance.''

In addition, we have estimated 32 States as possible respondents to the Governor's certification on waivers because there are 32 States that currently operate programs under approved waivers.

We have estimated that 45 States will be respondents under the domestic violence good cause waiver redetermination process because the majority of States have implemented the Family Violence Option, and many others are taking the legislative or administrative steps necessary to implement this provision.

While the statute requires Tribal organizations with TANF programs to submit some of the same data as States, we have not calculated the burden for the Tribal organizations in this rule. The reporting burden of Tribal organizations is addressed in the Tribal Work and TANF NPRM published July 22, 1998 (63 FR 39366).

Burden Estimates

In estimating the reporting burden in the NPRM, we pointed out that some of the reporting burden that used to exist in the AFDC program had disappeared. We also pointed out that most of the data elements required under the TANF Data Report were similar to previous data elements required in the AFDC or JOBS program and built upon the data elements in the Emergency TANF Data Report. However, States alleged that our assumptions in this area were not totally valid.

In addition, we assumed that most States would collect the data by means of a review sample. In the NPRM, we used as a starting point the OMB-inventoried QC burden hours as a standard for estimating the TANF burden. We also assumed that when a State provided us the information for their entire caseload, there would be a one-time burden and cost of developing or modifying its automated system.

These assumptions were based on a belief that the proposed information was currently being collected and could be extracted from State automated data systems. State commenters challenged both of these assumptions and the burden estimates we derived from them. They asserted that a significant amount of the proposed information was not available and would require manual collection from TANF recipients. (We note that 30 States are currently reporting data on their entire caseload in the quarterly Emergency TANF Data Report.)

We considered these comments and recalculated what the burden estimate would have been assuming that we had the same number of data elements and respondents as originally proposed in the NPRM. Based on these assumptions, the overall burden estimate would have increased from 241,128 hours (the total burden estimate in the NPRM) to 1,153,944 hours. However, this increase has been offset significantly by the changes we have made in the final rule, e.g., the decrease in the total number of data elements and the substantial reduction in the number of SSP–MOE respondents. These reductions were in large part the result of our response to comments on the NPRM. The estimated total annual burden hours have been reduced to 583,912.

The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

Table A contains our burden estimates for the final rule and revised estimates for the NPRM. The columns entitled ''Final'' incorporate the estimates of the burden associated with the requirements in the final rule. These estimates reflect both the revised assumptions and the overall reductions in burden. The columns entitled ''NPRM As Revised'' provide revised estimates of the burden associated with the requirements in the NPRM, i.e., assuming we retained all the data elements proposed in the NPRM. All numbers have been rounded where indicated.

A. Recalculated Burden Estimates for the Final Rule

Instrument or requirement	Number of respondents		Yearly submittals	Average burden hours per response		Total burden hours	
	NPRM as revised [1]	Final		NPRM as revised [1]	Final	NPRM as revised [1]	Final
TANF Data Report—§ 265.3(b)	[2] 54	[2] 54	4	3,185	2,183	687,960	471,528
SSP—MOE Data Report—§ 265.3(d)	[3] 54	[3] 17	4	2,041	664	440,856	45,152
TANF Financial Report—§ 265.3(c)	[4] 51	[4] 51	4	12	30	2,448	6,120

Instrument or requirement	Number of respondents		Yearly submittals	Average burden hours per response		Total burden hours	
	NPRM as revised [1]	Final		NPRM as revised [1]	Final	NPRM as revised [1]	Final
Annual Report—§ 265.9(b)–(c)6	[5] NA	[2] 54	1	[5] NA	128	[5] NA	6,912
Caseload Reduction Documentation Process—§ 261.41 & § 261.44	[2] 54	[2] 54	1	100	160	5,400	8,640
Reasonable Cause/Corrective Compliance Documentation Process—§§ 262.4, 262.6, & 262.7; § 261.51	[1] 54	[1] 54	2	160	160	17,280	17,280
Governor's Waiver Certification Process—§ 260.75	[5] NA	32	1	[5] NA	40	[5] NA	1,280
Domestic Violence Good Cause Waiver Redetermination Process—§ 260.55	[5] NA	45	600	[5] NA	1	[5] NA	27,000
Estimated Total Annual Burden Hours: [7]						1,153,944	583,912

[1] This column reflects what the burden estimate would have been assuming we retained all data elements proposed in the NPRM.
[2] The 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents.
[3] We estimate that 17 States will be respondents based on the number of States that currently have SSP–MOE programs.
[4] The 50 States and the District of Columbia will be respondents.
[5] Not applicable. These reporting requirements did not appear in the NPRM.
[6] In the NPRM, the annual report referred to the Annual Program and Performance Report, now eliminated.
[7] The total burden estimate for the NPRM (using the original assumptions) was 241,128.

Therefore, while the burden estimate would have increased by approximately 140 percent (based on the provisions in the NPRM), the actual burden decreased by approximately 50 percent.

We did not consider the burden for the Territorial Financial Report because it has fewer than ten respondents and, therefore, is not covered by the PRA. Also, we no longer require an annual addendum to the fourth quarter TANF Financial Report (the burden for the addendum was estimated in the NPRM as a part of the financial report). We now include the content and burden of the Addendum as a part of the Annual Report requirement.

Finally, in the NPRM, we proposed a caseload reduction process requiring 40 annual burden hours per respondent. In response to comments on the caseload reduction process and the revisions we have made, we increased the estimated annual burden to 160 hours per respondent and developed a form for reporting this information. (See Appendix H.)

Cost Estimates

Many commenters expressed the opinion that we had greatly underestimated the costs associated with significant systems overhaul and redesign that would require substantial investment in staff and resources, as well as the costly ongoing operations and reporting efforts.

We have reconsidered the costs in light of these comments and have revised our estimates accordingly. Specifically, we have increased the estimate of the annualized cost of the hour burden from $3,520,469 to $17,050,230. This figure is based on an estimated average hourly wage of $29.20 (including fringe benefits, overhead, and general and administrative costs) for the State staff performing the work multiplied by 583,912 burden hours. (If we had not reduced the actual burden by approximately 50 percent, the estimated cost of the hour burden would have been $33,695,164 ($29.20 times 1,153,944 burden hours).)

We had originally estimated average annualized capital/start-up and operational and maintenance costs (CSO&M) to be $2,700,000 across all States, or $50,000 per respondent. Many States expressed the opinion that the data collection will require costly systems overhaul and redesign and that the overall burden should be anywhere from 5 to 20 times our original estimate.

As indicated above, we have made a substantial upward adjustment in the annualized cost of the hour burden. In addition, we have calculated a substantial increase of 500 percent in the annualized CSO&M based on the assertions of the States. Therefore, we have estimated annualized CSO&M cost to be $13,500,000. When added to the $17,050,230 estimate of the annualized cost of the hour burden, it yields a total estimated annualized cost of $30,550,230, or an average of $565,745 per respondent. Without the actual reduction in burden, the cost would have been $47,195,164, or an average of $873,985 per respondent.

We considered comments by the public on these collections of information in:

- Evaluating whether the collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that the rules will not result in the expenditure by State, local, and Tribal governments, in

the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

List of Subjects in 45 CFR Parts 260 Through 265

Administrative practice and procedure, Day care, Employment, Grant programs—social programs, Loan programs—social programs, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—State Family Assistance Grants, Assistance grants to Territories, Matching grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559—Loan Fund; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: March 26, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: March 29, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR chapter II by adding parts 260 through 265 to read as follows:

PART 260—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

Subpart A—What Provisions Generally Apply to the TANF Program?

Sec.
260.10 What does this part cover?
260.20 What is the purpose of the TANF program?
260.30 What definitions apply under the TANF regulations?
260.31 What does the term ''assistance'' mean?
260.32 What does the term ''WtW cash assistance'' mean?
260.33 When are expenditures on State or local tax credits allowable expenditures for TANF-related purposes?
260.35 What other Federal laws apply to TANF?
260.40 When are these provisions in effect?

Subpart B—What Special Provisions Apply to Victims of Domestic Violence?

260.50 What is the purpose of this subpart?
260.51 What definitions apply to this subpart?
260.52 What are the basic provisions of the Family Violence Option (FVO)?
260.54 Do States have flexibility to grant good cause domestic violence waivers?
260.55 What are the additional requirements for Federal recognition of good cause domestic violence waivers?
260.58 What penalty relief is available to a State whose failure to meet the work participation rates is attributable to providing federally recognized good cause domestic violence waivers?
260.59 What penalty relief is available to a State that failed to comply with the five-year limit on Federal assistance because it provided federally recognized good cause domestic violence waivers?

Subpart C—What Special Provisions Apply to States That Were Operating Programs Under Approved Waivers?

260.70 What is the purpose of this subpart?
260.71 What definitions apply to this subpart?
260.72 What basic requirements must State demonstration components meet for the purpose of determining if inconsistencies exist with respect to work requirements or time limits?
260.73 How do existing welfare reform waivers affect the participation rates and work rules?
260.74 How do existing welfare reform waivers affect the application of the Federal time-limit provisions?
260.75 If a State is claiming a waiver inconsistency for work requirements or time limits, what must the Governor certify?
260.76 What special rules apply to States that are continuing evaluations of their waiver demonstrations?

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

Subpart A—What Rules Generally Apply to the TANF Program?

§ 260.10 What does this part cover?

This part includes regulatory provisions that generally apply to the Temporary Assistance for Needy Families (TANF) program.

§ 260.20 What is the purpose of the TANF program?

The TANF program has the following four purposes:

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

§ 260.30 What definitions apply under the TANF regulations?

The following definitions apply under parts 260 through 265 of this chapter:

ACF means the Administration for Children and Families.

Act means Social Security Act, unless otherwise specified.

Adjusted State Family Assistance Grant, or adjusted SFAG, means the SFAG amount, minus any reductions for Tribal Family Assistance Grants paid to Tribal grantees on behalf of Indian families residing in the State and any transfers to the Social Services Block Grant or the Child Care and Development Block Grant.

Administrative costs has the meaning specified at § 263.0(b) of this chapter.

Adult means an individual who is not a ''minor child,'' as defined elsewhere in this section.

AFDC means Aid to Families with Dependent Children.

Aid to Families with Dependent Children means the welfare program in effect under title IV–A of prior law.

Assistance has the meaning specified at § 260.31.

Basic MOE means the expenditure of State funds that must be made in order to meet the MOE requirement at section 409(a)(7) of the Act.

Cash assistance, when provided to participants in the Welfare-to-Work program (WtW), has the meaning specified at § 260.32.

CCDBG means the Child Care and Development Block Grant Act of 1990, as amended, 42 U.S.C. 9858 *et seq.*

CCDF means the Child Care and Development Fund, or those child care programs and services funded either under section 418(a) of the Act or CCDBG.

Commingled State TANF expenditures means expenditures of State funds that are made within the TANF program and commingled with Federal TANF funds.

Contingency fund means Federal TANF funds available under section 403(b) of the Act, and contingency funds means the Federal monies made available to States under that section. Neither term includes any State funds expended pursuant to section 403(b).

Contingency fund MOE means the MOE expenditures that a State must make in order to meet the MOE requirements at sections 403(b)(6) and 409(a)(10) of the Act and subpart B of part 264 of this chapter and retain contingency funds made available to the State. The only expenditures that qualify for Contingency Fund MOE are State TANF expenditures.

Control group is a term relevant to continuation of a ''waiver'' and has the meaning specified at § 260.71.

Countable State expenditures has the meaning specified at § 264.0 of this chapter.

Discretionary fund of the CCDF refers to child care funds appropriated under the CCDBG.

EA means Emergency Assistance.

Eligible State means a State that, during the 27-month period ending with the close of the first quarter of the fiscal year, has submitted a TANF plan that we have determined is complete.

Emergency assistance means the program option available to States under sections 403(a)(5) and 406(e) of prior law to provide short-term assistance to needy families with children.

Expenditure means any amount of Federal TANF or State MOE funds that a State expends, spends, pays out, or disburses consistent with the requirements of parts 260 through 265 of this chapter. It may include expenditures on the refundable portions of State or local tax credits, if they are consistent with the provisions at § 260.33. It does not include any amounts that merely represent avoided costs or foregone revenue. Avoided costs include such items as contractor penalty payments for poor performance and purchase price discounts, rebates, and credits that a State receives. Foregone revenue includes State tax provisions—such as waivers, deductions, exemptions, or nonrefundable tax credits—that reduce a State's tax revenue.

Experimental group is a term relevant to continuation of a ''waiver'' and has the meaning specified at § 260.71.

FAG has the meaning specified at § 264.0(b) of this chapter.

Family Violence Option (or FVO) has the meaning specified at § 260.51.

FAMIS means the automated statewide management information system under sections 402(a)(30), 402(e), and 403 of prior law.

Federal expenditures means expenditures by a State of Federal TANF funds.

Federal TANF funds means all funds provided to the State under section 403 of the Act except WtW funds awarded under section 403(a)(5), including the SFAG, any bonuses, supplemental grants, or contingency funds.

Federally recognized good cause domestic violence waiver has the meaning specified at § 260.51.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

FY means fiscal year.

Good cause domestic violence waiver has the meaning specified at § 260.51.

Governor means the Chief Executive Officer of the State. It thus includes the Governor of each of the 50 States and the Territories and the Mayor of the District of Columbia.

IEVS means the Income and Eligibility Verification System operated pursuant to the provisions in section 1137 of the Act.

Inconsistent is a term relevant to continuation of a ''waiver'' and has the meaning specified at § 260.71.

Indian, Indian Tribe and Tribal Organization have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term ''Indian tribe'' means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(1) Arctic Slope Native Association;

(2) Kawerak, Inc.;

(3) Maniilaq Association;

(4) Association of Village Council Presidents;

(5) Tanana Chiefs Council;

(6) Cook Inlet Tribal Council;

(7) Bristol Bay Native Association;

(8) Aleutian and Pribilof Island Association;

(9) Chugachmuit;

(10) Tlingit Haida Central Council;

(11) Kodiak Area Native Association; and

(12) Copper River Native Association.

Individual Development Account, or IDA, has the meaning specified at § 263.20 of this chapter.

Job Opportunities and Basic Skills Training Program means the program under title IV–F of prior law to provide education, training and employment services to welfare recipients.

JOBS means the Job Opportunities and Basic Skills Training Program.

Minor child means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance-of-effort.

Needy State is a term that pertains to the provisions on the Contingency Fund and the penalty for failure to meet participation rates. It means, for a month, a State where:

(1)(i) The average rate of total unemployment (seasonally adjusted) for the most recent 3-month period for which data are published for all States equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment (seasonally adjusted) for such 3-month period equals or exceeds 110 percent of the average rate for either (or both) of the corresponding 3-month periods in the two preceding calendar years; or

(2) The Secretary of Agriculture has determined that the average number of individuals participating in the Food Stamp program in the State has grown at least 10 percent in the most recent 3-month period for which data are available.

Noncustodial parent means a parent of a minor child receiving assistance who:

(1) Lives in the State; and

(2) Does not live in the same household as the child.

Prior law means the provisions of title IV–A and IV–F of the Act in effect as of August 21, 1996. They include provisions related to Aid to Families with Dependent Children (or AFDC), Emergency Assistance (or EA), Job Opportunities and Basic Skills Training (or JOBS), and FAMIS.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or Pub. L. 104–193, 42 U.S.C. 1305 note.

Qualified Aliens has the meaning prescribed under section 431 of PRWORA, as amended, 8 U.S.C. 1641.

Qualified State Expenditures means the total amount of State funds expended during the fiscal year that count for basic MOE purposes. It includes expenditures, under any State program, for any of the following with respect to eligible families:

(1) Cash assistance;

(2) Child care assistance;

(3) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance of an eligible family that is not generally available to persons who are not members of an eligible family;

(4) Any other use of funds allowable under subpart A of part 263 of this chapter; and

(5) Administrative costs in connection with the matters described in paragraphs (1), (2), (3) and (4) of this definition, but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

Secretary means Secretary of the Department of Health and Human Services or any other Department official duly authorized to act on the Secretary's behalf.

Segregated State TANF expenditures means expenditures of State funds within the TANF program that are not commingled with Federal TANF funds.

Separate State program, or SSP, means a program operated outside of

TANF in which the expenditures of State funds may count for basic MOE purposes.

SFAG means State family assistance grant, as defined in this section.

SFAG payable means the SFAG amount, reduced, as appropriate, for any Tribal Family Assistance Grants made on behalf of Indian families residing in the State and any penalties imposed on a State under this chapter.

Single audit means an audit or supplementary review conducted under the authority of the Single Audit Act at 31 U.S.C. chapter 75.

Social Services Block Grant means the social services program operated under title XX of the Act, pursuant to 42 U.S.C. 1397.

SSBG means the Social Services Block Grant.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State agency means the agency that the Governor certifies as the administering and supervising agency for the TANF program, pursuant to section 402(a)(4) of the Act.

State family assistance grant means the amount of the basic block grant allocated to each eligible State under the formula at section 403(a)(1) of the Act.

State MOE expenditures means the expenditure of State funds that may count for purposes of the basic MOE requirements at section 409(a)(7) of the Act and the Contingency Fund MOE requirements at sections 403(b)(4) and 409(a)(10) of the Act.

State TANF expenditures means the expenditure of State funds within the TANF program.

TANF means The Temporary Assistance for Needy Families Program.

TANF program means a State program of family assistance operated by an eligible State under its State TANF plan.

Territories means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

Title IV–A refers to the title and part of the Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

Tribal family assistance grant means a grant paid to a Tribe that has an approved Tribal family assistance plan under section 412(a)(1) of the Act.

Tribal grantee means a Tribe that receives Federal TANF funds to operate a Tribal TANF program under section 412(a) of the Act.

Tribal TANF program means a TANF program developed by an eligible Tribe, Tribal organization, or consortium and approved by us under section 412 of the Act.

Tribe means Indian Tribe or Tribal organization, as defined elsewhere in this section. The definition may include Tribal consortia (i.e., groups of federally recognized Tribes or Alaska Native entities that have banded together in a formal arrangement to develop and administer a Tribal TANF program).

Victim of domestic violence has the meaning specified at § 260.51.

Waiver, when used in subpart C of this part, has the meaning specified at § 260.71.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Welfare-to-Work means the new program for funding work activities at section 403(a)(5) of the Act.

WtW means Welfare-to-Work.

WtW cash assistance has the meaning specified at § 260.32.

§ 260.31 What does the term ''assistance'' mean?

(a)(1) The term ''assistance'' includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under § 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section:

(1) Does not apply to the use of the term assistance at part 263, subpart A, or at part 264, subpart B, of this chapter; and

(2) Does not preclude a State from providing other types of benefits and services in support of the TANF goal at § 260.20(a).

§ 260.32 What does the term ''WtW cash assistance'' mean?

(a) For the purpose of § 264.1(b)(1)(iii) of this chapter, WtW cash assistance only includes benefits that:

(1) Meet the definition of assistance at § 260.31; and

(2) Are directed at basic needs.

(b) Thus, it includes benefits described in paragraphs (a)(1) and (a)(2) of § 260.31, but excludes benefits described in paragraph (a)(3) of § 260.31.

(c) It only includes benefits identified in paragraphs (a) and (b) of this section when they are provided in the form of cash payments, checks, reimbursements, electronic funds transfers, or any other form that can legally be converted to currency.

§ 260.33 When are expenditures on State or local tax credits allowable expenditures for TANF-related purposes?

(a) To be an allowable expenditure for TANF-related purposes, any tax credit program must be reasonably calculated to accomplish one of the purposes of the TANF program, as specified at § 260.20.

(b)(1) In addition, pursuant to the definition of expenditure at § 260.30, we

would only consider the refundable portion of a State or local tax credit to be an allowable expenditure.

(2) Under a State Earned Income Tax Credit (EITC) program, the refundable portion that may count as an expenditure is the amount that exceeds a family's State income tax liability prior to application of the EITC. (The family's tax liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of a State EITC that the State refunds to a family and that is above the amount of EITC used as credit towards the family's State income tax liability.

(3) For other refundable (and allowable) State and local tax credits, such as refundable dependent care credits, the refundable portion that would count as an expenditure is the amount of the credit that exceeds the taxpayer's tax liability prior to the application of the credit. (The taxpayer's liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of the credit that the State refunds to the taxpayer and that is above the amount of the credit applied against the taxpayer's tax bill.

§ 260.35 What other Federal laws apply to TANF?

(a) Under section 408(d) of the Act, the following provisions of law apply to any program or activity funded with Federal TANF funds:

(1) The Age Discrimination Act of 1975;

(2) Section 504 of the Rehabilitation Act of 1973;

(3) The Americans with Disabilities Act of 1990; and

(4) Title VI of the Civil Rights Act of 1964.

(b) The limitation on Federal regulatory and enforcement authority at section 417 of the Act does not limit the effect of other Federal laws, including Federal employment laws (such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA) and unemployment insurance (UI)) and nondiscrimination laws. These laws apply to TANF beneficiaries in the same manner as they apply to other workers.

§ 260.40 When are these provisions in effect?

(a) In determining whether a State is subject to a penalty under parts 261 through 265 of this chapter, we will not apply the regulatory provisions in parts 260 through 265 of this chapter retroactively. We will judge State actions that occurred prior to the effective date of these rules and expenditures of funds received prior to the effective date only against a reasonable interpretation of the statutory provisions in title IV–A of the Act.

(b) The effective date of these rules is October 1, 1999.

Subpart B—What Special Provisions Apply to Victims of Domestic Violence?

§ 260.50 What is the purpose of this subpart?

Under section 402(a)(7) of the Act, under its TANF plan, a State may elect to implement a special program to serve victims of domestic violence and to waive program requirements for such individuals. This subpart explains how adoption of these provisions affects the penalty determinations applicable if a State fails to meet its work participation rate or comply with the five-year limit on Federal assistance.

§ 260.51 What definitions apply to this subpart?

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act under which a State certifies in its State plan if it has elected the option to implement comprehensive strategies for identifying and serving victims of domestic violence.

Federally recognized good cause domestic violence waiver means a good cause domestic violence waiver that meets the requirements at §§ 260.52(c) and 260.55.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a State to a victim of domestic violence under the FVO, as described at § 260.52(c).

Victim of domestic violence means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(C)(iii) of the Act.

§ 260.52 What are the basic provisions of the Family Violence Option (FVO)?

Section 402(a)(7) of the Act provides that States electing the FVO certify that they have established and are enforcing standards and procedures to:

(a) Screen and identify individuals receiving TANF and MOE assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;

(b) Refer such individuals to counseling and supportive services; and

(c) Provide waivers, pursuant to a determination of good cause, of normal program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

§ 260.54 Do States have flexibility to grant good cause domestic violence waivers?

(a) Yes; States have broad flexibility to grant these waivers to victims of domestic violence. For example, they may determine which program requirements to waive and decide how long each waiver might be necessary.

(b) However, if a State wants us to take the waivers that it grants into account in deciding if it has reasonable cause for failing to meet its work participation rates or comply with the five-year limit on Federal assistance, has achieved compliance or made significant progress towards achieving compliance with such requirements during a corrective compliance period, or qualifies for a reduction in its work penalty under § 261.51 of this chapter, the waivers must be federally recognized good cause domestic violence waivers, within the meaning of §§ 260.52(c) and 260.55, and the State must submit the information specified at § 265.9(b)(5) of this chapter on its strategies and procedures for serving victims of domestic violence and the number of waivers granted.

§ 260.55 What are the additional requirements for Federal recognition of good cause domestic violence waivers?

To be federally recognized, good cause domestic violence waivers must:

(a) Identify the specific program requirements that are being waived;

(b) Be granted appropriately based on need, as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less often than every six months;

(c) Be accompanied by an appropriate services plan that:

(1) Is developed by a person trained in domestic violence;

(2) Reflects the individualized assessment and any revisions indicated by the redetermination; and

(3) To the extent consistent with § 260.52(c), is designed to lead to work.

§ 260.58 What penalty relief is available to a State whose failure to meet the work participation rates is attributable to providing federally recognized good cause domestic violence waivers?

(a)(1) We will determine that a State has reasonable cause if its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) To receive reasonable cause under the provisions of § 262.5(b) of this chapter, the State must provide evidence that it achieved the applicable rates, except with respect to any individuals who received a federally recognized good cause domestic violence waiver of work participation requirements. In other words, it must demonstrate that it met the applicable rates when such waiver cases are removed from the calculations at §§ 261.22(b) and 261.24(b) of this chapter.

(b)(1) We will reduce a State's penalty based on the degree of noncompliance to the extent that its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers.

(2) To receive a reduction based on degree of noncompliance under the provisions of § 261.51 of this chapter, a State granting federally recognized good cause domestic violence waivers of work participation requirements must demonstrate that it achieved participation rates above the threshold at § 261.51(b)(3) of this chapter, when such waiver cases are removed from the calculations at §§ 261.22(b) and 261.24(b) of this chapter.

(c) We may take federally recognized good cause domestic violence waivers of work requirements into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the work participation rates during a corrective compliance period.

(d) To receive the penalty relief specified in paragraphs (a), (b), and (c) of this section, the State must submit the information specified at § 265.9(b)(5) of this chapter.

Section 260.59—What Penalty Relief is Available to a State That Failed To Comply With the Five-Year Limit on Federal Assistance Because It Provided Federally Recognized Good Cause Domestic Violence Waivers?

(a)(1) We will determine that a State has reasonable cause if it failed to comply with the five-year limit on Federal assistance because of federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) More specifically, to receive reasonable cause under the provisions at § 264.3(b) of this chapter, a State must demonstrate that:

(i) It granted federally recognized good cause domestic violence waivers to extend time limits based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence; and

(ii) When individuals and their families are excluded from the calculation, the percentage of families receiving federally funded assistance for more than 60 months did not exceed 20 percent of the total.

(b) We may take federally recognized good cause domestic violence waivers to extend time limits into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the five-year limit on Federal assistance during a corrective compliance period.

(c) To receive the penalty relief specified in paragraphs (a) and (b) of this section, the State must submit the information specified at § 265.9(b)(5) of this chapter.

Subpart C—What Special Provisions Apply to States that Were Operating Programs Under Approved Waivers?

§ 260.70 What is the purpose of this subpart?

(a) Under section 415 of the Act, if a State was granted a waiver under section 1115 of the Act and that waiver was in effect on August 22, 1996, the amendments made by PRWORA do not apply for the period of the waiver, to the extent that they are inconsistent with the waiver and the State elects to continue its waiver.

(b) Identification of waiver inconsistencies is relevant for the determination of penalties in three areas:

(1) Under § 261.50 of this chapter for failing to meet the work participation rates at part 261 of this chapter;

(2) Under § 264.2 of this chapter for failing to comply with the five-year limit on Federal assistance at subpart A of part 264 of this chapter; and

(3) Under § 261.54 of this chapter for failing to impose sanctions on individuals who fail to work.

(c) This subpart explains how we will determine waiver inconsistencies and apply them in the penalty determination process for these penalties.

§ 260.71 What definitions apply to this subpart?

(a) *Inconsistent* means that complying with the TANF work participation or sanction requirements at section 407 of the Act or the time-limit requirement at section 408(a)(7) of the Act would necessitate that a State change a policy reflected in an approved waiver.

(b) *Waiver* consists of the work participation or time-limit component of the State's demonstration project under section 1115 of the Act. The component includes the revised AFDC requirements indicated in the State's waiver list, as approved by the Secretary under the authority of section 1115, and the associated AFDC provisions that did not need to be waived.

(c) *Control group* and *experimental group* have the meanings specified in the terms and conditions of the State's demonstration.

§ 260.72 What basic requirements must State demonstration components meet for the purpose of determining if inconsistencies exist with respect to work requirements or time limits?

(a) The policies must be consistent with the requirements of section 415 of the Act and the requirements of this subpart.

(b) The policies must be within the scope of the approved waivers both in terms of geographical coverage and the coverage of the types of cases specified in the waiver approval package.

(c) The State must have applied its waiver policies on a continuous basis from the date that it implemented its TANF program, except that it may have adopted modifications that have the effect of making its policies more consistent with the provisions of PRWORA.

(d) An inconsistency may not apply beyond the earlier of the following dates:

(1) The expiration of waiver authority as determined in accordance with the demonstration terms and conditions; or

(2) For any specific inconsistency, the date upon which the State discontinued the applicable waiver policy.

(e) The State must submit the Governor's certification specified in § 260.75.

(f) In general, the policies in this subpart do not have the effect of delaying the date when a State might be subject to the work or time-limit penalties at §§ 261.50, 261.54, and 264.1 of this chapter or the data collection requirements at part 265 of this chapter.

§ 260.73 How do existing welfare reform waivers affect the participation rates and work rules?

(a) If a State is implementing a work participation component under a waiver, in accordance with this subpart, the provisions of section 407 of the Act will not apply in determining if a penalty should be imposed, to the extent that the provision is inconsistent with the waiver.

(b) For the purpose of determining if the State's demonstration has a work participation component, the waiver list for the demonstration must include one or more specific provisions that directly correspond to the work policies in section 407 of the Act (i.e., change

allowable JOBS activities, exemptions from JOBS participation, hours of required JOBS participation, or sanctions for noncompliance with JOBS participation).

(c) Corresponding to the inconsistencies certified by the Governor under § 260.75:

(1) We will calculate the State's work participation rates, by:

(i) Excluding cases exempted from participation under the demonstration component and, if applicable, experimental and control cases not otherwise exempted, in calculating the rate;

(ii) Defining work activities as defined in the demonstration component in determining the numerator; and

(iii) Including cases meeting the required number of hours of participation in work activities in accordance with demonstration component policy, in determining the numerator.

(2) We will determine whether a State is taking appropriate sanctions when an individual refuses to work based on the State's certified waiver policies.

(d) We will use the data submitted by States pursuant to § 265.3 of this chapter to calculate and make public a State's work participation rates under both the TANF requirements and the State's alternative waiver requirements.

§ 260.74 How do existing welfare reform waivers affect the application of the Federal time-limit provisions?

(a)(1) If a State is implementing a time-limit component under a waiver, in accordance with this subpart, the provisions of section 408(a)(7) of the Act will not apply in determining if a penalty should be imposed, to the extent that they are inconsistent with the waiver.

(2) For the purpose of determining if the State's demonstration has a time-limit component, the waiver list for the demonstration must include provisions that directly correspond to the time-limit policies enumerated in section 408(a)(7) of the Act (i.e., address which individuals or families are subject to, or exempt from, terminations of assistance based solely on the passage of time or who qualifies for extensions to the time limit).

(b)(1) Generally, under an approved waiver, except as provided in paragraph (b)(3) of this section, a State will count, toward the Federal five-year limit, all months for which the head-of-household or spouse of the head-of-household subject to the State time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver.

(2) The State need not count, toward the Federal five-year limit, any months for which a head-of-household or spouse of the head-of-household receives assistance with Federal TANF funds while that individual is exempt from the State's time limit under the State's approved waiver.

(3) Where a State has continued a time limit under waivers that only terminates assistance for adults, the State need not count, toward the Federal five-year limit, any months for which an adult subject to the State time limit receives assistance with Federal TANF funds.

(4) The State may continue to provide assistance with Federal TANF funds for more than 60 months, without a numerical limit, to families provided extensions to the State time limit, under the provisions of the terms and conditions of the approved waiver.

(c) Corresponding to the inconsistencies certified by the Governor under § 260.75, we will calculate the State's time-limit exceptions by:

(1) Excluding, from the determination of the number of months of Federal assistance received by a family:

(i) Any month in which the adult(s) were exempt from the State's time limit under the terms of an approved waiver or any months in which the children received assistance under a waiver that only terminated assistance to adults; and

(ii) If applicable, experimental and control group cases not otherwise exempted; and

(2) Applying the State's waiver policies with respect to the availability of extensions to the time limit.

§ 260.75 If a State is claiming a waiver inconsistency for work requirements or time limits, what must the Governor certify?

(a) The Governor of the State must certify in writing to the Secretary that:

(1) The applicable policies have been continually applied in operating the TANF program, as described in § 260.72(c);

(2) The inconsistencies claimed by the State are within the scope of the approved waivers, as described in § 260.72(b);

(b) The certification must identify the specific inconsistencies that the State chooses to continue with respect to work and time limits.

(1) If the waiver inconsistency claim includes work provisions, the certification must specify the standards that will apply, in lieu of the provisions in subparts B and C of part 261 of this chapter, to determine:

(i) The number of two-parent and all-parent cases that are exempt from participation, if any, for the purpose of determining the denominator of the work participation rate;

(ii) The number of nonexempt two-parent and all-parent cases that are participating in work activities for the purpose of determining the numerator of the work participation rate, including standards applicable to;

(A) Countable work activities; and

(B) Required hours of work for participation for individual participants; and

(iii) The penalty against an individual or family when an individual refuses to work.

(2) If the waiver inconsistency claim includes time-limit provisions, the certification must include the standards that will apply, in lieu of the provisions in § 264.1 of this chapter, in determining:

(i) Which families are counted toward the Federal time limit; and

(ii) Whether a family is eligible for an extension of its time limit on federally funded assistance.

(3) If the State is continuing policies for evaluation purposes in accordance with § 260.76:

(i) The certification must specify any special work or time-limit standards that apply to the control group and experimental group cases; and

(ii) The State may choose to exclude cases assigned to the experimental and control groups, which are not otherwise exempt, for the purpose of calculating the work participation rate or determining State compliance related to limiting assistance to families including adults who have received 60 months of Federal TANF assistance. In doing so, the State may effectively exclude all experimental group cases and/or control group cases, not otherwise exempt, but may not exclude individual cases on a selective basis.

(c) The certification may include a claim of inconsistency with respect to hours of required participation in work activities only if the State has written evidence that, when implemented, the waiver policies established specific requirements related to hours of work for nonexempt individuals.

(d)(1) The Governor's certification must be provided no later than October 1, 1999.

(2) If a State modifies its waiver policies in a way that has a substantive effect on the determination of its work sanctions, or the calculation of its work participation rates or its time-limit exceptions, it must submit an amended certification no later than the end of the fiscal quarter in which the modifications take effect.

§ 260.76 What special rules apply to States that are continuing evaluations of their waiver demonstrations?

If a State is continuing research that employs an experimental design in order to complete an impact evaluation of a waiver demonstration, the experimental and control groups may continue to be subject to prior AFDC law, except as modified by the waiver.

PART 261—ENSURING THAT RECIPIENTS WORK

Sec.

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261.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

Authority: 42 U.S.C. 601, 602, 607, and 609.

§ 261.1 What does this part cover?

This part includes the regulatory provisions relating to the mandatory work requirements of TANF.

§ 261.2 What definitions apply to this part?

The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

Subpart A—What Are the Provisions Addressing Individual Responsibility?

§ 261.10 What work requirements must an individual meet?

(a)(1) A parent or caretaker receiving assistance must engage in work activities when the State has determined that the individual is ready to engage in work or when he or she has received assistance for a total of 24 months, whichever is earlier, consistent with section 407(e)(2) of the Act.

(2) The State must define what it means to engage in work for this requirement; its definition may include participation in work activities in accordance with section 407 of the Act.

(b) If a parent or caretaker has received assistance for two months, he or she must participate in community service employment, consistent with section 407(e)(2) of the Act, unless the State has exempted the individual from work requirements or he or she is already engaged in work activities as described at § 261.30. The State will determine the minimum hours per week and the tasks the individual must perform as part of the community service employment.

§ 261.11 Which recipients must have an assessment under TANF?

(a) The State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

(b) The State may make any required assessments within 30 days (90 days, at State option) of the date an individual becomes eligible for assistance.

§ 261.12 What is an individual responsibility plan?

An individual responsibility plan is a plan developed at State option, in consultation with the individual, on the basis of the assessment made under § 261.11. The plan:

(a) Should set an employment goal and a plan for moving immediately into private-sector employment;

(b) Should describe the obligations of the individual. These could include going to school, maintaining certain grades, keeping school-aged children in school, immunizing children, going to classes, or doing other things that will help the individual become or remain employed in the private sector;

(c) Should be designed to move the individual into whatever private-sector employment he or she is capable of handling as quickly as possible and to increase over time the responsibility and the amount of work the individual handles;

(d) Should describe the services the State will provide the individual to enable the individual to obtain and keep private sector employment, including job counseling services; and

(e) May require the individual to undergo appropriate substance abuse treatment.

§ 261.13 May an individual be penalized for not following an individual responsibility plan?

Yes. If an individual fails without good cause to comply with an individual responsibility plan that he or she has signed, the State may reduce the amount of assistance otherwise payable to the family, by whatever amount it considers appropriate. This penalty is in addition to any other penalties under the State's TANF program.

§ 261.14 What is the penalty if an individual refuses to engage in work?

(a) If an individual refuses to engage in work required under section 407 of the Act, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish. Such a reduction is governed by the provisions of § 261.16.

(b)(1) The State must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work.

(2) The State may impose a greater reduction, including terminating assistance.

(c) A State that fails to impose penalties on individuals in accordance with the provisions of section 407(e) of the Act may be subject to the State penalty specified at § 261.54.

§ 261.15 Can a family be penalized if a parent refuses to work because he or she cannot find child care?

(a) No, the State may not reduce or terminate assistance based on an individual's refusal to engage in required work if the individual is a single custodial parent caring for a child under age six who has a demonstrated inability to obtain needed child care, as specified at § 261.56.

(b) A State that fails to comply with the penalty exception at section 407(e)(2) of the Act and the requirements at § 261.56 may be subject to the State penalty specified at § 261.57.

§ 261.16 Does the imposition of a penalty affect an individual's work requirement?

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under TANF shall not be construed to be a reduction in any wage paid to the individual.

Subpart B—What Are the Provisions Addressing State Accountability?

§ 261.20 How will we hold a State accountable for achieving the work objectives of TANF?

(a) Each State must meet two separate work participation rates, one—the two-parent rate—based on how well it succeeds in helping adults in two-parent families find work activities described at § 261.30, the other—the overall rate—based on how well it succeeds in finding those activities for adults in all the families that it serves.

(b) Each State must submit data that allows us to measure its success in requiring adults to participate in work activities, as specified at § 265.3 of this chapter.

(c) If the data show that a State met both participation rates in a fiscal year, then the percentage of historic State expenditures that it must expend under TANF, pursuant to § 263.1 of this chapter, decreases from 80 percent to 75 percent for that fiscal year. This is also known as the State's TANF ''maintenance-of-effort'' requirement.

(d) If the data show that a State did not meet either minimum work participation rate for a fiscal year, a State could be subject to a financial penalty.

(e) Before we impose a penalty, a State will have the opportunity to claim reasonable cause or enter into a corrective compliance plan, pursuant to §§ 262.5 and 262.6 of this chapter.

§ 261.21 What overall work rate must a State meet?

Each State must achieve the following minimum overall participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 and thereafter	50

§ 261.22 How will we determine a State's overall work rate?

(a) The overall participation rate for a fiscal year is the average of the State's overall participation rates for each month in the fiscal year.

(b) We determine a State's overall participation rate for a month as follows:

(1) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is engaged in work for the month (i.e., the numerator), divided by,

(2) The number of families receiving TANF assistance during the month that include an adult or a minor head-of-household, minus the number of families that are subject to a penalty for refusing to work in that month (i.e., the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) The State may direct us, through its reported participation data, to include in the participation calculation families that have been sanctioned for no more than three of the last 12 months.

(c)(1) A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work.

(2) At State option, we will disregard a family with such a parent from the participation rate calculation for a maximum of 12 months.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

§ 261.23 What two-parent work rate must a State meet?

A State receiving a TANF grant for a fiscal year must achieve the following minimum two-parent participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	75
1998	75
1999 and thereafter	90

§ 261.24 How will we determine a State's two-parent work rate?

(a) The two-parent participation rate for a fiscal year is the average of the State's two-parent participation rates for each month in the fiscal year.

(b) We determine a State's two-parent participation rate for a month as follows:

(1) The number of two-parent families receiving TANF assistance that include an adult or minor child head-of-household and other parent who meet the requirements set forth in § 261.32 for the month (i.e., the numerator), divided by,

(2) The number of two-parent families receiving TANF assistance during the month, minus the number of two-parent families that are subject to a penalty for refusing to work in that month (i.e., the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) The State may direct us, through its reported participation data, to include in the participation calculation families that have been sanctioned for no more than three of the last 12 months.

(c) For purposes of the calculation in paragraph (b) of this section, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if an adult in the family (or both adults, if they are both required to work) is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

(e) If a family includes a disabled parent, we will not consider the family to be a two-parent family under paragraph (b) of this section; i.e., we will not include such a family in either the numerator or denominator of the two-parent rate.

§ 261.25 Does a State include Tribal families in calculating these rates?

At State option, we will include families that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program in calculating the State's participation rates under §§ 261.22 and 261.24.

Subpart C—What Are the Work Activities and How Do They Count?

§ 261.30 What are the work activities?

The work activities are:

(a) Unsubsidized employment;

(b) Subsidized private-sector employment;

(c) Subsidized public-sector employment;

(d) Work experience if sufficient private-sector employment is not available;

(e) On-the-job training (OJT);

(f) Job search and job readiness assistance;

(g) Community service programs;

(h) Vocational educational training;

(i) Job skills training directly related to employment;

(j) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(k) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate; and

(l) Providing child care services to an individual who is participating in a community service program.

§ 261.31 How many hours must an individual participate to count in the numerator of the overall rate?

(a) An individual counts as engaged in work for a month for the overall rate if:

(1) He or she participates in work activities during the month for at least the minimum average number of hours per week listed in the following table:

If the fiscal year is:	Then the minimum average hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

and

(2) At least 20 of the above hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count toward the first 20 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 20 hours per week, the following three activities may also count as participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

§ 261.32 How many hours must an individual participate to count in the numerator of the two-parent rate?

(a) Subject to paragraph (d) of this section, an individual counts as engaged in work for the month for the two-parent rate if:

(1) If an individual and the other parent in the family are participating in work activities for an average of at least 35 hours per week during the month, and

(2) At least 30 of the 35 hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count for the first 30 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 30 hours per week, the following three activities may also count for participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(d)(1) If the family receives federally funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the individual and the other parent must be participating in work activities for an average of at least 55 hours per week for the individual to count as a two-parent family engaged in work for the month.

(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b) of this section.

(3) Above 50 hours per week, the three activities listed in paragraph (c) of this section may also count as participation.

§ 261.33 What are the special requirements concerning educational activities in determining monthly participation rates?

(a) Vocational educational training may only count for a total of 12 months for any individual.

(b)(1) A recipient who is married or a single head-of-household under 20 years old counts as engaged in work in a month if he or she:

(i) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(ii) Participates in education directly related to employment for an average of at least 20 hours per week during the month.

(2)(i) For a married recipient, such participation counts as the greater of 20 hours or the actual hours of participation.

(ii) If both parents in the family are under 20 years old, the requirements at § 261.32(d) are met if both meet the conditions of paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(c) In counting individuals for each participation rate, not more than 30 percent of individuals engaged in work in a month may be included in the numerator because they are:

(1) Participating in vocational educational training; and

(2) In fiscal year 2000 or thereafter, individuals deemed to be engaged in work by participating in educational activities described in paragraph (b) of this section.

§ 261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?

Yes. There are four limitations concerning job search and job readiness.

(a) Except as provided in paragraph (b) of this section, an individual's participation in job search and job readiness assistance counts for a maximum of six weeks in any fiscal year.

(b) If the State's total unemployment rate is at least 50 percent greater than the United States' total unemployment rate or if the State meets the definition of a needy State, specified at § 260.30 of this chapter, then an individual's participation in job search and job readiness assistance counts for a maximum of 12 weeks in that fiscal year.

(c) An individual's participation in job search and job readiness assistance does not count for a week that immediately follows four consecutive weeks of such participation in a fiscal year.

(d) Not more than once for any individual in a fiscal year, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation.

§ 261.35 Are there any special work provisions for single custodial parents?

Yes. A single custodial parent or caretaker relative with a child under age six will count as engaged in work if he or she participates for at least an average of 20 hours per week.

§ 261.36 Do welfare reform waivers affect the calculation of a State's participation rates?

A welfare reform waiver could affect the calculation of a State's participation rate, pursuant to subpart C of part 260 and section 415 of the Act.

Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

§ 261.40 Is there a way for a State to reduce the work participation rates?

(a)(1) If the average monthly number of cases receiving assistance, including assistance under a separate State program (as provided at § 261.42(b)), in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance in FY 1995, the minimum overall participation rate the State must meet for the fiscal year (as provided at § 261.21) decreases by the number of percentage points the prior-year caseload fell in comparison to the FY 1995 caseload.

(2) The minimum two-parent participation rate the State must meet for the fiscal year (as provided at § 261.23) decreases, at State option, by either:

(i) The number of percentage points the prior-year two-parent caseload, including two-parent cases receiving assistance under a separate State program (as provided at § 261.42(b)), fell in comparison to the FY 1995 two-parent caseload or;

(ii) The number of percentage points the prior-year overall caseload, including assistance under a separate State program (as provided at § 261.42(b)), fell in comparison to the FY 1995 overall caseload.

(b) The calculations in paragraph (a) of this section must disregard the net caseload reduction (i.e., caseload decreases offset by increases) due either to requirements of Federal law or to changes that a State has made in its eligibility criteria in comparison to its criteria in effect in FY 1995.

(c)(1)(i) To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases and Unemployed Parent cases reported on ACF–3637, Statistical Report on Recipients under Public Assistance.

(ii) We will automatically adjust the Unemployed Parent caseload proportionally upward, based on the percentage of cases with two parents in the household, as shown in Quality Control data for the period prior to the State's reporting two-parent data under TANF.

(2) To determine the prior-year caseload for subsequent years, we will use caseload information from the TANF Data Report and the SSP-MOE Data Report.

(3) To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for the preceding fiscal year for cases receiving assistance as defined at § 261.43.

(d)(1) A State may correct erroneous data or submit accurate data to adjust IV-A program data or to include unduplicated cases. For example, a State may submit accurate data for Emergency Assistance cases and two-parent cases outside the Unemployed Parent program.

(2) A State may submit data to adjust the caseload for FY 1999 and thereafter to include two-parent or other State program cases covered by Federal TANF or State MOE expenditures, but not otherwise reported.

(3) We will adjust both the FY 1995 baseline and the caseload information for subsequent years, as appropriate, based on these State submissions.

(e) We refer to the number of percentage points by which a caseload falls, disregarding the cases described in paragraph (b), as a caseload reduction credit.

§ 261.41 How will we determine the caseload reduction credit?

(a)(1) We will determine the total and two-parent caseload reduction credits that apply to each State based on the information and estimates reported to us by the State on eligibility policy changes, application denials, and case closures.

(2) We will accept the information and estimates provided by a State, unless they are implausible based on the criteria listed in paragraph (d) of this section.

(3) We may conduct on-site reviews and inspect administrative records on applications and terminations to validate the accuracy of the State estimates.

(b) In order to receive a caseload reduction credit, a State must submit a Caseload Reduction Report to us containing the following information:

(1) A listing of, and implementation dates for, all State and Federal eligibility changes, as defined at § 261.42, made by the State since the beginning of FY 1995;

(2) A numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application denials, case closures or other analyses);

(3) An overall estimate of the total net positive or negative impact on the

applicable caseload as a result of all such eligibility changes;

(4) An estimate of the State's caseload reduction credit;

(5) The number of application denials and case closures for fiscal year 1995 and the prior fiscal year;

(6) The distribution of such denials and case closures, by reason, for fiscal year 1995 and the prior fiscal year;

(7) A description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;

(8) A certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from Federal and State eligibility changes; and

(9) A summary of all public comments.

(c) A State requesting a caseload reduction credit for both rates must provide separate estimates and information for the two-parent credit if it wishes to base the caseload reduction credit for the two-parent rate on reductions in the two-parent caseload.

(1) The State must base its estimates of the impact of eligibility changes for the overall participation rate on decreases in its overall caseload compared to the FY 1995 overall caseload baseline established in accordance with § 261.40(d).

(2) The State must base its estimates of the impact of eligibility changes for two-parent cases on decreases in its two-parent caseload compared to the FY 1995 two-parent caseload baseline established in accordance with § 261.40(d).

(d)(1) For each State, we will assess the adequacy of information and estimates using the following criteria: its methodology; its estimates of impact compared to other States; the quality of its data; and the completeness and adequacy of its documentation.

(2) If we request additional information to develop or validate estimates, the State may negotiate an appropriate deadline or provide the information within 30 days of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not calculate a caseload reduction credit unless the State reports case-record data on individuals and families served by any separate State program, as required under § 265.3(d) of this chapter.

(f) A State may only apply to its participation rate a caseload reduction credit that we have calculated. If a State disagrees with the caseload reduction credit, it may appeal the decision as an adverse action in accordance with § 262.7 of this chapter.

§ 261.42 Which reductions count in determining the caseload reduction credit?

(a)(1) A State's caseload reduction estimate must not include net caseload decreases (i.e., caseload decreases offset by increases) due to Federal requirements or State changes in eligibility rules since FY 1995 that directly affect a family's eligibility for assistance. These include more stringent income and resource limitations, time limits, full family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements, cooperate with child support, or fulfill other behavioral requirements.

(2) A State may count the reductions attributable to enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules.

(b) A State must include cases receiving assistance in separate State programs as part of its prior-year caseload. However, if a State provides documentation that separate State program cases meet the following conditions, we will exclude them from the caseload count:

(1) The cases overlap with, or duplicate, cases in the TANF caseload; or

(2) They are cases made ineligible for Federal benefits by Pub. L. 104–193 that are receiving only State-funded cash assistance, nutrition assistance, or other benefits.

§ 261.43 What is the definition of a ''case receiving assistance'' in calculating the caseload reduction credit?

(a)(1) The caseload reduction credit is based on decreases in caseloads receiving assistance (other than those excluded pursuant to § 261.42) both in a State's TANF program and in separate State programs that address basic needs and are used to meet the maintenance-of-effort requirement.

(2) A State that is investing State MOE funds in eligible families in excess of the required 80 percent or 75 percent basic MOE amount need only include the pro rata share of caseloads receiving assistance that are required to meet basic MOE requirements.

(b)(1) Depending on a State's TANF implementation date, for fiscal years 1995, 1996 and 1997, we will use adjusted baseline caseload data as established in accordance with § 261.40(d).

(2) For subsequent fiscal years, we will determine the caseload based on all cases in a State receiving assistance (according to the definition of assistance at § 260.31 of this chapter).

§ 261.44 When must a State report the required data on the caseload reduction credit?

(a) A State must report the necessary documentation on caseload reductions for the preceding fiscal year by December 31.

(b) We will notify the State of its caseload reduction credit no later than March 31.

Subpart E—What Penalties Apply to States Related to Work Requirements?

§ 261.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b)(1) If there was no penalty for the preceding fiscal year, the base penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the base penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

(d) In accordance with the procedures specified at § 262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(1) If the State fails only the two-parent participation rate specified at § 261.23, reduced by any applicable caseload reduction credit, its maximum penalty will be a percentage of the penalty specified at § 261.50. This percentage will equal the percentage of two-parent cases in the State's total caseload.

(2) If the State fails the overall participation rate specified at § 261.21, reduced by any applicable caseload

reduction credit, or both rates, its maximum penalty will be the penalty specified at § 261.50.

(b)(1) In order to receive a reduction of the penalty amounts determined under paragraphs (a)(1) or (a)(2) of this section:

(i) The State must achieve participation rates equal to a threshold level defined as 50 percent of the applicable minimum participation rate at § 261.21 or § 261.23, minus any caseload reduction credit determined pursuant to subpart D of this part; and

(ii) The adjustment factor for changes in the number of individuals engaged in work, described in paragraph (b)(4) of this section, must be greater than zero.

(2) If the State meets the requirements of paragraph (b)(1) of this section, we will base its reduction on the severity of the failure. For this purpose, we will calculate the severity of the State's failure based on:

(i) The degree to which it missed the target rate;

(ii) An adjustment factor that accounts for changes in the number of individuals who are engaged in work in the State since the prior year; and

(iii) The number of consecutive years in which the State failed to meet the participation rates and the number of rates missed.

(3) We will determine the degree to which the State missed the target rate using the ratio of the following two factors:

(i) The difference between the participation rate achieved by the State and the 50-percent threshold level (adjusted for any caseload reduction credit determined pursuant to subpart D of this part); and

(ii) The difference between the minimum applicable participation rate and the threshold level (both adjusted for any caseload reduction credit determined pursuant to subpart D of this part).

(4) We will calculate the adjustment factor for changes in the number of individuals engaged in work using the following formula:

(i) The average monthly number of individuals engaged in work in the penalty year minus the average monthly number of individuals engaged in work in the prior year, divided by,

(ii) The product of 0.15 and the average monthly number of individuals engaged in work in the prior year.

(5) Subject to paragraph (c) of this section, if the State fails only the two-parent participation rate specified at § 261.23, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(1) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to two-parent families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section computed with respect to two-parent families.

(6) Subject to paragraph (c) of this section, if the State fails the overall participation rate specified at § 261.21, or both rates, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(2) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to all families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section.

(7) Pursuant to § 260.58 of this chapter, we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers.

(c)(1) If the State was not subject to a penalty the prior year, the State will receive:

(i) The full applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 50 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(2) If the penalty year is the second successive year in which the State is subject to a penalty, the State will receive:

(i) 50 percent of the applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 25 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(3) If the penalty year is the third or greater successive year in which the State is subject to a penalty, the State will not receive a penalty reduction described in paragraph (b)(5) or (b)(6) of this section.

(d)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at § 260.30 of this chapter; or,

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster, regional recession, or substantial caseload increase.

(2) In determining noncompliance under paragraph (d)(1)(ii) of this section, we will consider such objective evidence of extraordinary circumstances as the State chooses to submit.

§ 261.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at § 262.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of federally recognized good cause domestic violence waivers (i.e., it provides evidence that it achieved the applicable work rates when individuals receiving federally recognized good cause domestic violence waivers of work requirements, in accordance with the provisions at §§ 260.54(b) and 260.55 of this chapter, are removed from the calculations in §§ 261.22(b) and 261.24(b)).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at § 262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.53 May a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet a participation rate, as specified at § 262.6 of this chapter.

(b) To qualify for a penalty reduction under § 262.6(j)(1) of this chapter, based on significant progress towards correcting a violation, a State must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year (adjusted for any caseload reduction credit determined pursuant to subpart D of this part) by at least 50 percent.

§ 261.54 Is a State subject to any other penalty relating to its work program?

(a) If we determine that, during a fiscal year, a State has violated section 407(e) of the Act, relating to imposing

penalties against individuals, we must reduce the SFAG payable to the State.

(b) The penalty amount for a fiscal year will equal between one and five percent of the adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§ 261.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider objective evidence of:

(1) Whether the State has established a control mechanism to ensure that the grants of individuals are appropriately reduced for refusing to engage in required work; and

(2) The percentage of cases for which the grants have not been appropriately reduced.

§ 261.56 What happens if a parent cannot obtain needed child care?

(a)(1) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

(i) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(ii) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(iii) Appropriate and affordable formal child care arrangements are unavailable.

(2) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(b)(1) The State will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms ''appropriate child care,'' reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements''; and

(iii) Be submitted to us.

(c) The TANF agency must inform parents about:

(1) The penalty exception to the TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The State's process or procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

§ 261.57 What happens if a State sanctions a single parent of a child under six who cannot get needed child care?

(a) If we determine that a State has not complied with the requirements of § 261.56, we will reduce the SFAG payable to the State by no more than five percent for the immediately succeeding fiscal year unless the State demonstrates to our satisfaction that it had reasonable cause or it achieves compliance under a corrective compliance plan pursuant to §§ 262.5 and 262.6 of this chapter.

(b) We will impose the maximum penalty if:

(1) The State does not have a statewide process in place to inform parents about the exception to the work requirement and enable them to demonstrate that they have been unable to obtain child care; or

(2) There is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of this requirement.

(c) We may impose a reduced penalty if the State demonstrates that the violations were isolated or that they affected a minimal number of families.

Subpart F—How Do Welfare Reform Waivers Affect State Penalties?

§ 261.60 How do existing welfare reform waivers affect a State's penalty liability under this part?

A welfare reform waiver could affect a State's penalty liability under this part, subject to subpart C of part 260 of this chapter and section 415 of the Act.

Subpart G—What Nondisplacement Rules Apply in TANF?

§ 261.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined in § 261.30 may not fill a vacant employment position if:

(1) Another individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force in order to fill the vacancy with an adult taking part in a work activity.

(b) A State must establish and maintain a grievance procedure to resolve complaints of alleged violations of the displacement rule in this section.

(c) This section does not preempt or supersede State or local laws providing greater protection for employees from displacement.

PART 262—ACCOUNTABILITY PROVISIONS—GENERAL

Sec.

262.0 What definitions apply to this part?
262.1 What penalties apply to States?
262.2 When do the TANF penalty provisions apply?
262.3 How will we determine if a State is subject to a penalty?
262.4 What happens if we determine that a State is subject to a penalty?
262.5 Under what general circumstances will we determine that a State has reasonable cause?
262.6 What happens if a State does not demonstrate reasonable cause?
262.7 How can a State appeal our decision to take a penalty?

Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 606, 609, and 610.

§ 262.0 What definitions apply to this part?

The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

§ 262.1 What penalties apply to States?

(a) We will assess fiscal penalties against States under circumstances defined in parts 261 through 265 of this chapter. The penalties are:

(1) A penalty of the amount by which a State misused its TANF funds;

(2) An additional penalty of five percent of the adjusted SFAG if such misuse was intentional;

(3) A penalty of four percent of the adjusted SFAG for each quarter a State fails to submit an accurate, complete and timely required report;

(4) A penalty of up to 21 percent of the adjusted SFAG for failure to satisfy the minimum participation rates;

(5) A penalty of no more than two percent of the adjusted SFAG for failure to participate in IEVS;

(6) A penalty of no more than five percent of the adjusted SFAG for failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement (IV–D) agency;

(7) A penalty equal to the outstanding loan amount, plus interest, for failure to repay a Federal loan;

(8) A penalty equal to the amount by which a State fails to meet its basic MOE requirement;

(9) A penalty of five percent of the adjusted SFAG for failure to comply with the five-year limit on Federal assistance;

(10) A penalty equal to the amount of contingency funds that were received but were not remitted for a fiscal year, if the State fails to maintain 100 percent of historic State expenditures in that fiscal year;

(11) A penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) A penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in this section in the immediately succeeding fiscal year;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to meet its basic MOE requirement during a year in which it receives the formula grant; and

(14) A penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to impose penalties properly against individuals who refuse to engage in required work in accordance with section 407 of the Act.

(b) In the event of multiple penalties for a fiscal year, we will add all applicable penalty percentages together. We will then assess the penalty amount against the adjusted SFAG that would have been payable to the State if we had assessed no penalties. As a final step, we will subtract other (fixed) penalty amounts from the adjusted SFAG.

(c)(1) We will take the penalties specified in paragraphs (a)(1), (a)(2) and (a)(7) of this section by reducing the SFAG payable for the quarter that immediately follows our final decision.

(2) We will take the penalties specified in paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), and (a)(14) of this section by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

(d) When imposing the penalties in paragraph (a) of this section, the total reduction in an affected State's quarterly SFAG amount must not exceed 25 percent. If this 25-percent limit prevents the recovery of the full penalty amount imposed on a State during a quarter or a fiscal year, as appropriate, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding quarter until we recover the full penalty amount.

(e)(1) In the immediately succeeding fiscal year, a State must expend additional State funds to replace any reduction in the SFAG resulting from penalties.

(2) The State must document compliance with this replacement provision on its TANF Financial Report (or Territorial Financial Report).

§ 262.2 When do the TANF penalty provisions apply?

(a) A State will be subject to the penalties specified in § 262.1(a)(1), (2), (7), (8), (9), (10), (11), (12), (13), and (14) for conduct occurring on and after the first day the State operates the TANF program.

(b) A State will be subject to the penalties specified in § 262.1(a)(3), (4), (5), and (6) for conduct occurring on and after July 1, 1997, or the date that is six months after the first day the State operates the TANF program, whichever is later.

(c) For the time period prior to October 1, 1999, we will assess State conduct as specified in § 260.40(b) of this chapter.

§ 262.3 How will we determine if a State is subject to a penalty?

(a)(1) We will use the single audit under OMB Circular A–133, in conjunction with other reviews, audits, and data sources, as appropriate, to determine if a State is subject to a penalty for misusing Federal TANF funds (§ 263.10 of this chapter), intentionally misusing Federal TANF funds (§ 263.12 of this chapter), failing to participate in IEVS (§ 264.10 of this chapter), failing to comply with paternity establishment and child support requirements (§ 264.31 of this chapter), failing to maintain assistance to an adult single custodial parent who cannot obtain child care for child under six (§ 261.57 of this chapter), and failing to reduce assistance to a recipient who refuses without good cause to work (§ 261.54 of this chapter).

(2) We will also use the single audit as a secondary method of determining if a State is subject to other penalties if an audit detects lack of compliance in other penalty areas.

(b)(1) We will use the TANF Data Report required under part 265 of this chapter to determine if a State failed to meet participation rates (§§ 261.21 and 261.23 of this chapter) or failed to comply with the five-year limit on Federal assistance (§ 264.1 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(c)(1) We will use the TANF Financial Report (or, as applicable, the Territorial Financial Report) as the primary method for determining if a State has failed to meet the basic MOE requirement (§ 263.8 of this chapter), meet the Contingency Fund MOE requirement (§ 264.76 of this chapter), or replace SFAG reductions with State-only funds (§ 264.50 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(d) We will determine that a State is subject to the specific penalties for failure to perform if we find information in the reports under paragraphs (b) and (c) of this section to be insufficient to show compliance or if we determine that the State has not adequately documented actions verifying that it has met the participation rates or the time limits.

(e) To determine if a State has met its MOE requirements, we will also use the supplemental information in the annual report required in accordance with § 265.9(c) of this chapter.

(f) States must maintain records in accordance with § 92.42 of this title.

§ 262.4 What happens if we determine that a State is subject to a penalty?

(a) If we determine that a State is subject to a penalty, we will notify the State agency in writing, specifying which penalty we will impose and the reasons for the penalty. This notice will:

(1) Specify the penalty provision at issue, including the penalty amount;

(2) Specify the source of information and the reasons for our decision;

(3) Invite the State to present its arguments if it believes that the information or method that we used were in error or were insufficient or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute; and

(4) Explain how and when the State may submit a reasonable cause justification under § 262.5 and/or corrective compliance plan under § 262.6.

(b) Within 60 days of when it receives our notification, the State may submit a written response that:

(1) Demonstrates that our determination is incorrect because our information or the method that we used in determining the violation or the amount of the penalty was in error or was insufficient, or that the State acted, in the absence of Federal rules, on a reasonable interpretation of the statute;

(2) Demonstrates that the State had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan, pursuant to § 262.6.

(c) If we find that we determined the penalty erroneously, or that the State has adequately demonstrated that it had reasonable cause for failing to meet one or more requirements, we will not impose the penalty.

(d) Reasonable cause and corrective compliance plans are not available for failing to repay a Federal loan; meet the basic MOE requirement; meet the Contingency Fund MOE requirement; expend additional State funds to replace adjusted SFAG reductions due to the imposition of one or more penalties listed in § 262.1; or maintain 80 percent, or 75 percent, as appropriate, basic MOE during a year in which the State receives a Welfare-to-Work grant.

(e)(1) If we request additional information from a State that we need to determine reasonable cause, the State must ordinarily provide such information within 30 days.

(2) Under unusual circumstances, we may give the State an extension of the time to respond to our request.

(f)(1)(i) We will notify the State in writing of our findings with respect to reasonable cause generally within 60 days of the date when we receive its response to our penalty notice (in accordance with paragraph (b) of this section).

(ii) If the finding is negative and the State has not yet submitted a corrective compliance plan, it may do so in response to this notice in accordance with § 262.6.

(2) We will notify the State of our decision regarding its corrective compliance plan in accordance with the provisions of § 262.6(g).

(g) We will impose a penalty in accord with the provisions in § 262.1(c) after we make our final decision and the appellate process is completed, if applicable. If there is an appellate decision upholding the penalty, we will take the penalty and charge interest back to the date that we formally notified the Governor of the adverse action pursuant to § 262.7(a)(1).

§ 262.5 Under what general circumstances will we determine that a State has reasonable cause?

(a) We will not impose a penalty against a State if we determine that the State had reasonable cause for its failure. The general factors a State may use to claim reasonable cause include:

(1) Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State's failure;

(2) Formally issued Federal guidance that provided incorrect information resulting in the State's failure; or

(3) Isolated problems of minimal impact that are not indicative of a systemic problem.

(b)(1) We will grant reasonable cause to a State that:

(i) Clearly demonstrates that its failure to submit complete, accurate, and timely data, as required at § 265.8 of this chapter, for one or both of the first two quarters of FY 2000, is attributable, in significant part, to its need to divert critical system resources to Year 2000 compliance activities; and

(ii) Submits complete and accurate data for the first two quarters of FY 2000 by June 30, 2000.

(2) A State may also use the additional factors for claiming reasonable cause for failure to comply with the five-year limit on Federal assistance or the minimum participation rates, as specified at §§ 261.52 and 264.3 and subpart B of part 260 of this chapter.

(c) In determining reasonable cause, we will consider the efforts the State made to meet the requirement, as well as the duration and severity of the circumstances that led to the State's failure to achieve the requirement.

(d)(1) The burden of proof rests with the State to fully explain the circumstances and events that constitute reasonable cause for its failure to meet a requirement.

(2) The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause.

§ 262.6 What happens if a State does not demonstrate reasonable cause?

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation in order to avoid the penalty if:

(1) A State does not claim reasonable cause; or

(2) We find that the State does not have reasonable cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in § 262.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause will have 60 days from the date that it received our second notice, described in § 262.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

(1) A complete analysis of why the State did not meet the requirements;

(2) A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;

(3) The time period in which the violation will be corrected or discontinued;

(4) The milestones, including interim process and outcome goals, that the State will achieve to assure it comes into compliance within the specified time period; and

(5) A certification by the Governor that the State is committed to correcting or discontinuing the violation, in accordance with the plan.

(e) The corrective compliance plan must correct or discontinue the violation within the following time frames:

(1) For a penalty under § 262.1(a)(4) or (a)(9), by the end of the first fiscal year ending at least six months after our receipt of the corrective compliance plan; and

(2) For the remaining penalties, by a date the State proposes that reflects the minimum period necessary to achieve compliance.

(f) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan.

(g) We will accept or reject the State's corrective compliance plan, in writing, within 60 days of our receipt of the plan, although a corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan.

(h) If a State does not submit an acceptable corrective compliance plan on time, we will assess the penalty immediately.

(i) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State completely corrects or discontinues, as appropriate, the violation within the period covered by the plan.

(j) Under limited circumstances, we may reduce the penalty if the State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner. To receive a reduced penalty, the State must demonstrate that it met one or both of the following conditions:

(1) Although it did not achieve full compliance, the State made significant progress towards correcting or discontinuing the violation; or

(2) The State's failure to comply fully was attributable to either a natural disaster or regional recession.

§ 262.7 How can a State appeal our decision to take a penalty?

(a)(1) We will formally notify the Governor and the State agency of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 261 through 265 of this chapter.

(2) Such notice will include the factual and legal basis for taking the penalty in sufficient detail for the State to be able to respond in an appeal.

(b)(1) The State may file an appeal of the action, in whole or in part, with the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must submit its brief and supporting documents when it files its appeal.

(2) The State must send a copy of the appeal, and any supplemental filings, to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

(c) We will submit our reply brief and supporting documentation within 45 days of the receipt of the State's submission under paragraph (b) of this section.

(d) The State may submit a reply and any supporting documentation within 21 days of its receipt of our reply under paragraph (c) of this section.

(e) The appeal to the Board must follow the provisions of the rules under this section and those at §§ 16.2, 16.9, 16.10, and 16.13–16.22 of this title, to the extent that they are consistent with this section.

(f) The Board will consider an appeal filed by a State on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g)(1) A State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision. It should file this action with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court will base its review on the documents and supporting data submitted to the Board.

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

Sec.

263.0 What definitions apply to this part?

Subpart A—What Rules Apply to a State's Maintenance of Effort?

263.1 How much State money must a State expend annually to meet the basic MOE requirement?
263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?
263.3 When do child care expenditures count?
263.4 When do educational expenditures count?
263.5 When do expenditures in State-funded programs count?
263.6 What kinds of expenditures do not count?
263.8 What happens if a State fails to meet the basic MOE requirement?
263.9 May a State avoid a penalty for failing the basic MOE requirement through reasonable cause or through corrective compliance?

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

263.10 What actions would we take against a State if it uses Federal TANF funds in violation of the Act?
263.11 What uses of Federal TANF funds are improper?
263.12 How will we determine if a State intentionally misused Federal TANF funds?
263.13 Is there a limit on the amount of Federal TANF funds that a State may spend on administrative costs?

Subpart C—What Rules Apply to Individual Development Accounts?

263.20 What definitions apply to Individual Development Accounts (IDAs)?
263.21 May a State use the TANF grant to fund IDAs?
263.22 Are there any restrictions on IDA funds?
263.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

Authority: 42 U.S.C. 604, 607, 609, and 862a.

§ 263.0 What definitions apply to this part?

(a) Except as noted in § 263.2(d), the general TANF definitions at § 260.30 through § 260.33 of this chapter apply to this part.

(b) The term ''administrative costs'' means costs necessary for the proper administration of the TANF program or separate State programs.

(1) It excludes direct costs of providing program services.

(i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

(ii) It excludes the salaries and benefits costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space.

(2) It includes costs for general administration and coordination of these programs, including contract costs and all indirect (or overhead) costs. Examples of administrative costs include:

(i) Salaries and benefits of staff performing administrative and coordination functions;

(ii) Activities related to eligibility determinations;

(iii) Preparation of program plans, budgets, and schedules;

(iv) Monitoring of programs and projects;

(v) Fraud and abuse units;

(vi) Procurement activities;

(vii) Public relations;

(viii) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(ix) Costs for the goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(x) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(xi) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for State staff); and

(xii) Preparing reports and other documents.

Subpart A—What Rules Applies to a State's Maintenance of Effort?

§ 263.1 How much State money must a State expend annually to meet the basic MOE requirement?

(a)(1) The minimum basic MOE for a fiscal year is 80 percent of a State's historic State expenditures.

(2) However, if a State meets the minimum work participation rate

requirements in a fiscal year, as required under §§ 261.21 and 261.23 of this chapter, after adjustment for any caseload reduction credit under § 261.41 of this chapter, then the minimum basic MOE for that fiscal year is 75 percent of the State's historic State expenditures.

(3) A State that does not meet the minimum participation rate requirements in a fiscal year, as required under §§ 261.21 and 261.23 of this chapter (after adjustment for any caseload reduction credit under § 261.41 of this chapter), but which is granted full or partial penalty relief for that fiscal year, must still meet the minimum basic MOE specified under paragraph (a)(1) of this section.

(b) The basic MOE level also depends on whether a Tribe or consortium of Tribes residing in a State has received approval to operate its own TANF program. The State's basic MOE level for a fiscal year will be reduced by the same percentage as we reduced the SFAG as the result of any Tribal Family Assistance Grants awarded to Tribal grantees in the State for that year.

§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

(a) Expenditures of State funds in TANF or separate State programs may count if they are made for the following types of benefits or services:

(1) Cash assistance, including the State's share of the assigned child support collection that is distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see § 263.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see § 263.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act (such as nonmedical treatment services for alcohol and drug abuse and some medical treatment services, provided that the State has not commingled its MOE funds with Federal TANF funds to pay for the services), if consistent with the goals at § 260.20 of this chapter; and

(5)(i) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section, not to exceed 15 percent of the total amount of countable expenditures for the fiscal year.

(ii) Costs for information technology and computerization needed for tracking or monitoring required by or under part IV–A of the Act do not count towards the limit in paragraph (5)(i) of this section, even if they fall within the definition of ''administrative costs.''

(A) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support or operate the portions of information technology or computer systems used for tracking and monitoring.

(B) It also covers the costs of contracts for development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

(b) The benefits or services listed under paragraph (a) of this section count only if they have been provided to or on behalf of eligible families. An ''eligible family,'' as defined by the State, must:

(1) Be comprised of citizens or aliens who:

(i) Are eligible for TANF assistance;

(ii) Would be eligible for TANF assistance, but for the time limit on the receipt of federally funded assistance; or

(iii) Would be eligible for TANF assistance, but for the application of title IV of PRWORA;

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.

(c) Benefits or services listed under paragraph (a) of this section provided to a family that meets the criteria under paragraphs (b)(1) through (b)(3) of this section, but who became ineligible solely due to the time limitation given under § 264.1 of this chapter, may also count.

(d) Expenditures for the benefits or services listed under paragraph (a) of this section count whether or not the benefit or service meets the definition of assistance under § 260.31 of this chapter.

(e)(1) The expenditures for benefits or services in State-funded programs listed under paragraph (a) of this section count only if they also meet the requirements of § 263.5.

(2) Expenditures that fall within the prohibitions in § 263.6 do not count.

§ 263.3 When do child care expenditures count?

(a) State funds expended to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts) may also count as basic MOE expenditures up to the State's child care MOE amount that must be expended to qualify for CCDF matching funds.

(b) Child care expenditures that have not been used to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts), or any other Federal child care program, may also count as basic MOE expenditures. The limit described in paragraph (a) of this section does not apply.

(c) The child care expenditures described in paragraphs (a) and (b) of this section must be made to, or on behalf of, eligible families, as defined in § 263.2(b).

§ 263.4 When do educational expenditures count?

(a) Expenditures for educational activities or services count if:

(1) They are provided to eligible families (as defined in § 263.2(b)) to increase self-sufficiency, job training, and work; and

(2) They are not generally available to other residents of the State without cost and without regard to their income.

(b) Expenditures on behalf of eligible families for educational services or activities provided through the public education system do not count unless they meet the requirements under paragraph (a) of this section.

§ 263.5 When do expenditures in State-funded programs count?

(a) If a current State or local program also operated in FY 1995, and expenditures in this program would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then current fiscal year expenditures in this program count in their entirety, provided that the State has met all requirements under § 263.2.

(b) If a current State or local program also operated in FY 1995, and expenditures in this program would not have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then countable expenditures are limited to the amount by which total current fiscal year expenditures that meet the requirements under § 263.2 exceed total State expenditures in the program during FY 1995.

§ 263.6 What kinds of expenditures do not count?

The following kinds of expenditures do not count:

(a) Expenditures of funds that originated with the Federal government;

(b) State expenditures under the Medicaid program under title XIX of the Act;

(c) Expenditures that a State makes as a condition of receiving Federal funds under another program, except as provided under § 263.3;

(d) Expenditures that a State made in a prior fiscal year;

(e) Expenditures that a State uses to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act; and

(f) Expenditures that a State makes in the TANF program to replace the reductions in the SFAG as a result of penalties, pursuant to § 264.50 of this chapter.

§ 263.8 What happens if a State fails to meet the basic MOE requirement?

(a) If any State fails to meet its basic MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.

(b) If a State fails to meet its basic MOE requirement for any fiscal year, and the State received a WtW formula grant under section 403(a)(5)(A) of the Act for the same fiscal year, we will also reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the WtW formula grant paid to the State.

§ 263.9 May a State avoid a penalty for failing to meet the basic MOE requirement through reasonable cause or corrective compliance?

No. The reasonable cause and corrective compliance provisions at §§ 262.4, 262.5, and 262.6 of this chapter do not apply to the penalties in § 263.8.

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

§ 263.10 What actions would we take against a State if it uses Federal TANF funds in violation of the Act?

(a) If a State misuses its Federal TANF funds, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the amount misused.

(b) If the State fails to demonstrate that the misuse was not intentional, we will further reduce the SFAG payable for the immediately succeeding fiscal year quarter in an amount equal to five percent of the adjusted SFAG.

(c) The reasonable cause and corrective compliance provisions of §§ 262.4 through 262.6 of this chapter apply to the penalties specified in paragraphs (a) and (b) of this section.

§ 263.11 What uses of Federal TANF funds are improper?

(a) States may use Federal TANF funds for expenditures:

(1) That are reasonably calculated to accomplish the purposes of TANF, as specified at § 260.20 of this chapter; or

(2) For which the State was authorized to use IV–A or IV–F funds under prior law, as in effect on September 30, 1995 (or, at the option of the State, August 21, 1996).

(b) We will consider use of funds in violation of paragraph (a) of this section, sections 404 and 408 and other provisions of the Act, section 115(a)(1) of PRWORA, the provisions of part 92 of this title, or OMB Circular A–87 to be misuse of funds.

§ 263.12 How will we determine if a State intentionally misused Federal TANF funds?

(a) The State must show, to our satisfaction, that it used these funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 260.20 of this chapter) and consistent with the provisions listed in § 263.11.

(b) We may determine that a State misused funds intentionally if there is supporting documentation, such as Federal guidance or policy instructions, precluding the use of Federal TANF funds for such purpose.

(c) We may also determine that a State intentionally misused funds if the State continues to use the funds in the same or similarly improper manner after receiving notification that we had determined such use to be improper.

§ 263.13 Is there a limit on the amount of Federal TANF funds that a State may spend on administrative costs?

(a)(i) Yes, a State may not spend more than 15 percent of the amount that it receives as its adjusted SFAG, or under other provisions of section 403 of the Act, on ''administrative costs,'' as defined at § 263.0(b).

(ii) Any violation of the limitation in paragraph (a)(i) of this section will constitute a misuse of funds under § 263.11(b).

(b) Expenditures on the information technology and computerization needed for tracking and monitoring required by or under part IV–A of the Act do not count towards the limit specified in paragraph (a) of this section.

(1) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support or operate the portions of information technology or computer systems used for tracking and monitoring.

(2) It also covers the costs of contracts for development, maintenance. support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

Subpart C—What Rules Apply to Individual Development Accounts?

§ 263.20 What definitions apply to Individual Development Accounts (IDAs)?

The following definitions apply with respect to IDAs:

Date of acquisition means the date on which a binding contract to obtain, construct, or reconstruct the new principal residence is entered into.

Eligible educational institution means an institution described in section 481(a)(1) or section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections were in effect on August 21, 1996. Also, an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) that is in any State (as defined in section 521(33) of such Act), as such sections were in effect on August 21, 1996.

Individual Development Account (IDA) means an account established by, or for, an individual who is eligible for assistance under the TANF program, to allow the individual to accumulate funds for specific purposes. Notwithstanding any other provision of law (other than the Internal Revenue Code of 1986), the funds in an IDA account must be disregarded in determining eligibility for, or the amount of, assistance in any Federal means-tested programs.

Post-secondary educational expenses means a student's tuition and fees required for the enrollment or attendance at an eligible educational institution, and required course fees, books, supplies, and equipment required at an eligible educational institution.

Qualified acquisition costs means the cost of obtaining, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

Qualified business means any business that does not contravene State law or public policy.

Qualified business capitalization expenses means business expenses pursuant to a qualified plan.

Qualified entity means a nonprofit, tax-exempt organization, or a State or local government agency that works cooperatively with a nonprofit, tax-exempt organization.

Qualified expenditures means expenses entailed in a qualified plan, including capital, plant equipment, working capital, and inventory expenses.

Qualified first-time home buyer means a taxpayer (and, if married, the taxpayer's spouse) who has not owned a principal residence during the three-year period ending on the date of acquisition of the new principal residence.

Qualified plan means a business plan that is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity. It includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and it may require the eligible recipient to obtain the assistance of an experienced entrepreneurial advisor.

Qualified principal residence means the place a qualified first-time home buyer will reside in accordance with the meaning of section 1034 of the Internal Revenue Code of 1986 (26 U.S.C. 1034). The qualified acquisition cost of the residence cannot exceed the average purchase price of similar residences in the area.

§ 263.21 May a State use the TANF grant to fund IDAs?

If the State elects to operate an IDA program, then the States may use Federal TANF funds or WtW funds to fund IDAs for individuals who are eligible for TANF assistance and exercise flexibility within the limits of Federal regulations and the statute.

§ 263.22 Are there any restrictions on IDA funds?

The following restrictions apply to IDA funds:

(a) A recipient may deposit only earned income into an IDA.

(b) A recipient's contributions to an IDA may be matched by, or through, a qualified entity.

(c) A recipient may withdraw funds only for the following reasons:

(1) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(2) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time home buyer; or

(3) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally insured financial institution and used for a qualified business capitalization expense.

§ 263.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

To prevent recipients from using the IDA account improperly, States may do the following:

(a) Count withdrawals as earned income in the month of withdrawal (unless already counted as income);

(b) Count withdrawals as resources in determining eligibility; or

(c) Take such other steps as the State has established in its State plan or written State policies to deter inappropriate use.

PART 264—OTHER ACCOUNTABILITY PROVISIONS

Sec.

264.0 What definitions apply to this part?

Subpart A—What Specific Rules Apply for Other Program Penalties?

264.1 What restrictions apply to the length of time Federal TANF assistance may be provided?
264.2 What happens if a State does not comply with the five-year limit?
264.3 How can a State avoid a penalty for failure to comply with the five-year limit?
264.10 Must States do computer matching of data records under IEVS to verify recipient information?
264.11 How much is the penalty for not participating in IEVS?
264.30 What procedures exist to ensure cooperation with the child support enforcement requirements?
264.31 What happens if a State does not comply with the IV–D sanction requirement?
264.40 What happens if a State does not repay a Federal loan?
264.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

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Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 609, 654, 1302, 1308, and 1337.

§ 264.0 What definitions apply to this part?

(a) The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

(b) The following definitions also apply to this part:

Countable State Expenditures means the amount of qualifying State expenditures, as defined in § 264.75, plus the amount of contingency funds expended by the State in the fiscal year.

FAG means the Family Assistance Grant granted to a Territory pursuant to section 403(a)(1) of the Act. It is thus the Territorial equivalent of the SFAG, as defined at § 260.30 of this chapter.

Food Stamp Trigger means a State's monthly average of individuals participating in the Food Stamp program (as of the last day of the month) for the most recent three-month period that exceeds its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995, whichever is less, by at least ten percent, assuming that the immigrant provisions of title IV and the Food Stamp provisions under title VII of PRWORA had been in effect in those years.

Unemployment Trigger means a State's average unemployment rate for the most recent three-month period of at least 6.5 percent and equal to at least 110 percent of the State's unemployment rate for the corresponding three-month period in either of the two preceding calendar years.

Subpart A—What Specific Rules Apply for Other Program Penalties?

§ 264.1 What restrictions apply to the length of time Federal TANF assistance may be provided?

(a)(1) Subject to the exceptions in this section, no State may use any of its Federal TANF funds to provide assistance (as defined in § 260.31 of this chapter) to a family that includes an adult head-of-household or a spouse of the head-of-household who has received Federal assistance for a total of five years (i.e., 60 cumulative months, whether or not consecutive).

(2) The provision in paragraph (a)(1) of this section also applies to a family that includes a pregnant minor head-of-household, minor parent head-of-household, or spouse of such a head-of-household who has received Federal assistance for a total of five years.

(3) Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, a State may provide assistance under WtW, pursuant to section 403(a)(5) of the Act, to a family that is ineligible for TANF solely because it has reached the five-year time limit.

(b)(1) States must not count toward the five-year limit:

(i) Any month of receipt of assistance by an individual who is not the head-of-household or married to the head-of-household;

(ii) Any month of receipt of assistance by an adult while living in Indian country (as defined in section 1151 of title 18, United States Code) or a Native Alaskan Village where at least 50 percent of the adults were not employed; and

(iii) Any month for which an individual receives only noncash assistance provided under WtW, pursuant to section 403(a)(5) of the Act.

(2) Only months of assistance that are paid for with Federal TANF funds (in whole or in part) count towards the five-year time limit.

(c) States have the option to extend assistance paid for by Federal TANF funds beyond the five-year limit for up to 20 percent of the average monthly number of families receiving assistance during the fiscal year or the immediately preceding fiscal year, whichever the State elects. States are permitted to extend assistance to families only on the basis of:

(1) Hardship, as defined by the State; or

(2) The fact that the family includes someone who has been battered, or subject to extreme cruelty based on the fact that the individual has been subjected to:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(d) If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it would grant such an extension to a specific family once a head-of-household or spouse of a head-of-household in the family has received 60 cumulative months of assistance.

(e) To determine whether a State has failed to comply with the five-year limit on Federal assistance established in paragraph (c) of this section for a fiscal year, we would divide the average monthly number of families with a head-of-household or a spouse of a head-of-household who has received assistance for more than 60 cumulative months by the average monthly number of all families that received assistance during that fiscal year or during the immediately preceding fiscal year.

(f) If the five-year limit is inconsistent with a State's waiver granted under section 1115 of the Act, we will determine State compliance with the Federal time limit in accordance with the provisions of subpart C of part 260.

§ 264.2 What happens if a State does not comply with the five-year limit?

If we determine that a State has not complied with the requirements of § 264.1, we will reduce the SFAG payable to the State for the immediately succeeding fiscal year by five percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause, or it corrects or discontinues the violation under an approved corrective compliance plan.

§ 264.3 How can a State avoid a penalty for failure to comply with the five-year limit?

(a) We will not impose the penalty if the State demonstrates to our satisfaction that it had reasonable cause for failing to comply with the five-year limit on Federal assistance or it achieves compliance under a corrective compliance plan, pursuant to §§ 262.5 and 262.6 of this chapter.

(b) In addition, we will determine a State has reasonable cause if it demonstrates that it failed to comply with the five-year limit on Federal assistance of federally recognized good cause domestic violence waivers provided to victims of domestic violence in accordance with the provisions of subpart B of part 260.

§ 264.10 Must States do computer matching of data records under IEVS to verify recipient information?

(a) Pursuant to section 1137 of the Act and subject to paragraph (a)(2) of that section, States must meet the requirements of IEVS and request the following information from the Internal Revenue Service (IRS), the State Wage Information Collections Agency (SWICA), the Social Security Administration (SSA), and the Immigration and Naturalization Service (INS):

(1) IRS unearned income;

(2) SWICA employer quarterly reports of income and unemployment insurance benefit payments;

(3) IRS earned income maintained by SSA; and

(4) Immigration status information maintained by the INS.

(b) The requirements at §§ 205.51 through 205.62 of this chapter also apply to the TANF IEVS requirement.

§ 264.11 How much is the penalty for not participating in IEVS?

If we determine that the State has not complied with the requirements of § 264.10, we will reduce the SFAG payable for the immediately succeeding fiscal year by two percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or achieved compliance under a corrective compliance plan pursuant to §§ 262.5 and 262.6 of this chapter.

§ 264.30 What procedures exist to ensure cooperation with the child support enforcement requirements?

(a)(1) The State agency must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the child support enforcement agency (i.e., the IV–D agency).

(2) Referred individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child.

(b) If the IV–D agency determines that an individual is not cooperating, and the individual does not qualify for a good cause or other exception established by the State agency responsible for making good cause determinations in accordance with section 454(29) of the Act or for a good cause domestic violence waiver granted in accordance with § 260.52 of this chapter, then the IV–D agency must notify the IV–A agency promptly.

(c) The IV–A agency must then take appropriate action by:

(1) Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25 percent of the amount of such assistance; or

(2) Denying the family any assistance under the program.

§ 264.31 What happens if a State does not comply with the IV–D sanction requirement?

(a)(1) If we find that, for a fiscal year, the State IV–A agency did not enforce the penalties against recipients required under § 264.30(c), we will reduce the SFAG payable for the next fiscal year by one percent of the adjusted SFAG.

(2) Upon a finding for a second fiscal year, we will reduce the SFAG by two percent of the adjusted SFAG for the following year.

(3) A third or subsequent finding will result in the maximum penalty of five percent.

(b) We will not impose a penalty if:

(1) The State demonstrates to our satisfaction that it had reasonable cause pursuant to § 262.5 of this chapter; or

(2) The State achieves compliance under a corrective compliance plan pursuant to § 262.6 of this chapter.

§ 264.40 What happens if a State does not repay a Federal loan?

(a) If a State fails to repay the amount of principal and interest due at any point under a loan agreement developed pursuant to section 406 of the Act:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 262.5 of this chapter nor the corrective compliance plan provisions at § 262.6 of this chapter apply when a State fails to repay a Federal loan.

§ 264.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

(a)(1) When we withhold Federal TANF funds from a State during a fiscal year because of other penalty actions listed at § 262.1 of this chapter, the State must replace these Federal TANF funds with State funds during the subsequent fiscal year.

(2) If the State fails to replace funds during the subsequent year, then we will assess an additional penalty of no more than two percent of the adjusted SFAG during the year that follows the subsequent year.

(b) A State must expend such replacement funds under its TANF program, not under ''separate State programs.''

(c) We will assess a penalty of no more than two percent of the adjusted SFAG plus the amount equal to the difference between the amount the State was required to expend and the amount it actually expended in the fiscal year.

(1) We will assess the maximum penalty amount if the State made no additional expenditures to compensate for the reductions to its adjusted SFAG resulting from penalties.

(2) We will reduce the percentage portion of the penalty if the State has expended some of the amount required. In such case, we will calculate the applicable percentage portion of the penalty by multiplying the percentage of the required expenditures that the State failed to make in the fiscal year by two percent.

(d) The reasonable cause and corrective compliance plan provisions at §§ 262.5 and 262.6 of this chapter do not apply to this penalty.

Subpart B—What Are the Requirements for the Contingency Fund?

§ 264.70 What makes a State eligible to receive a provisional payment of contingency funds?

(a) In order to receive a provisional payment of contingency funds, a State must:

(1) Be a needy State, as defined in § 260.30 of this chapter; and

(2) Submit to ACF a request for contingency funds for an eligible month (i.e., a month in which a State is a needy State).

(b) A determination that a State is a needy State for a month makes that State eligible to receive a provisional payment of contingency funds for two consecutive months.

(c) Only the 50 States and the District of Columbia may receive contingency funds. Territories and Tribal TANF grantees are not eligible.

§ 264.71 What determines the amount of the provisional payment of contingency funds that will be made to a State?

We will make a provisional payment to a State that meets the requirements of § 264.70, within the following limits:

(a) The amount that we will pay to a State in a fiscal year will not exceed an amount equal to 1/12 times 20 percent of that State's SFAG for that fiscal year, multiplied by the number of eligible months for which the State has requested contingency funds;

(b) The total amount that we will pay to all States during a fiscal year will not exceed the amount appropriated for this purpose; and

(c) We will pay contingency funds to States in the order in which we receive requests for such payments.

§ 264.72 What requirements are imposed on a State if it receives contingency funds?

(a)(1) A State must meet a Contingency Fund MOE level of 100 percent of historic State expenditures for FY 1994.

(2) A State must exceed the Contingency Fund MOE level to keep any of the contingency funds that it received. It may be able to retain a portion of the amount of contingency funds that match countable State expenditures, as defined in § 264.0, that are in excess of the State's Contingency Fund MOE level, after the overall adjustment required by section 403(b)(6)(C) of the Act.

(b) A State must complete an annual reconciliation, in accordance with § 264.73, in order to determine how much, if any, of the contingency funds that it received in a fiscal year it may retain.

(c) If required to remit funds under the annual reconciliation, a State must remit all (or a portion) of the funds paid to it for a fiscal year within one year after it has failed to meet either the Food Stamp trigger or the Unemployment trigger, as defined in § 264.0, for three consecutive months.

(d) A State must expend contingency funds in the fiscal year in which they are awarded.

(e) A State may not transfer contingency funds to the Discretionary Fund of the CCDF or the SSBG.

(f) A State must follow the restrictions and prohibitions in effect for Federal TANF funds, including the provisions of § 263.11 of this chapter, in its use of contingency funds.

§ 264.73 What is an annual reconciliation?

(a) The annual reconciliation involves the calculation, for a fiscal year, of:

(1) The amount of a State's qualifying expenditures;

(2) The amount by which a State's countable State expenditures, as defined in § 264.0, exceed the State's required Contingency Fund MOE level; and

(3) The amount of contingency funds that the State may retain or must remit.

(b) If a State exceeded its required Contingency Fund MOE level, it may be able to retain some or all of the contingency funds that it received.

(c) A State determines the amount of contingency funds that it may retain by performing the following calculations:

(1) From the lesser of the following two amounts:

(i) The amount of contingency funds paid to it during the fiscal year; or

(ii) Its countable State expenditures, as defined in § 264.0, minus its required Contingency Fund MOE level, multiplied by:

(A) The State's Federal Medical Assistance Percentage (FMAP) applicable for the fiscal year for which funds were awarded; and

(B) 1/12 times the number of months during the fiscal year for which the State received contingency funds.

(2) Subtract the State's proportionate remittance (as reported to the State by ACF) for the overall adjustment of the Contingency Fund for that fiscal year required by section 403(b)(6)(C) of the Act.

§ 264.74 How will we determine the Contingency Fund MOE level for the annual reconciliation?

(a)(1) The Contingency Fund MOE level includes the State's share of expenditures for AFDC benefit payments, administration, and FAMIS; EA; and the JOBS program for FY 1994.

(2) We will use the same data sources and date, i.e., April 28, 1995, that we used to determine the basic MOE levels for FY 1994. We will exclude the State's share of expenditures from the former IV–A child care programs (AFDC/JOBS, Transitional and At-Risk child care) in the calculation.

(b) We will reduce a State's Contingency Fund MOE level by the same percentage that we reduce the basic MOE level for any fiscal year in which we reduce the State's annual SFAG allocation to provide funding to Tribal grantees operating a Tribal TANF program.

§ 264.75 For the annual reconciliation, what are qualifying State expenditures?

(a) Qualifying State expenditures are expenditures of State funds made in the State TANF program, with respect to eligible families, for the following:

(1) Cash assistance, including assigned child support collected by the State, distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance to an eligible family that are not generally available to persons who are not members of an eligible family;

(3) Any other services allowable under section 404(a)(1) of the Act and consistent with the goals at § 260.20 of this chapter; and

(4) Administrative costs in connection with the provision of the benefits and services listed in paragraphs (a)(1) through (a)(3) of this section, but only to the extent that such costs are consistent with the 15-percent limitation at § 263.2(a)(5) of this chapter.

(b) Qualifying State expenditures do not include:

(1) Child care expenditures; and

(2) Expenditures made under separate State programs.

§ 264.76 What action will we take if a State fails to remit funds after failing to meet its required Contingency Fund MOE level?

(a) If, for a fiscal year in which it receives contingency funds, a State fails to meet its required Contingency Fund MOE level, we will penalize the State by reducing the SFAG payable for the next fiscal year by the amount of contingency funds not remitted.

(b) A State may appeal this decision, as provided in § 262.7 of this chapter.

(c) The reasonable cause exceptions and corrective compliance regulations at §§ 262.5 and 262.6 of this chapter do not apply to this penalty.

§ 264.77 How will we determine if a State met its Contingency Fund expenditure requirements?

(a) States receiving contingency funds for a fiscal year must complete the quarterly TANF Financial Report. As part of the fourth quarter's report, a State must complete its annual reconciliation.

(b) The TANF Financial Report and State reporting on expenditures are subject to our review.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

§ 264.80 If a Territory receives Matching Grant funds, what funds must it expend?

(a) If a Territory receives Matching Grant funds under section 1108(b) of the Act, it must:

(1) Contribute 25 percent of the expenditures funded under the Matching Grant for title IV–A or title IV–E expenditures;

(2) Expend 100 percent of the amount of historic expenditures for FY 1995 for the AFDC program (including administrative costs and FAMIS), the EA program, and the JOBS program; and

(3) Expend 100 percent of the amount of the Family Assistance Grant annual allocation using Federal TANF, title IV–E funds and/or Territory-only funds, without regard to any penalties applied in accordance with section 409 of the Act.

(b) Territories may not use the same Territorial expenditures to satisfy the requirements of paragraphs (a)(1), (a)(2) and (a)(3) of this section.

§ 264.81 What expenditures qualify for Territories to meet the Matching Grant MOE requirement?

To meet the Matching Grant MOE requirements, Territories may count:

(a) Territorial expenditures made in accordance with §§ 263.2, 263.3, 263.4, and 263.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program; and

(b) Territorial expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 264.82 What expenditures qualify for meeting the Matching Grant FAG amount requirement?

To meet the Matching Grant FAG amount requirement, Territories may count:

(a) Expenditures made with Federal TANF funds pursuant to § 263.11 of this chapter;

(b) Expenditures made in accordance with §§ 263.2, 263.3, 263.4, and 263.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program;

(c) Amounts transferred from TANF funds pursuant to section 404(d) of the Act; and

(d) The Federal and Territorial shares of expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 264.83 How will we know if a Territory failed to meet the Matching Grant funding requirements at § 264.80?

We will require the Territories to report the expenditures required by § 264.80(a)(2) and (a)(3) on the quarterly Territorial Financial Report.

§ 264.84 What will we do if a Territory fails to meet the Matching Grant funding requirements at § 264.80?

If a Territory does not meet the requirements at either or both of § 264.80(a)(2) and (a)(3), we will disallow all Matching Grant funds received for the fiscal year.

§ 264.85 What rights of appeal are available to the Territories?

The Territories may appeal our decisions to the Departmental Appeals Board in accordance with our regulations at part 16 of this title if we decide to take disallowances under section 1108(b) of the Act.

PART 265—DATA COLLECTION AND REPORTING REQUIREMENTS

Sec.

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Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

§ 265.1 What does this part cover?

(a) This part explains how we will collect the information required by section 411(a) of the Act (data collection and reporting); the information required to implement section 407 of the Act (work participation requirements), as authorized by section 411(a)(1)(A)(xii); the information required to implement section 409 (penalties), section 403 (grants to States), section 405 (administrative provisions), section 411(b) (report to Congress), and section 413 (annual rankings of State TANF programs); and the data necessary to carry out our financial management and oversight responsibilities.

(b) This part describes the information in the quarterly and annual reports that each State must file, as follows: [1]

(1) The case record information (disaggregated and aggregated) on individuals and families in the quarterly TANF Data Report;

(2) The expenditure data in the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report); and

(3) The definitions and other information on the State's TANF and MOE programs that must be filed annually.

(c) If a State claims MOE expenditures under a separate State program(s), this part specifies the circumstances under which the State must collect and report case-record information on individuals and families served by the separate State program(s).

(d) This part describes when reports are due, how we will determine if reporting requirements have been met, and how we will apply the statutory penalty for failure to file a timely report. It also specifies electronic filing and sampling requirements.

§ 265.2 What definitions apply to this part?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

(b) For data collection and reporting purposes only, *family* means:

(1) All individuals receiving assistance as part of a family under the State's TANF or separate State program (including noncustodial parents, where required under § 265.3(f)); and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

§ 265.3 What reports must the State file on a quarterly basis?

(a) *Quarterly reports.* (1) Each State must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report).

(2) Under the circumstances described in paragraph (d)(1) of this section, the State must collect and file the data specified in the SSP–MOE (Separate State Program-Maintenance-of-Effort) Data Report.

(b) *TANF Data Report.* The TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *Disaggregated Data on Families Receiving TANF Assistance—Section one.* Each State must file disaggregated information on families receiving TANF assistance.[2] This section specifies identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. The data apply to adults and children.

(2) *Disaggregated Data on Families No Longer Receiving TANF Assistance—Section two.* Each State must file disaggregated information on families no longer receiving TANF assistance.[3] This section specifies the reasons for case closure and data similar to the data in section one.

(3) *Aggregated Data—Section three.* Each State must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance.[4] This section of the Report requires aggregate figures in such areas as: The number of applications and their disposition; the number of recipient families, adult recipients, and child recipients; the number of births and out-of-wedlock births for families receiving TANF assistance; the number of noncustodial parents participating in work activities; and the number of closed cases.

(c) *The TANF Financial Report (or Territorial Financial Report).*

(1) Each State must file quarterly expenditure data on the State's use of Federal TANF funds, State TANF expenditures, and State expenditures of MOE funds in separate State programs.[5]

(2) If a State is expending Federal TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report (or, as applicable, Territorial Financial Report) for each fiscal year that provides information on the expenditures of that year's TANF funds.

(3) Territories must report their expenditure and other fiscal data on the Territorial Financial Report, as provided at § 264.85 of this chapter, in lieu of the TANF Financial Report.

(d) *SSP–MOE Data Report.* (1) Subject to paragraph (d)(2) of this section, if a State claims MOE expenditures under a separate State program(s), it must collect and file disaggregated and aggregated information on families receiving assistance and families no longer receiving assistance under the separate State program(s) as follows:

(i) If a State wishes to receive a high performance bonus, it must file the information in sections one and three of the SSP–MOE Data Report; and

(ii) If a State wishes to qualify for caseload reduction credit under subpart D of part 261 of this chapter, it must file the information in sections one, two, and three of the SSP–MOE Data Report.

(2) The State must file the SSP–MOE Data Report only on separate State programs that provide benefits that meet

[1] The Appendices contain the specific data elements in the quarterly Data Report, the quarterly Financial Report, and the Annual Report on State MOE Programs, as well as the instructions for filing these reports. They also include the form and instructions for the Caseload Reduction Report described at § 261.41(b) of this chapter.

[2] See Appendix A for the specific data elements and instructions.

[3] See Appendix B for the specific data elements and instructions.

[4] See Appendix C for the specific data elements and instructions.

[5] See Appendix D for the TANF Financial Report and filing instructions.

the definition of assistance at § 260.31 of this chapter.

(3) The SSP–MOE Data Report consists of three sections. Section one contains disaggregated information on families receiving assistance under separate State programs; section two contains disaggregated information on families no longer receiving assistance under separate State programs; and section three contains aggregated data on families receiving and families no longer receiving assistance under separate State programs.[6]

(e) *Optional data elements.* A State has the option not to report on some data elements for some individuals in the TANF Data Report and the SSP–MOE Data Report, as specified in the instructions to these reports.

(f) *Noncustodial parents.* A State must report information on a noncustodial parent (as defined in § 260.30 of this chapter) if the noncustodial parent:

(1) Is receiving assistance as defined in § 260.31 of this chapter;

(2) Is participating in work activities as defined in section 407(d) of the Act; or

(3) Has been designated by the State as a member of a family receiving assistance.

§ 265.4 When are quarterly reports due?

(a) Each State must file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report) within 45 days following the end of the quarter or be subject to a penalty.

(b) A State that fails to submit the reports within 45 days will be subject to a penalty unless the State files complete and accurate reports before the end of the fiscal quarter that immediately succeeds the quarter for which the reports were required to be submitted.

(c) Each State may file its quarterly SSP–MOE Data Report:

(1) At the same time as it submits its quarterly TANF Data Report; or

(2) At the time it seeks to be considered for a high performance bonus or a caseload reduction credit as long as it submits the required data for the full period for which these determinations will be made.

§ 265.5 May States use sampling?

(a) Each State may report the disaggregated data in the TANF Data Report and the SSP–MOE Data Report on all recipient families or on a sample of families selected through the use of a scientifically acceptable sampling method that we have approved. States may use sampling to generate certain aggregated data elements as identified in the instructions to the reports. States may not use sampling to report expenditure data.

(b) ''Scientifically acceptable sampling method'' means:

(1) A probability sampling method in which every sampling unit in the population has a known, non-zero chance to be included in the sample; and

(2) Our sample size requirements are met.

(c) In reporting data based on sampling, the State must follow the specifications and procedures in the TANF Sampling Manual.

§ 265.6 Must States file reports electronically?

Each State must file all quarterly reports (i.e., the TANF Data Report, the TANF Financial Report (or, as applicable, the Territorial Financial Report), and the SSP–MOE Data Report) electronically, based on format specifications that we will provide.

§ 265.7 How will we determine if the State is meeting the quarterly reporting requirements?

(a) Each State's quarterly reports (the TANF Data Report, the TANF Financial Report (or Territorial Financial Report), and the SSP–MOE Data Report) must be complete and accurate and filed by the due date.

(b) For a disaggregated data report, ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data for all required elements (i.e., no data are missing);

(4)(i) The State provides data on all families; or

(ii) If the State opts to use sampling, the State reports data on all families selected in a sample that meets the specification and procedures in the TANF Sampling Manual (except for families listed in error); and

(5) Where estimates are necessary (e.g., some types of assistance may require cost estimates), the State uses reasonable methods to develop these estimates.

(c) For an aggregated data report, ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data on all applicable elements; and

(4) Monthly totals are unduplicated counts for all families (e.g., the number of families and the number of out-of-wedlock births are unduplicated counts).

(d) For the TANF Financial Report (or, as applicable, the Territorial Financial Report), ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data on all applicable elements; and

(4) All expenditures have been made in accordance with § 92.20(a) of this title.

(e) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the States.

(f) States must maintain records to adequately support any report, in accordance with § 92.42 of this title.

§ 265.8 Under what circumstances will we take action to impose a reporting penalty for failure to submit quarterly and annual reports?

(a) We will take action to impose a reporting penalty under § 262.1(a)(3) of this chapter if:

(1) A State fails to file the quarterly TANF Data Report or the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report) within 45 days of the end of the quarter;

(2) The disaggregated data in the TANF Data Report is not accurate or does not include all the data required by section 411(a) of the Act (other than section 411(a)(1)(A)(xii) of the Act) or the nine additional elements necessary to carry out the data collection system requirements, including the social security number;

(3) The aggregated data elements in the TANF Data Report required by section 411(a) of the Act are not accurate and the report does not include the data elements necessary to carry out the data collection system requirements and to verify and validate the disaggregated data;

[6] See Appendices E, F, and G for the specific data elements and instructions.

(4) The TANF Financial Report (or, as applicable, the Territorial Financial Report) does not contain complete and accurate information on total expenditures and expenditures on administrative costs and transitional services; or

(5) The annual report under § 265.9 does not contain the definition of work activities and the description of transitional services provided by a State to families no longer receiving assistance due to employment.

(b) We will not apply the reporting penalty to the SSP–MOE Data Report.

(c) If we determine that a State meets one or more of the conditions set forth in paragraph (a) of this section, we will notify the State that we intend to reduce the SFAG payable for the immediately succeeding fiscal year.

(d) We will not impose the penalty at § 262.1(a)(3) of this chapter if the State files the complete and accurate quarterly report or the annual report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the reports were required.

(e) If the State does not file all reports as provided under paragraph (a) of this section by the end of the immediately succeeding fiscal quarter, the penalty provisions of §§ 262.4 through 262.6 of this chapter will apply.

(f) Subject to paragraphs (a) through (d) of this section and §§ 262.4 through 262.6 of this chapter, for each quarter for which a State fails to meet the reporting requirements, we will reduce the SFAG payable by an amount equal to four percent of the adjusted SFAG (or a lesser amount if the State achieves substantial compliance under a corrective compliance plan).

§ 265.9 What information must the State file annually?

(a) Each State must file an annual report containing information on the TANF program and the State's MOE program(s) for that year. The report may be filed as:

(1) An addendum to the fourth quarter TANF Data Report; or

(2) A separate annual report.

(b) Each State must provide the following information on the TANF program:

(1) The State's definition of each work activity;

(2) A description of the transitional services provided to families no longer receiving assistance due to employment;

(3) A description of how a State will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause pursuant to § 261.14 of this chapter;

(4) The average monthly number of payments for child care services made by the State through the use of disregards, by the following types of child care providers:

(i) Licensed/regulated in-home child care;

(ii) Licensed/regulated family child care;

(iii) Licensed/regulated group home child care;

(iv) Licensed/regulated center-based child care;

(v) Legally operating (i.e., no license category available in State or locality) in-home child care provided by a nonrelative;

(vi) Legally operating (i.e., no license category available in State or locality) in-home child care provided by a relative;

(vii) Legally operating (i.e., no license category available in State or locality) family child care provided by a nonrelative;

(viii) Legally operating (i.e., no license category available in State or locality) family child care provided by a relative;

(ix) Legally operating (i.e., no license category available in State or locality) group child care provided by a nonrelative;

(x) Legally operating (i.e., no license category available in State or locality) group child care provided by a relative; and

(xi) Legally operated (i.e., no license category available in State or locality) center-based child care;

(5) If the State has adopted the Family Violence Option and wants Federal recognition of its good cause domestic violence waivers under subpart B of part 260 of this chapter, a description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services and an aggregate figure for the total number of good cause domestic waivers granted;

(6) A description of any nonrecurrent, short-term benefits provided, including:

(i) The eligibility criteria associated with such benefits, including any restrictions on the amount, duration, or frequency of payments;

(ii) Any policies that limit such payments to families that are eligible for TANF assistance or that have the effect of delaying or suspending a family's eligibility for assistance; and

(iii) Any procedures or activities developed under the TANF program to ensure that individuals diverted from assistance receive information about, referrals to, or access to other program benefits (such as Medicaid and food stamps) that might help them make the transition from welfare to work;

(7) A description of the procedures the State has established and is maintaining to resolve displacement complaints, pursuant to section 407(f)(3) of the Act. This description must include the name of the State agency with the lead responsibility for administering this provision and explanations of how the State has notified the public about these procedures and how an individual can register a complaint;

(8) A summary of State programs and activities directed at the third and fourth statutory purposes of TANF (as specified at § 260.20(c) and (d) of this chapter); and

(9) An estimate of the total number of individuals who have participated in subsidized employment under § 261.30(b) or (c) of this chapter.

(c) Each State must provide the following information on the State's program(s) for which the State claims MOE expenditures:

(1) The name of each program and a description of the major activities provided to eligible families under each such program;

(2) Each program's statement of purpose;

(3) If applicable, a description of the work activities in each separate State MOE program in which eligible families are participating;

(4) For each program, both the total annual State expenditures and the total annual State expenditures claimed as MOE;

(5) For each program, the average monthly total number or the total number of eligible families served for which the State claims MOE expenditures as of the end of the fiscal year;

(6) The eligibility criteria for the families served under each program/activity;

(7) A statement whether the program/activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;

(8) The FY 1995 State expenditures for each program/activity not authorized and allowable as of August 21, 1996, under section 403 of prior law (see § 263.5(b) of this chapter); and

(9) A certification that those families for which the State is claiming MOE expenditures met the State's criteria for ''eligible families.'' [7]

(d) If the State has submitted the information required in paragraphs (b) and (c) of this section in the State Plan, it may meet the annual reporting requirements by reference in lieu of re-submission. If the information in the

[7] See Appendix I for the reporting form for the Annual Report on State Maintenance-of-Effort Programs.

annual report has not changed since the previous annual report, the State may reference this information in lieu of re-submission.

(e) If a State makes a substantive change in certain data elements in paragraphs (b) and (c) of this section, it must file a copy of the change with the next quarterly data report or as an amendment to its State Plan. The State must also indicate the effective date of the change. This requirement is applicable to the following data elements:

(1) Paragraphs (b)(1), (b)(2), and (b)(3) of this section; and

(2) Paragraphs (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8) of this section.

§ 265.10 When is the annual report due?

The annual report required by § 265.9 is due at the same time as the fourth quarter TANF Data Report.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices

Appendix A—TANF Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the TANF Program)
Appendix B—TANF Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program)
Appendix C—TANF Data Report—Section Three (Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance under the TANF Program)
Appendix D—TANF Financial Report
Appendix E—SSP–MOE Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix F—SSP–MOE Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the Separate State Programs)
Appendix G—SSP–MOE Data Report—Section Three (Aggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix H—Caseload Reduction Report
Appendix I—Annual Report on State Maintenance-of-Effort Programs

Appendix A—TANF Data Report—Section One Disaggregated Data Collection for Families Receiving Assistance under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An ''Unknown'' code may appear only on four sets of data elements ([#32 and #67] Date of Birth, [#33 and #68] Social Security Number, [#41 and #74] Educational Level, and [#42 and #75] Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1'').

There are five data elements for which States have the option to report based on either the budget month or the reporting month. These are: #16 Amount of Food Stamps Assistance; #19 Amount of Child Support; #20 Amount of Families Cash Resources; #64 Amount of Earned Income; and [#35 and #76] Amount of Unearned Income. Whichever choice the State selects must be used for all families reported each month and must be used for all months in the fiscal year.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 01, 03, 05. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes.) State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month codes that identify the year and month for which the data are being reported.

5. Stratum:

Guidance: All TANF families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each TANF family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State should use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency or Tribal grantee to uniquely identify the case.

7. *ZIP Code:* Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

8. *Funding Stream:*

Guidance: The TANF Data Report collects information on families receiving assistance as defined in § 260.31. We do not collect information on families receiving benefits and services that do not meet the definition of assistance. A family that receives TANF

assistance funded, entirely or in part, with Federal funds is subject to the Federal time limits. A family that receives assistance under a segregated State TANF program funded solely with State funds is not subject to the Federal time limits.We will collect information on families who receive assistance under a separate State program in the SSP–MOE Data Report.

Instructions: For States that bifurcate their caseloads, enter the appropriate code for the funding stream used to provide assistance to this TANF family. If the State (Tribe) does not bifurcate its caseload, enter code ''1.''

1=Funded, in whole or in part, with Federal TANF block grant funds.

2=Funded entirely from State-only funds. (segregated State TANF program) which are subject to most, but not all, TANF rules.

9. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is ''listed in error.'' States must collect and report complete data for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each TANF sampled case.

1=Data collection completed.

2=Not subject to data collection/listed in error.

10. *New Applicant:*

Guidance: A newly-approved applicant means the current reporting month is the first month in which the TANF family receives TANF assistance (and thus has had a chance to be selected into the TANF sample). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly, approved applicant.

Instruction: Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1=Yes, a newly-approved application

2=No.

11. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the State's (Tribe's) TANF Program during the reporting month. Include in the number of family members, the noncustodial parent who the State (Tribe) has opted to include as part of the eligible family, who is receiving assistance as defined in § 260.31, or who is participating in work activities as defined in section 407(d) of the Act.

12. *Type of Family for Work Participation:*

Guidance: This data element identifies whether the family will be used to calculate both the overall and two-parent work participation rates, will be used to calculate only the overall work participation rate, or will not be used to calculate either work participation rate.

A family with an adult or minor child head-of-household is included in the overall work participation rate unless explicitly disregarded. See data element #48 ''Work Participation Status'' for reasons for disregarding a family.

For the purpose of calculating the two-parent work participation rate, the two-parent families include any family with two or more natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household. All two-parent families must be included in the two-parent work participation rate unless the family is explicitly disregarded. See the ''Work Participation Status'' data element for reasons for disregarding a family. A two-parent family that includes a disabled parent will not be included in the two-parent work participation rate.

A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate.

A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

However, the State may choose whether a two-parent family with a noncustodial parent as one of the two parents is a two-parent family for the purposes of calculating the two-parent work participation rate. If a State chooses to exclude a two-parent family with a noncustodial parent as one of the parents from the two-parent work participation rate, the State must code the data element ''Type of Family for Work Participation'' with a ''1'' and code the data element ''Work Participation Status'' for the noncustodial parent with a ''99''.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Family included only in overall work participation rate.

2=Two-Parent Family included in both the overall and two-parent work participation rates.

3=Family excluded from both the overall and two-parent work participation rates.

13. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

14. *Receives Medical Assistance:* Enter ''1'' if, for the reporting month, any TANF family member is enrolled in Medicaid and thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no TANF family member is enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

15. *Receives Food Stamps:* Enter the one-digit code that indicates whether or not the TANF family is receiving food stamp assistance.

1=Yes, receives food stamp assistance.

2=No.

16. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the food stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family. One acceptable method for calculating the amount of food stamp assistance available to the TANF family is to prorate the amount of food stamps equally among each food stamp recipient then add together the amounts belonging to the TANF recipients to get the total amount for the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of food stamp assistance for the reporting month or for the month used to budget for the reporting month.

17. *Receives Subsidized Child Care:*

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, receives child care funded entirely or in part with Federal funds (e.g., receives TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, receives child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No subsidized child care received.

18. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or local government to or on behalf of a parent (or caretaker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or caretaker relative) or to a child care provider on behalf of the parent (or caretaker relative).

Instruction: Enter the total dollar amount of subsidized child care from all sources (e.g., CCDF, TANF, SSBG, State, local, etc.) that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for services in the reporting month, enter ''0.''

19. *Amount of Child Support*: Enter the total dollar value of child support received on behalf of the TANF family in the reporting month or for the month used to budget for the reporting month. This includes current payments, arrearages, recoupment, and pass-through amounts whether paid to the State or the family.

20. *Amount of the Family's Cash Resources*: Enter the total dollar amount of the TANF family's cash resources as the State defines them for determining eligibility and/or computing benefits for the reporting month or for the month used to budget for the reporting month.

Amount of Assistance Received and the Number of Months That the Family has Received Each Type of Assistance Under the State (Tribal) TANF Program

Guidance: The term ''assistance'' includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing

basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on their participation in work experience, community service, or other work activities (i.e., under the CFR § 261.30).

Except where excluded as indicated in the following paragraph, it also includes supportive services such as transportation and child care provided to families who are not employed.

The term ''assistance'' excludes:

(1) Nonrecurrent, short-term benefits (such as payments for rent deposits or appliance repairs) that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under an Access to Jobs or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

The exclusion of nonrecurrent, short-term benefits under (1) of this paragraph also covers supportive services for recently employed families, for temporary periods of unemployment, in order to enable continuity in their service arrangements.

Instruction: For each type of assistance provided under the State's (Tribal) TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the State's (Tribe's) TANF program. For TANF Child Care also enter the number of children covered by the dollar amount of child care. If, for a ''type of assistance,'' no dollar amount of assistance was provided during the reporting month, enter ''0'' as the amount. If, for a ''type of assistance,'' no assistance has been received (since the State began its TANF Program) by the TANF eligible family, enter ''0'' as the number of months of assistance.

21. *Cash and Cash Equivalents:*

A. *Amount*

B. *Number of Months*

22. *TANF Child Care:*

Guidance: For TANF Child Care, enter the dollar amount, the number of children covered by the dollar amount of child care, and the total number of months that the family has received TANF child care assistance for families not employed. For example, a TANF family may receive a total of $500.00 in TANF child care assistance for two children for the reporting month. Furthermore, the family may have received TANF child care for one or more child(ren) for a total of six months under the State (Tribal) TANF Program. In this example, the State (Tribe) would code 500, 2, and 6 for the amount, number of children and number of months respectively. Include only the child care funded directly by the State (Tribal) TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

Number of:

A. *Amount*

B. *Children Covered*

C. *Number of Months*

23. *Transportation:*

A. *Amount*

B. *Number of Months*

24. *Transitional Services:*

A. *Amount*

B. *Number of Months*

25. *Other:*

A. *Amount*

B. *Number of Months*

26. *Reason for and Amount of Reductions in Assistance:*

Instruction: The amount of assistance received by a TANF family may have been reduced for one or more of the following reasons. For each reason listed below, indicate whether the TANF family received a reduction in assistance. Enter the total dollar value of the reduction(s) for each group of reasons for the reporting month. If for any reason there was no reduction in assistance, enter ''0.''

a. *Sanctions:*

i. *Total Dollar Amount of Reductions due to Sanctions:* Enter the total dollar value of reduction in assistance due to sanctions.

ii. *Work Requirements Sanction:*

1=Yes.

2=No.

iii. *Family Sanction for an Adult with No High School Diploma or Equivalent:*

1=Yes.

2=No.

iv. *Sanction for Teen Parent not Attending School:*

1=Yes.

2=No.

v. *Non-Cooperation with Child Support:*

1=Yes.

2=No.

vi. *Failure to Comply with an Individual Responsibility Plan:*

1=Yes.

2=No.

vii. *Other Sanction:*

1=Yes.

2=No.

b. *Recoupment of Prior Overpayment:*

Enter the total dollar value of reduction in assistance due to recoupment of a prior overpayment.

c. *Other:*

i. *Total Dollar Amount of Reductions due to Other Reasons (exclude amounts for sanctions and recoupment):* Enter the total dollar value of reduction in assistance due to reasons other than sanctions and recoupment.

ii. *Family Cap:*

1=Yes.

2=No.

iii. *Reduction Based on Family Moving into State From Another State:*

1=Yes.

2=No.

iv. *Reduction Based on Length of Receipt of Assistance:*

1=Yes.

2=No.

v. *Other, Non-sanction:*

1=Yes.

2=No.

27. *Waiver Evaluation Experimental and Control Groups:*

Guidance: If this data element is not applicable to your State (Tribe), either code this element ''9'' or leave this data element blank. In connection with waivers that are approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to control groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and experimental groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A State may choose, for the purpose of completing impact analyses, to maintain applicable control snd experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases not assigned to an experimental or control group, but subject to waiver policies in accordance with terms and conditions of the waiver approval, may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. When a State continues waivers, but does not maintain experimental and control groups for impact evaluation purposes, all cases in the demonstration site will be treated as cases subject to waiver policies in accordance with the terms and conditions regardless of their original assignment as control group cases (i.e., prior law policies may only apply to the extent they are specially linked to approved waivers and former control group cases will now be subject to waiver policies.)

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

1=Control group case (for impact analysis purposes).

2=Experimental group case.

3=Other cases subject to waiver policies.

9=Not applicable (no waivers apply to this case).

28. *Is the TANF Family Exempt from the Federal Time-Limit Provisions:*

Guidance: Under TANF rules, an eligible family that does not include a recipient who is an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for 60 countable months may continue to receive assistance. A

countable month is a month of assistance for which the adult head-of-household, the spouse of the head-of-household, or the minor child head-of-household is not exempt from the Federal time-limit provisions. TANF rules provide for two categories of exceptions. Certain families are exempt from the accrual of months of assistance (i.e., the clock is not ticking). Certain families with an adult head-of-household, a spouse of a head-of-house, or minor child head-of-household who has received 60 countable months of assistance may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption that allows up to 20% of the families to receive assistance beyond the 60-month time limit. In lieu of the 20% hardship exemptions, States with prior-approved welfare reform waivers may choose to employ extension policies prescribed under their waivers.

Instruction: If the TANF family has no exemption from the Federal five-year time limit, enter code ''01.'' If the TANF family does not include an adult head-of-household, a spouse of the head-of-household, or a minor child head-of-household who has received federally-funded assistance for 60 countable months or is otherwise exempt from accrual of months of assistance or termination of assistance under the Federal five-year time limit for the reporting month, enter ''02.'' If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has not received federally-funded assistance for 60 countable months and the family is exempt from the accrual of months of assistance, enter ''03,'' ''04,'' or ''05,'' whichever is appropriate. If the TANF family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received assistance for 60 countable months and the family is exempt from termination of assistance, enter code ''06'' ''07,'' ''08,'' ''09,'' ''10,'' or ''11,'' whichever is appropriate.

01=Family is not exempt from Federal time limit.

Family does not include an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received federally-funded assistance for 60 countable months:

02=Yes, family is exempt from accrual of months and termination of assistance under the Federal five-year time limit for the reporting month because no adult head-of-household, a spouse of the head-of-household, or minor child head-of-household in the eligible family is receiving assistance.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household, but has accrued less than 60 months of assistance:

03=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because assistance to family is funded entirely from State-only funds.

04=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because the family is living in Indian country or an Alaskan native village, where at least 50 percent of the adults living in the Indian country or Alaskan native village are not employed.

05=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month based on an approved welfare reform waiver policy.

Family includes an adult head-of-household, a spouse of the head-of-household, or minor child head-of-household who has received federally-funded assistance for 60 countable months:

06=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because assistance to the family is funded entirely from State-only funds.

07=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month due to a hardship exemption, battery, or extreme cruelty.

08=Yes, family is exempt from termination of assistance under State policy for the reporting month based on a federally recognized good cause domestic violence waiver of time limits.

09=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because the adult head-of-household, the spouse of the head-of-household, or minor child head-of-household is living in Indian country or an Alaskan native village, where at least 50 percent of whose adults are not employed.

10=Yes, family (including adults) is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved welfare reform waivers.

11=Yes, the children in the family are receiving assistance beyond the 60 countable months and the family is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved welfare reform waivers (i.e., under an adult-only time limit).

29. *Is the TANF Family A New Child-Only Family?:*

Guidance: A child-only family is a TANF family that does not include an adult or a minor child head-of-household who is receiving TANF assistance. For purposes of this data element, a new child-only family is a TANF family that: (a) has received TANF assistance for at least two months (i.e., the reporting month and the month prior to the reporting month); (b) received benefits in the prior month, but not as a child-only case; and (c) is a child-only family for the reporting month. All other families—including those that are not a child-only case during the reporting month—get coded as ''not a new-child-only family,'' i.e., as code 2.

Instructions: If the TANF family is a new child-only family, enter code ''1.'' Otherwise, enter code ''2.''

1=Yes, a new child-only family.

2=No, not a new child-only family.

Person-Level Data

Person-level data has two sections: (1) The adult and minor child head-of-household characteristic section and (2) the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

Detailed data elements must be reported on all individuals unless, for a specific data element, the instructions explicitly give States (Tribes) an option to not report for a specific group of individuals.

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a ''minor child head-of-household.'' For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. A noncustodial parent is defined in section 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

The State has the option to count a family with a noncustodial parent receiving assistance as a two-parent family for work participation rate purposes. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, or 5).

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with least income.

30. *Family Affiliation:*

Guidance: This data element is used both for (1) The adult and minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

31. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent is defined in section 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent.

2=No.

32. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the State (Tribal) TANF Program in the format YYYYMMDD. If the adult's (or minor child head-of-household's) date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

33. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

34. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

35. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender:

1=Male.

2=Female.

36. *Receives Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

a. *Receives Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):*

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Receives Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:*

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Receives Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:*

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

37. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

38. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe) (i.e., the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

39. *Parent With Minor Child in the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3 or 5.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

40. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the adult (or minor child head-of-household) is pregnant and the needs associated with this pregnancy are considered in determining the amount of assistance for the reporting month, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy are considered in determining the amount of assistance.

2=No.

41. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household). Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

42. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

43. *Cooperation with Child Support:* Enter the one-digit code that indicates if the adult (or minor child head-of-household) has cooperated with child support. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Yes, adult (or minor child head-of-household) has cooperated with child support.

2=No.

9=Not applicable.

44. *Number of Months Countable toward Federal Time Limit:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on the cumulative amount of time the individual has received Federal TANF assistance received from both the State (Tribe) and other States or Tribes. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

45. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

46. *Is Current Month Exempt from the State's (Tribe's) Time Limit:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt status from State's (Tribe's) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, or 5.

1=Yes, adult (or minor child head-of-household) is exempt from the State's (Tribe's) time limit for the reporting month.

2=No.

47. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

48. *Work Participation Status:*

Guidance: This item is used in calculating the work participation rates. The following two definitions are used in reporting this item and in determining which families are included in and excluded from the calculations.

''Disregarded'' from the participation rate means the TANF family is not included in the calculation of the work participation rate.

''Exempt'' means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the TANF family is included in the calculation of the work participation rate.

A State is not required to disregard all families that could be disregarded. For example, a family with a single custodial parent with child under 12 months (and the parent has not been disregarded for 12 months) may be disregarded. However, if the single custodial parent is meeting the work requirements, the State may want to include the family in its work participation rate. In this situation, the State should use work participation status code ''19'' rather than code ''01''.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status. If the State chooses to include the noncustodial parent in the two-parent work participation rate, the State must code the data element ''Type of Family for Work Participation Rate'' with a ''2'' and enter the applicable code for this data element. If a State chooses to exclude the noncustodial parent from the two-parent work participation rate, the State must code the data element ''Type of Family for Work Participation'' with a ''1'' and code the data element ''Work Participation Status'' for the noncustodial parent with a ''99''. This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5 (i.e., use code ''99'' or leave blank).

01=Disregarded from participation rate, single custodial parent with child under 12 months.

02=Disregarded from participation rate because all of the following apply: required to participate, but not participating; and sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period (Note, this code should be used only in a month for which the family is disregarded from the participation rate. While one or more adults may be sanctioned in more than 3 months within the preceding 12-month period, the family may not be disregarded from the participation rate for more than 3 months within the preceding 12-month period).

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental group) approved under Section 1115 of the Social Security Act.

04=Disregarded from the work participation rate based on an inconsistency under an approved welfare reform waiver that exempts the family from participation.

05=Disregarded from participation rate, based on participation in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate.

06=Exempt, single custodial parent with child under age 6 and child care unavailable.

07=Exempt, disabled (not using an extended definition under a State waiver).

08=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver).

09=Exempt, under a federally recognized good cause domestic violence waiver.

10=Exempt, State waiver.

11=Exempt, other.

12=Required to participate, but not participating; sanctioned for the reporting month; and sanctioned for more than 3 months within the preceding 12-month period.

13=Required to participate, but not participating; and sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period.

14=Required to participate, but not participating; and not sanctioned for the reporting month.

15=Deemed engaged in work—single teen head-of-household or married teen who maintains satisfactory school attendance.

16=Deemed engaged in work—single teen head-of-household or married teen who participates in education directly related to employment for an average of at least 20 hours per week during the reporting month.

17=Deemed engaged in work—parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week.

18=Required to participate and participating, but not meeting minimum participation requirements.

19=Required to participate and meeting minimum participation requirements.

99=Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance or noncustodial parent that the State opted to exclude in determining participation rate).

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (i.e., the JOBS approach.) A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for any full week(s) that the family receives assistance in that month.

Special Rules: Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training may only count as a work activity for a total of 12 months. For any adult (or minor child head-of-household) that has exceeded this limit, enter ''0'' as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under ''Other.''

The exception to the above 12-month rule may be a State that received a waiver that is inconsistent with the provision limiting vocational education training. In this case the State would adhere to the terms and conditions of the waiver.

Limitations: The four limitations concerning job search and job readiness are: (1) Job search and job readiness assistance only count for 6 weeks in any fiscal year; (2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks; (3) If the

State's (Tribe's) total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year or the State is a needy State (within the meaning of section 403 (b)(6)), then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and (4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual.

For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use ''0'' as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

If a State is operating its TANF Program under a waiver that permits broader rules for participation in job search and job readiness training, the TANF rules apply. Any additional participation in job search and job readiness training permitted under the waiver rules should be coded under data element #61 ''Additional Work Activities Permitted Under Waiver Demonstration.''

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation. These work activity data elements are applicable only for individuals whose family affiliation code is 1.

49. *Unsubsidized Employment.*

50. *Subsidized Private-Sector Employment.*

51. *Subsidized Public-Sector Employment.*

52. *Work Experience.*

53. *On-the-job Training.*

54. *Job Search and Job Readiness Assistance.*

Instruction: As noted above, the statute limits participation in job search and job readiness training in four ways. Enter, in this data element, the average number of hours per week of participation in job search and job readiness training that are within the statutory limitations.

Some State waivers permit participation in job search and job readiness training beyond the statutory limits. Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

55. *Community Service Programs.*

56. *Vocational Educational Training:*

Instruction: As noted above, the statute contains special rules limiting an adult's (or minor child head-of-household's) participation in vocational educational training to twelve months. Enter, in this data element, the average number of hours per week of participation in vocational educational training that are within the statutory limits.

Some State waivers permit participation in vocational educational training beyond the statutory limits. Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

57. *Job Skills Training Directly Related to Employment.*

58. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*

59. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*

60. *Providing Child Care Services to an Individual Who Is Participating in a Community Service Program.*

61. *Additional Work Activities Permitted Under Waiver Demonstration:*

Instruction: Some States' waivers permit participation in work activities that are not permitted under the statute. Enter the adult's (or minor child head-of-household's) average number of hours per week of participation in such work activities in this data element. For example, some State waivers permit participation in vocational educational training and job search beyond the TANF statutory limits. Count hours of participation in these activities beyond the TANF limits where allowed by the State waivers in this item. Otherwise, count the additional hours of work participation in the activity ''Other Work Activities.''

62. *Other Work Activities:*

Guidance: This data element collects information on work activities provided that are not permitted under a State waiver and are beyond the requirements of the statute. Reporting on this data element is optional. States may want to demonstrate their additional efforts at helping individuals become self-sufficient even though these activities are not considered in the calculation of the work participation rates.

63. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance with the waiver terms and conditions. If the hour requirement in this case was part of a specific work component waiver, the State could show inconsistency and could use the waiver hours instead of the hours in section 407.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual under a work component waiver. Otherwise, leave blank or enter ''0.'' This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

64. *Amount of Earned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) earned income for the reporting month or for the month used to budget for the reporting month. Include wages, salaries, and other earned income in this item.

65. *Amount of Unearned Income:* Unearned income has five categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income for the reporting month or for the month used to budget for the reporting month.

a. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable Federal, State, or local tax credit for families and dependent children. EITC payments are received monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the Earned Income Tax Credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (or minor child head-of-household) during the reporting month or the month used to budget for the reporting month. If the State counts the EITC as a resource, report it here as unearned income in the month received (i.e., reporting month or budget month, whichever the State is using). If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

b. *Social Security:* Enter the dollar amount of Social Security benefits that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

c. *SSI:* Enter the dollar amount of SSI that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

d. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

e. *Other Unearned Income:*

Guidance: Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, a housing subsidy, a contribution or income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, and other. Do not include EITC, Social Security, SSI, Worker's Compensation, value of food stamp assistance, the amount of a Child Care subsidy, or the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the State TANF family has received for the reporting month or for the month used to budget for the reporting month.

Child Characteristics

This section allows for coding the child characteristics for up to ten children in the TANF family. A minor child head-of-

household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

66. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

67. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the State (Tribal) TANF Program in the format YYYYMMDD. If the child's date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

68. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn. Reporting of this data element is optional for individuals whose family affiliation code is 4. If the Social Security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

69. *Race/Ethnicity*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF child. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

70. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male.

2=Female.

71. *Receives Disability Benefits:* The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

a. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

b. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

72. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (i.e., the relationship to the principal person of each person living in the household.)

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

73. *Parent With Minor Child In the Family:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Code ''1'' is not applicable for children. A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Instruction: Enter the one-digit code that indicates the child's parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

74. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the child. Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

75. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the child's citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

76. *Amount of Unearned Income:* Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

a. *SSI:* Enter the dollar amount of SSI that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

b. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the State (Tribal) TANF family has received for the reporting month or for the month used to budget for the reporting month.

Appendix B—TANF Data Report—Section Two Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e., correct).

An ''Unknown'' code may appear only on four data elements (#15 Date of Birth, #16 Social Security Number, #24 Educational Level, and #25 Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1''). States are not expected to track closed cases in order to collect information on families for months after the family has left the rolls. Rather, States are to report based on the last month of assistance.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. Stratum:

Guidance: All families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe uses a non-stratified sample design or opts to provide data for its entire caseload, enter the same stratum code any two-digit number) for each family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency or Tribal grantee to uniquely identify the TANF family.

7. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

8. *Disposition:* Enter one of the following codes for each TANF family.

1=Data collection completed.

2=Not subject to data collection/listed in error.

9. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's TANF Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code. For example, when an adult marries, the income and resources of the new spouse are considered in determining eligibility. If, at the time of the marriage, the family becomes ineligible because of the addition of the spouse's income and/or resources, the case closure should be coded using code ''2''. If the family did not became ineligible based on the income and resources at the time of the marriage, but rather due to an increase in earnings subsequent to the marriage, then the case closure should be coded using code ''1''.

Instruction: Enter the two-digit code that indicates the reason for the TANF family no longer receiving assistance.

01=Employment and/or excess earnings.

02=Marriage.

03=Federal five-year time limit.

Sanctions:

04=Work-related sanction.

05=Child support sanction.

06=Teen parent failing to meet school attendance requirement.

07=Teen parent failing to live in an adult setting.

08=Failure to finalize an individual responsibility plan (e.g., did not sign plan).

09=Failure to meet individual responsibility plan provision or other behavioral requirements (e.g., immunize a minor child, attend parenting classes).

State (Tribal) Policies:

10=State (Tribal) time limit, if different than Federal.

11=Child support collected.

12=Excess unearned income (exclusive of child support collected).

13=Excess resources.

14=Youngest child too old to qualify for assistance.

15=Minor child absent from the home for a significant time period.

16=Failure to appear at eligibility/redetermination appointment, submit required verification materials, and/or cooperate with eligibility requirements.

17=Transfer to separate State MOE program.

Other.

18=Family voluntarily closes the case.

99=Other.

10. *Received Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month (or for the last month of TANF assistance).

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

11. *Received Medical Assistance:* Enter ''1'' if, for the reporting month (or for the last month of TANF assistance), any TANF family member was enrolled in Medicaid and, thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no TANF family member was enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

12. *Received Food Stamps:* Enter the one-digit code that indicates whether or not the TANF family received food stamp assistance for the reporting month (or for the last month of TANF assistance).

1=Yes, received food stamp assistance.

2=No.

13. *Received Subsidized Child Care:*

Instruction: If the TANF family received subsidized child care for services in the reporting month (or for the last month of TANF assistance), enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, received federally funded (entirely or in part) child care (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, received child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No.

Person-Level Data

This section allows for coding up to sixteen persons in the TANF family. If there are more than sixteen persons in the TANF family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) children in the eligible family receiving assistance; (4) other adults in the eligible family receiving assistance; (5) parents not in the eligible family receiving assistance; (6) caretaker relatives not in the eligible family receiving assistance; (7) minor siblings of a child in the eligible family; and (8) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order from the person with the most income to the person with the least income. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, 4, or 5).

14. *Family Affiliation:*

Instruction: Enter the one-digit code that shows the individual's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

15. *Date of Birth:* Enter the eight-digit code for date of birth for this individual under TANF in the format YYYYMMDD. If the individual's date of birth is unknown and the individual's family affiliation code is not ''1,'' enter the code ''99999999''.

16. *Social Security Number:* Enter the nine-digit Social Security Number for the individual in the format nnnnnnnnn. If the social security number is unknown and the individual's family affiliation code is not ''1,'' enter ''999999999''.

17. *Race/Ethnicity:* Instructions: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the TANF individual. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

b. Race:

c. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

d. Asian:

1=Yes, Asian.

2=No.

e. Black or African American:

1=Yes, Black or African American.

2=No.

f. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

g. White:

1=Yes, White.

2=No.

18. *Gender:* Enter the one-digit code that indicates the individual's gender.

1=Male.

2=Female.

19. *Received Disability Benefits:*

Instructions: The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the individual received the benefit.

a. *Received Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):* Enter the one-digit code that indicates the adult received Federal disability insurance benefits for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits. Enter the one-digit code that indicates the individual received benefits based on Federal disability status for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Received Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:* Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XIV for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XIV–APDT.

2=No.

d. Received Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act: Enter the one-digit code that indicates the adult received aid under a State plan approved under Title XVI–AABD for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Received Supplemental Security Income Under Title XVI–SSI of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–SSI for the reporting month (or the last month of TANF assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received aid under Title XVI–SSI.

2=No.

20. *Marital Status:* Enter the one-digit code for the marital status of the adult recipient. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

21. *Relationship to Head-of-Household:*

Instruction: Enter the two-digit code that shows the individual's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (i.e., the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

22. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3, 4, or 5.

Instruction: Enter the one-digit code that indicates the individual's parental status.

1=Yes, a parent with a minor child in the family.

2=No.

23. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the TANF family receives. If the individual was pregnant and the needs associated with this pregnancy were considered in determining the amount of assistance for the last month of TANF assistance, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy were considered in determining the amount of assistance.

2=No.

24. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the individual. Unknown is not an acceptable code for individuals whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

25. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

9=Unknown.

26. *Number of Months Countable toward Federal Time Limit:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from (1) the State (Tribe) and (2) other States or Tribes. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

27. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

28. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

29. *Amount of Earned Income:* Enter the amount of the adult's (or minor child head-of-household's) earned income for the last month on assistance or for the month used to budget for the last month on assistance.

30. *Amount of Unearned Income:* Enter the dollar amount of the individual's unearned income for the last month on assistance or for the month used to budget for the last month on assistance.

Appendix C—TANF Data Report—Section Three—Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee are to collect and report data for each data element, unless explicitly instructed to leave the field blank. Monthly caseload counts (e.g., number of families, number of two-parent families, and number of closed cases) and number of recipients must be unduplicated monthly totals. States and Tribal grantees may use samples to estimate the monthly totals only for data elements #4, #5, #6, #15, #16, and #17.

1. *State FIPS Code:* Enter your two-digit State code. Tribal grantees should leave this field blank.

2. *Tribal Code:* For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

3. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January–March.

Second quarter—April–June.

Third quarter—July–September.

Fourth quarter—October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as ''19971'').

Applications

Guidance: The term ''application'' means the action by which an individual indicates in writing to the agency administering the State (or Tribal) TANF Program his/her desire to receive assistance.

Instruction: All counts of applications should be unduplicated monthly totals.

4. *Total Number of Applications:* Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6). The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

5. *Total Number of Approved Applications:* Enter the number of applications approved during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

6. *Total Number of Denied Applications:* Enter the number of applications denied (or otherwise disposed of) during each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

Active Cases

For purposes of completing this report, include all TANF eligible cases receiving assistance (i.e., cases funded under the TANF block grant and State MOE funded TANF cases) as cases receiving assistance under the State (Tribal) TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the State (Tribal) TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

8. *Total Number of Families:* Enter the number of families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item #10) and the number of no-parent families (in item #11).

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

9. *Total Number of Two-parent Families:* Enter the total number of 2-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

10. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

11. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

12. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

13. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

14. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

15. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of noncustodial parents participating in work activities (even if not receiving assistance) under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

16. *Total Number of Births:* Enter the total number of births in families receiving

assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

17. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births in families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

Closed Cases

18. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*

B. *Second Month:*

C. *Third Month:*

BILLING CODE 4184–01–M

APPENDIX D

Department of Health and Human Services
Administration for Children and Families

Temporary Assistance for Needy Families (TANF) ACF - 196 Financial Report

STATE	FISCAL YEAR	CURRENT QTR. ENDED	NEXT QTR. ENDING	ANNUAL RECONCILIATION [ ] YES [ ] NO
	FEDERAL FUNDS	STATE FUNDS		CONTINGENCY FUND FEDERAL SHARE AT FMAP RATE OF _____%
	(A) FEDERAL AWARDS & TRANSFERS	(B)	(C)	(D) FEDERAL AWARDS
1. AWARDED	$			$
2. TRANSFERRED TO CCDF DISCRETIONARY	$			
3. TRANSFERRED TO SSBG	$			
4. ADJUSTED SFAG	$			
EXPENDITURE CATEGORIES	FEDERAL TANF EXPENDITURES	STATE MOE EXPENDITURES IN TANF	MOE EXPENDITURES IN SEPARATE STATE PROGRAMS	FEDERAL EXPENDITURES
5. EXPENDITURES ON ASSISTANCE	$	$	$	$
a. BASIC ASSISTANCE	$	$	$	$
b. CHILD CARE	$	$	$	$
c. OTHER SUPPORTIVE SERVICES	$	$	$	$
d. ASSISTANCE AUTHORIZED SOLELY UNDER PRIOR LAW	$	$	$	$
6. EXPENDITURES ON NON-ASSISTANCE	$	$	$	$
a. WORK RELATED ACTIVITIES/EXPENSES	$	$	$	$
1. WORK SUBSIDIES	$	$	$	$
2. EDUCATION	$	$	$	$
3. OTHER WORK ACTIVITIES/EXPENSES	$	$	$	$
b. CHILD CARE	$	$	$	$
c. TRANSPORTATION	$	$	$	$
1. JOB ACCESS	$	$	$	$
2. OTHER	$	$	$	$
d. INDIVIDUAL DEVELOPMENT ACCOUNTS	$	$	$	$
e. REFUNDABLE EARNED INCOME TAX CREDITS	$	$	$	$
f. OTHER REFUNDABLE TAX CREDITS	$	$	$	$
g. DIVERSION PAYMENTS	$	$	$	$
h. PREVENTION OF OUT-OF-WEDLOCK PREGNANCIES	$	$	$	$
i. 2-PARENT FAMILY FORMATION AND MAINTENANCE	$	$	$	$
j. ADMINISTRATION	$	$	$	$
k. SYSTEMS	$	$	$	$
l. OTHER	$	$	$	$
7. TOTAL EXPENDITURES	$	$	$	$
8. TRANSITIONAL SERVICES FOR EMPLOYED	$	$	$	$
9. FEDERAL UNLIQUIDATED OBLIGATIONS	$			$
10. UNOBLIGATED BALANCE	$			$
11. STATE REPLACEMENT FUNDS		$		
QUARTERLY ESTIMATE	TANF FEDERAL FUNDS			
12. ESTIMATE FOR NEXT QTR. ENDED	$			

THIS IS TO CERTIFY THAT THE INFORMATION REPORTED ON ALL PARTS OF THIS FORM IS ACCURATE AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE: AUTHORIZED STATE OFFICIAL		TYPED NAME, TITLE, AGENCY NAME
DATE SUBMITTED:	SUBMITTAL: [ ] NEW [ ] REVISED	
PAGE 1 OF 1 APPROVED OMB NO. xxxx-xxxx FORM ACF-196 (xx/xx)		

BILLDING CODE 4184–01–C

Appendix D—Section 2—Instruction For Completion of Form ACF–196—Financial Reporting Form for the Temporary Assistance for Needy Families (TANF) Program

All States must complete and submit this report in accordance with these instructions on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted quarterly by February 14, May 15, August 14 and November 14.

States must submit separate quarterly reports regarding the use of each fiscal year's funds. For example, States must submit a report regarding the expenditure of FY 98 funds in FY 99 separately from the report on the use of FY 99 funds in FY 99. Until the State reports that all of the Federal funds awarded for a given fiscal year have been transferred or expended, States must continue to submit quarterly reports on the use of funds from that fiscal year.

Distribution: The original copy (with an original signature) should be submitted to: Administration for Children and Families, Office of Financial Services, Division of Formula, Entitlement and Block Grants, Aerospace Building, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions:

—Round all entries to the nearest dollar. Omit cents.
—Include costs of contracts and subcontracts in the appropriate reporting category based on their nature or function.
—Enter State Name.
—Enter the Fiscal Year for which this report is being submitted. Funding for each fiscal year is available until expended. Therefore, for each fiscal year, a State may be submitting reports simultaneously to cover two or more fiscal years. It is important to indicate the year for which information is being reported.

The State must note that prior fiscal year unobligated balances may only be expended on assistance or on the related administrative costs of providing assistance. Expenditure of prior year unobligated balances must be reported on the Expenditures on Assistance categories (lines 5(a) through 5(d)) and any related administrative costs reported on line 6(j).

—Transfers of TANF funds to the CCDF or SSBG must be made in the current fiscal year with current fiscal year TANF funds. Transfers of unobligated balances are not allowed after the end of the Federal fiscal year in which the funds were awarded.
—Enter the ending dates for the current quarter (the quarter just ended for which this constitutes the report of actual expenditures and obligations) and the ending date of the next quarter (the upcoming quarter which estimates are being requested on line 12).

Example: the State is reporting for the 1st quarter of the Federal fiscal year (10/1 through 12/31), the report is due February 14, the current quarter ending date is 12/31, the next quarter ending date for which estimates are requested is 6/30. The estimate submitted by the State will be for the quarter of 4/1 through 6/30. Estimates are not required on quarterly reports submitted for prior fiscal years.

—Enter whether this report is being used for annual reconciliation of the Contingency Fund.
—Enter the Federal Medical Assistance Percentage Rate used by the State for the fiscal year for which contingency funds were received.
—Indicate whether this is a new report or a revision of a report previously submitted for the same period.
—Entries are not required or are not applicable to blocks that are shaded.

Columns: All amounts reported in columns (A) through (D) must be actual expenditures or obligations made in accordance with all applicable statutes and regulations. Amounts reported in the estimates section are estimates of Federal expenditures to be made during the quarter indicated based on the best information available to the State.

Explanation of Columns:

Column (A) lines 1 through 4 refer to the Federal State Family Assistance Grant (SFAG) awards plus any Supplemental Grant or Bonus Funds, amounts transferred to the Child Care and Development Fund (CCDF) (Discretionary Fund) and the Social Services Block Grant (SSBG) program, and the amount Available for TANF.

Column: (A) lines 5 through 9 refer to the Federal TANF funds that the State expended and obligated under its TANF program.

Column: (A) line 10 refers to the unobligated balance, which is calculated by subtracting the amounts on lines 7 and 9 from the amount on line 4.

Column: (A) line 12 is the SFAG grant award amount or the percentage of the SFAG that the State estimates it will need for the next quarter ending on the date indicated at the top of the form. (See page 6 of Line Item Instructions)

Column: (B) lines 5 through 7 refer to State TANF expenditures that the State is making to meet its basic Maintenance-of-Effort (MOE) requirement. Include State funds that are commingled with Federal funds and segregated State funds expended under the State TANF program.

Note: States receiving contingency funds under section 403(b) for the fiscal year must also use this column to report State TANF expenditures made to meet the Contingency Fund (CF) MOE requirement and matching expenditures made above the 100-percent MOE level. Expenditures made to meet the CF MOE requirement and expenditures made above the MOE level (for matching purposes) must be expenditures made under the State TANF program only; they cannot include expenditures made under ''separate State programs.'' In addition, child care expenditures cannot be included as CF MOE expenditures or expenditures that are matched with contingency funds.

Column(B) line 11 refers to State replacement funds that the State must expend in the TANF program due to the assessment of a penalty and a reduction in its TANF grant awards.

Column (C) lines 5 through 7 refer to State expenditures that the State is making in Separate State Programs, outside the State TANF program, to meet its basic MOE requirement.

Note: For the basic MOE requirement, the cumulative total expenditures (i.e., the sum of 7(B) + 7(C)) reported at the end of the Federal fiscal year must add up to 80% of fiscal year 1994 historic State expenditures if the State did not meet the TANF work participation requirements, or 75% of fiscal year 1994 historic State expenditures if the State met the TANF work participation requirements. Basic MOE requirements and tables were published in Program Instruction No. TANF–ACF–PI–97–9, dated October 31, 1997.

For States that received contingency funds, line 7(B) minus line 5(B)(b)(assistance—child care) minus line 6(B)(b)(non—assistance child care) must exceed 100 percent of the CF MOE requirement.

Column (D) line 1 refers to the Federal Contingency Fund grant awards.

Column (D) lines 5 through 7 refer to the Federal share of expenditures for which Federal funding is available at the FMAP rate for the fiscal year for which contingency funds were received. Contingency funds are available for match for State expenditures in excess of 100% of CF MOE requirements as explained in the ''Note'' above.

Example: The State received contingency funds of $100,000 for 6 months of the fiscal year; the FMAP rate is 60% Federal and 40% State; the CF 100% MOE requirement is $1,000,000; the State reported expenditures under Columns (B) and (D) of $1,200,000. To determine how much of the contingency funds the State can keep, the expenditures of $1,000,000 (CF MOE requirement) must be subtracted from the total State expenditures of $1,200,000. That difference ($200,000) is to be multiplied by 60 percent, i.e., $200,000 × 60% = $120,000. The $120,000 must then be multiplied by 1/12 times the number of months a State received contingency funds, i.e., $120,000 × 1/12 × 6 = $60,000. The State may keep no more than $60,000 of the $100,000 ACF awarded it for the Contingency Fund. (This $60,000 may be further reduced as the result of the amendments to section 403(b)(6) under the Adoption and Safe Families Act.)

Determining how much, if any, a State may keep of the contingency funds awarded to it for a fiscal year, is possible only after annual reconciliation of the Contingency Fund account is completed. This form will serve as the annual reconciliation report when submitted for the fourth quarter of the fiscal year. Based on the example above, the amount claimed in line 7 of Column D (Total Expenditures − Contingency Fund) may be no more than $60,000.

It is possible that a State will have received contingency funds after the end of the fiscal year that apply to expenditures made in the prior fiscal year. For a State receiving contingency funds for a fiscal year after it has ended, the State will be required to submit a revised fourth quarter report within 45 days of receipt of the additional contingency funds. There is no carryover of such funds from one fiscal year to the next.

Unobligated Balances Reported on a State Fourth Quarter Financial Report for the Immediately Preceding Fiscal Year

Pursuant to section 404(e) of PRWORA of 1996, a State may reserve amounts awarded to the State under section 403 (excluding contingency funds), without fiscal year limitation, to provide assistance under the State TANF program. Federal Unobligated Balances carried forward from previous fiscal years may only be expended on assistance and related administrative costs associated with providing such assistance. The related Administrative Costs to provide the assistance will be reported against the 15 percent administrative cost cap for the fiscal year for which the Federal funds were originally awarded.

Current Fiscal Year Federal Expenditures on Non-Assistance

The State must obligate by September 30 of the current fiscal year any funds for Expenditures on Non-Assistance. Non-Assistance expenditures are reported on Line 6 categories of this report. The State must liquidate these obligations by September 30 of the immediately succeeding Federal fiscal year for which the funds were awarded. If the final liquidation amounts are lower than the original amount obligated, these funds must be included in the Unobligated Balance Line Item for the year in which they were awarded. As mentioned in the previous paragraph, unobligated balances from previous fiscal years may only be expended on assistance and the administrative costs related to providing the assistance.

Transfers

The State may transfer Federal funds to the CCDF Discretionary Fund and/or the SSBG programs only during the current fiscal year for which the funds were awarded. The State cannot transfer unobligated balances from a previous fiscal year to the CCDF and/or the SSBG programs. Limitations on transfers to these programs are explained in the Line Item instructions.

State Replacement of Grant Reductions Resulting From Penalties

If a State's State Family Assistance Grant is reduced because of the imposition of a penalty under section 409, section 409(a)(12) provides that the State must replace the funds lost due to the penalty with State funds in an amount that is no less than the amount withheld. The State replacement funds must be included in Line 11 Column (B). These funds must be in addition to funds reported under line 7(B).

Line Item Instructions—Cumulative Fiscal Year Expenditures and Obligations

Line 1. Awarded. Enter in column (A) the cumulative total of Federal TANF funds awarded to the State (after any Tribal adjustments) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Enter in column (D) the cumulative total of contingency funds awarded to the State from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must include all Federal TANF funds awarded for the current fiscal year on Line 1(A), except contingency funds. This includes SFAG funds, Supplemental Funds or any Bonus Funds. It does not include Welfare-to-Work funds awarded under section 403(a)(5).

Line 2. Transferred to Child Care and Development Fund (CCDF). Enter in column (A) the cumulative total of funds that the State transferred to the Discretionary Fund of the Child Care and Development Fund from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(1) of the Act governs the transfer of TANF funds to the Discretionary Fund. In compliance with section 404(d)(1), a State may not transfer more than 30% of its total annual TANF funds. A State may transfer this entire amount to the Discretionary Fund of the CCDF program. All funds transferred to the Discretionary Fund of the CCDF program take on the rules and regulations of that recipient Fund in place for the current fiscal year at the time when the transfer occurs. A State can transfer current-year Federal TANF funds only. The State may not transfer prior year unobligated balances to the CCDF.

Line 3. Transferred to SSBG. Enter in column (A) the cumulative total of funds the State transferred to the Social Services Block Grant (SSBG) program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(2) of the Act governs the transfer of TANF funds to the SSBG program; it limits the amount that a State may transfer to no more than 10% of its total annual TANF grant to SSBG. (Also, the combined amount transferred to SSBG and the Discretionary Fund may not exceed 30% of the annual TANF grant. In other words, for all financial reports applicable to grant funds for one fiscal year, the sum of the total cumulative amount reported on line 3 and the total cumulative amount reported on line 2 cannot exceed 30% of the annual TANF grant.) All funds transferred to the SSBG program are subject to the statute and regulations of the recipient SSBG program in place for the current fiscal year at the time when the transfer occurs. A State may transfer current-year Federal TANF funds only. The State may not transfer prior-year unobligated balances to SSBG.

Note: Beginning in FY 2001 the maximum amount of SFAG funds a State may transfer to the SSBG program is 4.25% of its annual TANF grant.

Also, the total amount transferred to SSBG and CCDBG affects the amount available for Job Access activities that may be used as the non-Federal match under that program, See instructions for line 6c1.

Line 4. Adjusted SFAG. Enter in column (A) the cumulative total of funds available for TANF after subtracting the amounts transferred to the CCDF program (Discretionary Fund) (line 2(A)) and/or the SSBG program (line 3(A)) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5. Expenditures on Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 5a through 5d from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5a. Basic Assistance. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for basic assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include benefits not reported on line 5d provided in the form of cash, payments, vouchers, or other forms designed to meet on going, basic needs. Include such benefits, even when provided in the form of payments by a TANF agency, or other agency on its behalf, to individuals and conditioned on their participation in work experience or community service (or any other work activity under section 261.30).

Line 5b. Child Care. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for child care that meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. The amounts reported in this category do not include funds transferred to the CCDF (Discretionary Fund—reported on the ACF–696) or SSBG programs. Include child care expenditures for families that are not employed, but need child care to participate in other work activities such as job search, community service, education, or training, or for respite purposes. Do not include child care provided as a nonrecurrent, short-term benefit (for example, during applicant job search or to recently employed families who need child care extended during a temporary period of unemployment in order to maintain continuity of care). Do not include expenditures on pre-K activities or other programs designed to provide early childhood development or educational services (e.g., following the Head Start model); such activities should be reported as ''other'' and identified as such in a footnote to that category in the 4th Quarter Financial Report.

LIne 5c. Other Supportive Services. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for transportation and other supportive services that meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include expenditures for families that are not employed but need supportive services to participate in other work activities such as job search, community service, education, or training, or for respite purposes. Do not include transportation or other supports provided as a nonrecurrent, short-term benefit (for example, during applicant job search).

Line 5d. Assistance Authorized Solely Under Prior Law. Enter in columns (A) and (D) any expenditures of Federal funds on assistance that are authorized solely under section 404(a)(2) of the Act from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

These are expenditures that are not otherwise consistent with the purposes of

TANF and/or with the prohibitions in section 408. States including expenditures on this line must include a footnote explaining the nature of these benefits (e.g., previously authorized juvenile justice or State foster care payments) and reference the State plan provision under which they were authorized.

Note: States may not report MOE expenditures in this category; all State MOE expenditures must be consistent with the purposes of TANF.

Line 6. Expenditures on Non-Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 6a through 6l.

Line 6a. Work-Related Activities and Expenses. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (sum of 6(a)1 + 6(a)2 + 6(a)3 for each column) for work-related activities and expenses, as described in the instructions for those 3 lines, from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6a1. Work Subsidies. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for work subsidies from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Work subsidies include payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, or training. Do not include expenditures related to payments to participants in community service and work experience activities that are within the definition of assistance.

Line 6a2. Education. Enter in columns (A), (B), (C), and (D) costs related to educational activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. These are expenditures on educational activities that are consistent with the recognized work activities at § 261.30 or as a supplement to such activities. Thus, include secondary education (including alternative programs); adult education, GED, and ESL classes; education directly related to employment; education provided as vocational educational training; and post-secondary education. Do not include costs of early childhood education or after-school or summer enrichment programs for children in elementary or junior high school; such activities should be reported as ''other'' and identified as such in a footnote to that category in the 4th Quarter Financial Report.

Line 6a3. Other Work Activities/Expenses. Enter in columns (A), (B), (C), and (D) expenditures on other work activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. These are expenditures on: (a) work activities that have not been reported as education or work subsidies (including staff costs related to providing work experience and community service activities, on-the-job training, job search and job readiness, job skills training, and training provided as vocational educational training); (b) related services (such as employment counseling, coaching, job development, information and referral, and outreach to business and non profit community groups); and (c) other work-related expenses (such as costs for work clothes and equipment). Include such costs when provided as part of a diversion program or as transitional services to individuals who ceased to receive assistance due to employment.

Line 6b. Child Care. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for child care that does not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include child care provided to employed families (related either to their work or related job retention and advancement activities) and child care provided as a nonrecurrent, short-term benefit (e.g., during applicant job search or to a recently employed family during a temporary period of unemployment). Do not include amounts of funds transferred to the CCDF (Discretionary Fund—reported on the ACF–696) or SSBG programs. Also, do not include expenditures on pre-K activities or other programs designed to provide early childhood development or educational services (e.g., following the Head Start model); such activities should be reported as ''other'' and identified as such in a footnote to that category in the 4th Quarter Financial Report).

Line 6c. Transportation. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (sum of 6(d)1 + 6(d)2 for each column) for transportation activities that do not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include the value of transportation benefits (such as allowances, bus tokens, car payments, auto insurance reimbursement, and van services) provided to employed families (related either to their work or related job retention and advancement activities) and provided as a nonrecurrent, short-term benefit (e.g., during applicant job search).

Line 6c1. Job Access. Enter in Columns (A), (B), (C), and (D) the cumulative total expenditures for the Department of Transportation Job Access program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The amount of TANF funds expended on Job Access programs that may be used as non-Federal matching under the Job Access program is limited to the difference between 30 percent of TANF funds (amount reported on line 1(A)) and the total amount transferred to SSBG and the Discretionary Fund of CCDF (sum of amounts reported on lines 2(B) and 2(C)).

Line 6c2. Other Transportation. Enter in Columns (A), (B), (C), and (D) the cumulative total expenditures for other types of transportation activities that do not meet the definition of assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6d. Individual Development Accounts. Enter in columns (A), (B), (C), and (D) expenditures on contributions to Individual Development Accounts and any other expenditures related to the operation of an IDA program that fall outside the definition of administrative costs from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6e. Refundable Earned Income Tax Credits. Enter in columns (A), (B), (C), and (D) expenditures on refundable earned income tax credits paid to families and otherwise consistent with the requirements of parts 260 and 263 of the TANF regulations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Include State and local tax credits that represent a specific portion of the Federal Earned Income Credit and expenditures on similar State programs designed to defray the costs of employment for low-income families.

Line 6f. Other Refundable Tax Credits. Enter in columns (A), (B), (C), and (D) expenditures on any other refundable tax credits provided under State or local law that are consistent with the purposes of TANF and the requirements of parts 260 and 263 of the TANF regulations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6g. Diversion Payments. Enter in columns (A), (B), (C), and (D) any expenditures on nonrecurrent, short-term benefits to families in the form of cash payments, vouchers, or similar form of payment to deal with a specific crisis situation or episode of need and excluded from the definition of assistance on that basis. Do not include expenditures on support services such as child care or transportation (including car repairs) or work activities and expenses (such as applicant job search) provided under a diversion program; these items should have been reported in prior reporting categories.

Line 6h. Prevention of Out-of-Wedlock Pregnancies. Enter in columns (A), (B), (C), and (D) the cumulative total program expenditures for prevention of out-of-wedlock pregnancies activities that have not otherwise been reported from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6i. Two-Parent Family Formation and Maintenance. Enter in columns (A), (B), (C), and (D) the cumulative total program expenditures for two-parent family formation and maintenance activities that have not otherwise been reported from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 6j. Administration. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for administrative costs (as defined at § 263.0) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

For Federal TANF funds, the 15% administrative cost cap applies to the amount Available for TANF reported on line 4(A) of this form. For State expenditures reported in columns (B) and (C), the 15% administrative cost cap applies to the cumulative amount of Total Expenditures (i.e., the sum of line 7(B) + 7(C)) reported for these columns.

Based on the nature or function of the contract, States must include appropriate administrative costs associated with contracts and subcontracts that count towards the 15% administrative cost caps.

Line 6k. Systems. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for systems costs related to monitoring and tracking under the program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: Section 404(b)(1) of the Act limits States to which a grant is made under section 403 to expend no more than 15% of the grant for administrative costs. In addition, section 404(b)(2) of the Act states that the 15% administrative cost cap shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under part IV–A of the Act. The systems exclusion applies to items that might normally be administrative costs, but are systems-related and needed for monitoring or tracking purposes under TANF. Under our final rules the same information technology exclusion applies to MOE expenditures. The TANF rules at §§ 263.2 and 263.13 provide guidance about what is excluded under this provision.

Line 6l. Other. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures for other expenditures considered ''expenditures on non-assistance'' that were not included on Lines 6a through 6j from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. For example, include as ''other'' costs on general family preservation activities and parenting training. Include costs on activities such as substance abuse treatment, domestic violence services, and case management to the extent that such costs are not directed at the second goal of TANF and included as work-related costs above.

Note: In the 4th quarter annual report the State must describe in a footnote the activities for which ''other expenditures'' under this line item applies.

Line 7. Total Expenditures. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures (i.e., the sum of Line 5a through Line 6l) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 8. Transitional Services for Employed. Enter in columns (A), (B), (C), and (D) the cumulative total expenditures to provide transitional services to families that cease to receive assistance under the TANF program because of employment from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Expenditures reported on this line must also be included in the expenditure categories reported on lines 5 through 7.

Note: The expenditures reported on this line will duplicate expenditures reported elsewhere in this report. Section 411(a)(5) requires separate quarterly reporting of expenditures on transitional services for families that have ceased to receive assistance because of employment.

Line 9. Federal Unliquidated Obligations. Enter in columns (A) and (D) the cumulative total Federal unliquidated obligations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Obligations reported on this line must meet the definition of obligations contained in 45 CFR 92.3. For the Contingency Fund, this line should indicate $0 for the report submitted for the fourth quarter.

Line 10. Unobligated Balance. Enter in columns (A) and (D) the cumulative total Federal unobligated balances from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. After the end of the Federal fiscal year any amount reported in column (D), as an unobligated balance, will be de-obligated by ACF.

Note: The State must report any Federal funds reserved for ''rainy day'' purposes as an unobligated balance on this line. Unobligated balances expended in any future Federal fiscal year must be expended only on assistance (reported on Line 5 categories of this report) or administrative costs related to providing assistance (reported on line 6(j)).

Line 11. State Replacement Funds. Enter in column (B) the cumulative total State Replacement Funds expended as a result of the imposition of a TANF penalty from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 12. Estimate for Next Quarter Ended. Enter in column (A) the estimate of SFAG grant award funds requested for the next quarter ending, whose ending date was entered at the top of this report.

Note: Section 405(c)(1) of the Act states that ACF shall estimate the amount to be paid to each eligible State for each quarter, such estimate is to be based on a report filed by the State of the total sum to be expended by the State in the quarter under the State program funded under section 403.

Appendix E—SSP MOE Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: If a State claims MOE expenditures for separate State programs (SSPs) and for persons served by those programs, it must collect and report this information on the SSP–MOE Data Report on SSP–MOE families receiving assistance only as follows: (1) If the State wishes to receive a high performance bonus, it must file the information in sections one and three of the SSP–MOE Data Report; and (2) if the State wishes to quality for caseload reduction credit, it must file the information in all three sections of the SSP–MOE Data Report.

The State agency should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An ''Unknown'' code may appear only on four sets of data elements ([#28 and #60] Date of Birth, [#29 and #61] Social Security Number, [#37 and #67] Educational Level, and (#38 and #68] Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1'').

There are six data elements for which States have the option to report based on either the budget month or the reporting month. These are: #14 Amount of Food Stamps Assistance; #17 Amount of Child Support; #18 Amount of Families Cash Resources; #57 Amount of Earned Income; and [#58 and #69] Amount of Unearned Income. Whichever choice the State selects must be used for all families reported each month and must be used for all months in the fiscal year.

The data elements in the SSP–MOE Data Report are similar to those in the TANF Data Report for the TANF Program. This will give us comparable information on the SSP programs. It will allow us, for example, to calculate a SSP–MOE work participation rate. Because a State's definitions and eligibility requirements for its SSPs may be different from those in its TANF Program, the data required in its SSP–MOE Data Report may not precisely correspond to the information collected by the State in its SSP–MOE Data Report. We encourage States to provide the best possible information.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38

State	Code
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month codes that identify the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (i.e, SSP–MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each SSP–MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the SSP–MOE family means (a) all individuals receiving assistance as part of a family under the separate State program(s); and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number—Separate State MOE:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency to uniquely identify the case.

6. *ZIP Code:* Enter the five-digit ZIP code for the SSP–MOE family's place of residence for the reporting month.

7. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is ''listed in error.'' States are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each SSP–MOE sampled case.

1=Data collection completed.

2=Not subject to data collection/listed in error.

8. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the separate State program(s). Include in the number of family members, the noncustodial parent whom the State has opted to include as part of the eligible family, who is receiving assistance as defined in § 260.31, or who is participating in work activities as defined in section 407(d) of the Act.

9. *Type of Family for Work Participation:*

Guidance: This data element identifies whether the family would be used in the calculations for both the overall and two-parent work participation rates, would be used in only the overall work participation rate, or would not be used in either work participation rate.

A family with an adult or minor child head-of-household will be included in the overall work participation rate unless explicitly disregarded. See data element #41 ''Work Participation Status'' for reasons for disregarding a family.

For the purpose of calculating the two-parent work participation rate, the two-parent families include any family with two or more natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minor and neither is a head-of-household. All two-parent families are included in the two-parent work participation rate unless the family is explicitly disregarded. See data element #41 ''Work Participation Status'' for reasons for disregarding a family. A two-parent family that includes a disabled parent is not included in the two-parent work participation rate.

A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate.

A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Family included only in overall work participation rate.

2=Two-Parent Family included in both the overall and two-parent work participation rates.

3=Family excluded from both the overall and two-parent work participation rates.

10. *Has the Family Received Assistance Under a State (Tribal) TANF Program Within the Past Six Months:* If the SSP–MOE family has received assistance under a State (Tribal) TANF Program within the past six months, enter code ''1.'' Otherwise, enter ''2.''

1=Yes, family has received assistance under a State (Tribal) TANF program within the past six months.

2=No.

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the SSP–MOE family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

12. *Receives Medical Assistance:* Enter ''1'' if, for the reporting month, any SSP–MOE family member is enrolled in Medicaid and thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no SSP–MOE family member is enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

13. *Receives Food Stamps:* Enter the one-digit code that indicates whether or not the SSP–MOE family is receiving food stamp assistance.

1=Yes, receives food stamp assistance.

2=No.

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the food stamp household differs from the SSP–MOE family, code this element in a manner that most accurately reflects the resources available to the SSP–MOE family. One acceptable method for calculating the amount of food stamp assistance available to the SSP–MOE family is to prorate the amount of food stamps equally between each food stamp recipient then add together the amounts belonging to the SSP–MOE recipients.

Instruction: Enter the SSP–MOE eligible family's authorized dollar amount of food stamp assistance for the reporting month or for the month used to budget for the reporting month. If the SSP–MOE family did not receive any food stamps for the reporting month, enter ''0.''

15. *Receives Subsidized Child Care:*

Instruction: If the SSP–MOE family receives subsidized child care for the reporting month, enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, receives child care funded entirely or in part with Federal funds (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, receives child care funded entirely under a State, Tribal, and/or local program.

3=No subsidized child care received.

16. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or local government to or on behalf of a parent (or

caretaker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or caretaker relative) or to a child care provider on behalf of the parent (or caretaker relative).

Instruction: Enter the dollar amount of subsidized child care that the SSP–MOE family has received from all sources (e.g., CCDF, TANF, SSBG, State, local, etc.) for services in the reporting month. If SSP–MOE family did not receive any subsidized child care for services in the reporting month, enter ''0'' as the amount.

17. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the SSP–MOE family in the reporting month or for the month used to budget for the reporting month. This includes current payments, arrearages, recoupment, and pass-through amounts whether paid to the State or the family.

18. *Amount of the Family's Cash Resources* Enter the total dollar amount of the SSP–MOE family's cash resources as the State defines them for determining eligibility and/or computing benefits for the reporting month or for the month used to budget for the reporting month.

Amount of Assistance Received and the Number of Months That the Family Has Received Each Type of Assistance Under the Separate State Program

Guidance: The term ''assistance'' includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on their participation in work experience, community service, or other work activities (i.e., under the CFR § 261.30).

Except where excluded as indicated in the following paragraph, it also includes supportive services such as transportation and child care provided to families who are not employed.

The term ''assistance'' excludes:

(1) Nonrecurrent, short-term benefits (such as payments for rent deposits or appliance repairs) that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under an Access to Jobs or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

The exclusion of nonrecurrent, short-term benefits under (1) of this paragraph also covers supportive services for recently employed families, for temporary periods of unemployment, in order to enable continuity in their service arrangements.

Instruction: For each type of assistance provided under the separate State program, enter the dollar amount of assistance that the SSP–MOE family received or that was paid on behalf of the SSP–MOE family for the reporting month and the number of months that the SSP–MOE family has received assistance under the State's Separate MOE programs. Also, for SSP–MOE Child Care, enter the number of children covered by the child care. If, for a ''type of assistance,'' no dollar amount of assistance was provided during the reporting month, enter ''0'' as the amount. If, for a ''type of assistance,'' no assistance has ever been received by the eligible family, enter ''0'' as the number of months of assistance.

19. *Cash and Cash Equivalents:*

A. *Amount*

B. *Number of Months*

20. *Child Care:*

Guidance: Include only the child care funded directly by these Separate State programs. Do not include child care funded under the TANF Program or the Child Care and Development Fund.

Number of:

A. Amount

B. Children Covered

C. Number of Months

21. Transportation:

A. Amount

B. Number of Months

22. Transitional Services:

A. Amount

B. Number of Months

23. Other:

A. Amount

B. Number of Months

24. *Reason for and Amount of Reduction in Assistance:*

Instruction: The amount of assistance received by a SSP–MOE family may be reduced for one or more reasons. For each reason listed below, indicate whether the SSP–MOE family received a reduction in assistance. Enter the total dollar value of the reduction(s) for each group of reasons for reductions in assistance for the reporting month. If for any reason there was no reduction in assistance, enter ''0.''

a. *Sanctions:*

i. *Total Dollar Amount of Reductions due to Sanctions:* Enter the total dollar value of reduction in assistance due to sanctions.

ii. *Work Requirements Sanction:*

1=Yes.

2=No.

iii. *Family Sanction for an Adult with No High School Diploma or Equivalent:*

1=Yes.

2=No.

iv. *Sanction for Teen Parent not Attending School:*

1=Yes.

2=No.

v. *Non-Cooperation with Child Support:*

1=Yes.

2=No.

vi. *Failure to Comply with an Individual Responsibility Plan:*

1=Yes.

2=No.

vii. *Other Sanctions:*

1=Yes.

2=No.

b. *Recoupment of Prior Overpayment:* Enter the total dollar value of reduction in assistance due to recoupment of a prior overpayment.

c. *Other:*

i. *Total Dollar Amount of Reductions due to Other Reasons (exclude the amounts for sanction and recoupment):* Enter the total dollar value of reduction in assistance due to reasons other than sanctions and recoupment.

ii. *Family Cap:*

1=Yes.

2=No.

iii. *Reduction Based on Family Moving into State From Another State:*

1=Yes.

2=No.

iv. *Reduction Based on Length of Receipt of Assistance:*

1=Yes.

2=No.

v. *Other, Non-sanction:*

1=Yes.

2=No.

25. *Waiver Evaluation Experimental and Control Groups:*

Guidance: If this data element is not applicable to your State (Tribe), either code this element ''9'' or leave this data element blank. In connection with waivers that are approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to control groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and experimental groups (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A State may choose, for the purpose of completing impact analyses, to maintain applicable control and experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases not assigned to an experimental or control group but subject to waiver policies in accordance with the terms and conditions of the waiver approval, may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. When a State continues waivers, but does not maintain experimental and control groups for impact evaluation purposes, all cases in the demonstration site will be treated as cases subject to waiver policies in accordance with terms and conditions regardless of their original assignment as control group cases (i.e., prior law policies may only apply to the extent they are specially linked to approved waivers and former control group cases will now be subject to waiver policies.)

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

1=Control group case (for impact analysis purposes).

2=Experimental group case.

3=Other cases subject to waiver policies.

9=Not applicable (no waivers apply to this case).

Person-Level Data

Person-level data has two sections: (1) The adult and minor child head-of-household characteristic section and (2) the child characteristics section. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Detailed data elements must be reported on all individuals unless, for a specific data element, the instructions explicitly give States an option to not report for a specific group of individuals.

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the SSP–MOE family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a ''minor child head-of-household.'' For each adult (or minor child head-of-household) in the SSP–MOE family, complete the adult characteristics section. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, or 5).

If there are more than six adults (or a minor child head-of-household and five adults) in the SSP–MOE family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

26. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

27. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent is defined in § 260.30 as a parent who lives in the State and does not live with his/her child(ren). The State must report information on the noncustodial parent if the noncustodial parent: (1) Is receiving assistance as defined in § 260.31; (2) is participating in work activities as defined in section 407(d) of the Act; or (3) has been designated by the State as a member of a family receiving assistance.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent.

2=No, not a noncustodial parent.

28. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the separate State program in the format YYYYMMDD. If the adult's (or minor child head-of-household's) date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

29. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

30. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the adult (or minor child head-of-household). Reporting of this data element is optional for individuals whose family affiliation code is 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2= No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

31. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male.

2=Female.

32. *Receives Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

a. *Receives Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):*

1=Yes, received Federal disability insurance.

2=No.

b. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

c. Receives Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Receives Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:*

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

33. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

34. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's (or minor child head-of-household's) relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State, (i.e., the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son (Natural or adoptive).

05=Stepdaughter or stepson.

06=Grandchild or great grandchild

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

35. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive

parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3 or 5.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

36. *Needs of a Pregnant Woman:* Some States (Tribes) consider the needs of a pregnant woman in determining the amount of assistance that the SSP–MOE family receives. If the adult (or minor child head-of-household) is pregnant and the needs associated with this pregnancy are considered in determining the amount of assistance for the reporting month, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy are considered in determining the amount of assistance.

2=No.

37. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household). Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

38. Citizenship/Alienage:

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

39. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this adult (or minor child head-of-household) has cooperated with child support. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Yes, adult (or minor child head-of-household) cooperated with child support.

2=No.

3=Not applicable.

40. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Reporting of this data element is optional for individuals whose family affiliation code is 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers)

41. *Work Participation Status:*

Guidance: This item could be used in calculating an SSP work participation rate and includes information comparable to TANF. The following two definitions are used in reporting this item and in determining which families might be included in and excluded from the calculations.

''Disregarded'' from the participation rate means the SSP–MOE family is not included in the calculation of the work participation rate.

''Exempt'' means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the SSP–MOE family is included in the calculation of the work participation rate.

A State is not required to disregard all families that could be disregarded. For example, a family with a single custodial parent with child under 12 months (and the parent has not been disregarded for 12 months) may be disregarded. However, if the single custodial parent is meeting the work requirements, the State may want to include the family in its work participation rate. In this situation, the State should used work participation status code ''19'' rather than code ''01''.

Instruction: Enter the two-digit code that indicates a work participation status for the adult or minor child head-of-household. This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

01=Disregarded from participation rate, single custodial parent with child under 12 months.

02=Disregarded from participation rate because all of the following apply: required to participate; but not participating; sanctioned for the reporting month; but not sanctioned for more than 3 months within the preceding 12-month period.

Note: this code should be used only in a month for which the family is disregarded from the participation rate. While one or more adults may be sanctioned in more than 3 months within the preceding 12-month period, the family may not be disregarded from the participation rate for more than 3 months within the preceding 12=month period.

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental group) approved under section 1115 of the Social Security Act.

04=Disregarded from the work participation rate based on an inconsistency under an approved welfare reform waiver that exempts the family from participation.

05=Disregarded from participation rate, based on participation in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate.

06=Exempt, single custodial parent with child under age 6 and child care available.

07=Exempt, disabled (not using an extended definition under a State waiver).

08=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver).

09=Exempt, under a federally recognized good cause domestic violence waiver.

10=Exempt, State waiver.

11=Exempt, other.

12=Required to participate, but not participating; sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period.

13=Required to participate, but not participating; sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period.

14=Required to participate, but not participating; and not sanctioned for the reporting month.

15=Deemed engaged in work—single teen head-of-household or married teen who maintains satisfactory school attendance.

16=Deemed engaged in work—single teen head-of-household or married teen who participates in education directly related to employment for an average of at least 20 hours per week during the reporting month.

17=Deemed engaged in work—parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week.

18=Required to participate and participating, but not meeting minimum participation requirements.

19=Required to participate and meeting minimum participation requirements.

99=Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance or noncustodial parent that the State opted to exclude in determining participation rate).

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27—August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for the month in which the Friday falls (i.e., the JOBS approach). A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a

month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation. These work activity data elements are applicable only for individuals whose family affiliation code is 1.

42. *Unsubsidized Employment.*

43. *Subsidized Private-Sector Employment.*

44. *Subsidized Public-Sector Employment*

45. *Work Experience*

46. *On-the-job Training*

47. *Job Search and Job Readiness Assistance*:

Instruction: Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in data element #54 ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under data element #55 ''Other Work Activities.''

48. *Community Service Programs.*

49. *Vocational Educational Training:*

Instruction: Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead, count the hours of participation beyond the TANF limit in data element #54 ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under data element #55 ''Other Work Activities.''

50. *Job Skills Training Directly Related to Employment.*

51. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*

52. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*

53. *Providing Child Care Services to an Individual who is Participating in a Community Service Program.*

54. *Additional Work Activities Permitted Under Waiver Demonstration:*

Instruction: Some States' waivers permit participation in work activities that are not permitted under the statute. Enter the adult's (or minor child head-of-household's) average number of hours per week of participation in such work activities in this data element. For example, some State waivers permit participation in vocational educational training and job search beyond the TANF statutory limits. Count hours of participation in these activities beyond the TANF limits where allowed by the State waivers in this item. Otherwise, count the addditional hours of participation in the activity ''Other Work Activities.''

55. *Other Work Activities.* This data element collects information on work activities provided that are not permitted under a State waiver and are beyond the requirements of the statute.

56. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance to waiver terms and conditions. If the hour requirement in this case was part of a specific work component waiver, the State could show inconsistency and could use the waiver hours instead of the hours in section 407.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual under a work component waiver. Otherwise, leave blank or enter ''0.'' This data element is not applicable for individuals whose family affiliation code is 2, 3, 4, or 5.

57. *Amount of Earned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) earned income for the reporting month or for the month used to budget for the reporting month.

58. *Amount of Unearned Income:* Unearned income has five categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

a. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the Earned Income Tax Credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (or minor child head-of-household) during the reporting month or the month used to budget for the reporting month. If the State counts the EITC as a resource, report it here as unearned income in the month received (i.e., the reporting month or budget month). If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

b. *Social Security:* Enter the dollar amount of Social Security benefits that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

c. *SSI:* Enter the dollar amount of SSI benefits that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

d. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

e. *Other Unearned Income:*

Guidance: Other unearned income includes RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include EITC, Social Security, SSI, Worker's Compensation, value of food stamp assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

Child Characteristics

This section allows for coding the child characteristics for up to ten children in the SSP–MOE family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on.

If there are more than ten children in the SSP–MOE family, use the following order to identify the persons to be coded: (1) Children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

59. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income is considered in determining eligibility for and amount of assistance for the eligible family receiving assistance.

60. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the separate State programs in the format YYYYMMDD. If the child's date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

61. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn. If the child's social security number is unknown and the family affiliation code is not ''1,'' enter the 9-digit code ''999999999''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

62. *Race/Ethnicity:*

Instruction: To allow for the multiplicity of race/ethnicity, please enter the one-digit code

for each category of race and ethnicity of the child. Reporting of this data element is optional for individuals whose family affiliation code is 4.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

63. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male.

2=Female.

64. *Receives Disability Benefits:* The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

a. *Receives Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits.

1=Yes, received benefits based on Federal disability status.

2=No.

b. *Receives Supplemental Security Income Under Title XVI–SSI of the Social Security Act:*

1=Yes, received aid under Title XVI–SSI.

2=No.

65. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household.

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son (Natural or adoptive).

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

66. *Parent With Minor Child In the Family:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Code ''1'' is not applicable for children. A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Instruction: Enter the one-digit code that indicates the child's parental status.

1=Yes, a parent with a minor child in the family and used in two-parent participation rate.

2=Yes, a parent with a minor child in the family, but not used in two-parent participation rate.

3=No.

67. *Educational Level:* Enter the two-digit code to indicate the highest level of education attained by the child. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

68. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the child citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

69. *Amount of Unearned Income:* Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income for the reporting month or for the month used to budget for the reporting month.

a. *SSI:* Enter the dollar amount of SSI that the child in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

b. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the SSP–MOE family has received for the reporting month or for the month used to budget for the reporting month.

Appendix F—SSP MOE Data Report—Section Two—Disaggregated Data Collection for Families No Longer Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: The State agency should collect and report data for each data element. The data must be complete (unless explicitly instructed to leave the field blank) and accurate (i.e, correct).

An ''Unknown'' code may appear only on four data elements (#14 Date of Birth, #15 Social Security Number, #23 Educational Level, and #24 Citizenship/Alienage). For these data elements, unknown is not an acceptable code for individuals who are members of the eligible family (i.e., family affiliation code ''1''). States are not expected to track closed cases in order to collect information on families for months after the family has left the rolls. Rather it is acceptable to report based on the last month of assistance.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45

State	Code
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (i.e, SSP–MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each SSP–MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the SSP–MOE family means (a) all individuals receiving assistance as part of a family under the separate State program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency to uniquely identify the SSP–MOE family.

6. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

7. *Disposition:* Enter one of the following codes for each SSP–MOE family.

1=Data collection completed.

2=Not subject to data collection/listed in error.

8. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's MOE Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code. For example, when an adult marries, the income and resources of the new spouse are considered in determining eligibility. If, at the time of the marriage, the family becomes ineligible because of the addition of the spouse's income and/or resources, the case closure should be coded using code ''2''. If the family did not became ineligible based on the income and resources at the time of the marriage, but rather due to an increase in earnings subsequent to the marriage, then the case closure should be coded using code ''1''.

Instruction: Enter the two-digit code that indicates the reason for the SSP–MOE family no longer receiving assistance.

01=Employment and/or excess earnings.

02=Marriage.

03=Five-year time limit.

Sanctions:

04=Work related sanction.

05=Child support sanction.

06=Teen parent failing to meet school attendance requirement.

07=Teen parent failing to live in an adult setting.

08=Failure to meet individual responsibility plan provision or other behavioral requirements (e.g., immunize a minor child, attend parenting classes).

09=Failure to complete individual responsibility plan (e.g., did not sign plan).

State Policies:

10=State time limit, if different than five-year limit.

11=Child support collected.

12=Excess unearned income (exclusive of child support collected).

13=Excess resources.

14=Youngest child too old to qualify for assistance.

15=Minor child absent from the home for a significant time period.

16=Failure to appear at eligibility/redetermination appointment, submit required verification materials, and/or cooperate with eligibility requirements.

17=Transfer to State's TANF program.

Other:

18=Family voluntarily closes the case.

99=Other.

9. *Received Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the SSP–MOE family received subsidized housing for the reporting month.

1=Public housing.

2=Rent subsidy.

3=No housing subsidy.

10. *Received Medical Assistance:* Enter ''1'' if, for the reporting month, any SSP–MOE family member was enrolled in Medicaid and, thus eligible to receive medical assistance under the State plan approved under Title XIX or ''2'' if no SSP–MOE family member was enrolled in Medicaid.

1=Yes, enrolled in Medicaid.

2=No.

11. *Received Food Stamps:* Enter the one-digit code that indicates whether or not the SSP–MOE family has received food stamp assistance.

1=Yes, received food stamp assistance.

2=No.

12. *Received Subsidized Child Care:*

Instruction: If the SSP–MOE family received subsidized child care for the reporting month (or for the last month of SSP–MOE assistance), enter code ''1'' or ''2,'' whichever is appropriate. Otherwise, enter code ''3.''

1=Yes, receives child care funded (entirely or in part) with Federal funds (e.g., receives either TANF, CCDF, SSBG, or other federally funded child care).

2=Yes, received child care funded entirely under a State, Tribal, and/or local program (i.e., no Federal funds used).

3=No.

Person-Level Data

This section allows for coding up to sixteen persons in the SSP–MOE family. If there are more than sixteen persons in the SSP–MOE family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) children in the eligible family receiving assistance; (4) other adults in the eligible family receiving assistance; (5) Parents not in the eligible family receiving assistance; (6) caretaker relatives not in the eligible family receiving assistance; (7) minor siblings of a child in the eligible family; and (8) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income. As indicated below, reporting for certain specified data elements in this section is optional for certain individuals (whose family affiliation code is a 2, 3, 4 or 5).

13. *Family Affiliation:*

Instruction: Enter the one-digit code that shows the individual's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance.

Not in eligible family receiving assistance, but in the household:

2=Parent of minor child in the eligible family receiving assistance.

3=Caretaker relative of minor child in the eligible family receiving assistance.

4=Minor sibling of child in the eligible family receiving assistance.

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance.

14. *Date of Birth:* Enter the eight-digit code for date of birth for this individual under separate State programs in the format

YYYYMMDD. If the individual's date of birth is unknown and the family affiliation code is not ''1,'' enter the code ''99999999''.

15. *Social Security Number:* Enter the nine-digit Social Security Number for the individual in the format nnnnnnnnn. If the social security number is unknown and the family affiliation code is not ''1,'' enter ''999999999''.

16. Race/Ethnicity:

Instructions: To allow for the multiplicity of race/ethnicity, please enter the one-digit code for each category of race and ethnicity of the SSP–MOE individual. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

Ethnicity:

a. Hispanic or Latino:

1=Yes, Hispanic or Latino.

2=No.

Race:

b. American Indian or Alaska Native:

1=Yes, American Indian or Alaska Native.

2=No.

c. Asian:

1=Yes, Asian.

2=No.

d. Black or African American:

1=Yes, Black or African American.

2=No.

e. Native Hawaiian or Other Pacific Islander:

1=Yes, Native Hawaiian or Pacific Islander.

2=No.

f. White:

1=Yes, White.

2=No.

17. *Gender:* Enter the one-digit code that indicates the individual's gender.

1=Male.

2=Female.

18. *Received Disability Benefits:* The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the individual received the benefit.

a. *Received Federal Disability Insurance Benefits Under the Social Security OASDI Program (Title II of the Social Security Act):* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month (or the last month of TANF assistance). This item is not required to be coded for a child.

1=Yes, received Federal disability insurance.

2=No.

b. *Received Benefits Based on Federal Disability Status Under Non-Social Security Act Programs:* These programs include Veteran's disability benefits, Worker's disability compensation, and Black Lung Disease disability benefits. Enter the one-digit code that indicates the individual received benefits based on Federal disability status for the reporting month (or the last month of SSP–MOE assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received benefits based on Federal disability status.

2=No.

c. *Received Aid to the Permanently and Totally Disabled Under Title XIV–APDT of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XIV for the reporting month (or the last month of SSP–MOE assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XIV–APDT.

2=No.

d. *Received Aid to the Aged, Blind, and Disabled Under Title XVI–AABD of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–AABD for the reporting month (or the last month of SSP–MOE assistance). This item is not required to be coded for a child.

1=Yes, received aid under Title XVI–AABD.

2=No.

e. *Received Supplemental Security Income Under Title XVI–SSI of the Social Security Act:* Enter the one-digit code that indicates the individual received aid under a State plan approved under Title XVI–SSI for the reporting month (or the last month of SSP–MOE assistance). This data element should be coded for each adult and child with family affiliation code ''1''.

1=Yes, received aid under Title XVI–SSI.

2=No.

19. *Marital Status:* Enter the one-digit code for the marital status of the adult (or minor child head-of-household). Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=Single, never married.

2=Married, living together.

3=Married, but separated.

4=Widowed.

5=Divorced.

20. *Relationship to Head-of-Household:*

Instruction: Enter the two-digit code that shows the individual's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household. If a minor child head-of-household, enter code ''01.''

01=Head-of-household.

02=Spouse.

03=Parent.

04=Daughter or son.

05=Stepdaughter or stepson.

06=Grandchild or great grandchild.

07=Other related person (brother, niece, cousin).

08=Foster child.

09=Unrelated child.

10=Unrelated adult.

21. *Parent With Minor Child In the Family:*

Guidance: A parent with a minor child in the family may be a natural parent, adoptive parent, or step-parent of a minor child in the family. Reporting of this data element is optional for individuals whose family affiliation code is 3, 4, or 5.

Instruction: Enter the one-digit code that indicates the individual's parental status.

1=Yes, a parent with a minor child in the family.

2=No.

22. *Needs of a Pregnant Woman:* Some States consider the needs of a pregnant woman in determining the amount of assistance that the SSP–MOE family receives. If the individual was pregnant and the needs associated with this pregnancy were considered in determining the amount of assistance for the last month of assistance, enter a ''1'' for this data element. Otherwise enter a ''2'' for this data element. This data element is applicable only for individuals whose family affiliation code is 1.

1=Yes, additional needs associated with pregnancy were considered in determining the amount of assistance.

2=No.

23. *Educational level:* Enter the two-digit code to indicate the educational level attained by the individual. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

01–11=Grade level completed in primary/secondary school including secondary level vocational school or adult high school.

12=High school diploma, GED, or National External Diploma Program.

13=Awarded Associate's Degree.

14=Awarded Bachelor's Degree.

15=Awarded graduate degree (Master's or higher).

16=Other credentials (degree, certificate, diploma, etc.).

98=No formal education.

99=Unknown.

24. *Citizenship/Alienage:*

Instruction: Enter the one-digit code that indicates the individual's citizenship/alienage. Unknown is not an acceptable code for an individual whose family affiliation code is ''1''. Reporting of this data element is optional for individuals whose family affiliation code is 4 or 5.

1=U.S. citizen, including naturalized citizens.

2=Qualified alien.

3=Non qualified alien.

9=Unknown.

25. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status. Leave this field blank for other minor children. Reporting of this data element is optional for individuals whose family affiliation code is 2, 3, 4, or 5.

1=Employed.

2=Unemployed, looking for work.

3=Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers).

26. *Amount of Earned Income*: Enter the amount of the adult's (or minor child head-of-household's) earned income for the last month on SSP–MOE assistance or for the month used to budget for the last month on assistance. Leave these fields blank for other minor children (i.e., children whose family affiliation code is 4).

27. *Amount of Unearned Income:* Enter the amount of the individual's unearned income for the last month on SSP–MOE assistance or for the month used to budget for the last month on assistance. Leave these fields blank for other minor children (i.e., children whose family affiliation code is 4).

Appendix G—SSP–MOE Data Report—Section Three—Aggregated Data Collection for Families Receiving Assistance Under the Separate State Program(s)

Instructions and Definitions

General Instruction: The State agency must collect and report data for each data element, unless explicitly instructed to leave the field blank. Monthly caseload counts (e.g., number of families, number of two-parent families, and number of closed cases) and number of recipients must be unduplicated monthly totals. States may use samples to estimate the monthly totals if explicitly stated in the instruction for the data element.

1. *State FIPS Code:* Enter your two-digit State code.

2. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January–March.
Second quarter—April–June.
Third quarter—July–September.
Fourth quarter—October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as ''19971'').

Active Cases

For purposes of completing this report, include all eligible families receiving assistance under the separate State programs, i.e., SSP–MOE families. All counts of families and recipients should be unduplicated monthly totals.

3. *Total Number of SSP–MOE Families:* Enter the number of families receiving assistance under the separate State programs for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #4), the number of one-parent families (in item #5) and the number of no-parent families (in item #6).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

4. *Total Number of Two-parent Families:* Enter the total number of two-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

7. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the separate State programs for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #8) and the number of child recipients (in item #9).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

9. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the separate State programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

10. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the separate State programs for each month of the quarter. The monthly totals for this element may be estimated from samples.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

11. *Total Amount of Assistance:* Enter the dollar value of all SSP–MOE assistance (cash and non-cash) provided to families under the separate State programs for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Closed Cases

12. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

APPENDIX H.—CASELOAD REDUCTION REPORT

[State_____ Fiscal Year _____]

Part I—Implementation of All Eligibility Changes Made by the State Since FY 1995

#	Eligibility change	Implementation date	Estimated impact on caseload since change (positive or negative)
	Changes Required by Federal Law		
	State-Implemented Changes		
Changes Related to Income and Resources:			
Changes Related to Categorical or Demographic Eligibility Factors:			
Changes Related to Behavioral Requirements			

APPENDIX H.—CASELOAD REDUCTION REPORT—Continued

[State_____ Fiscal Year _____]

Part I—Implementation of All Eligibility Changes Made by the State Since FY 1995

#	Eligibility change	Implementation date	Estimated impact on caseload since change (positive or negative)
Changes Due to Full-Family Sanctions:			
Other Eligibility Changes:			
Estimated Total Net Impact on the Caseload of All Eligibility Changes			
Total Prior-Year Caseload			
Estimated Caseload Reduction Credit			

Part II—Application Denials and Case Closures, by Reason

	Fiscal year 1995		Fiscal year ____	
	Number	Percentage	Number	Percentage
Reason for Application Denials:				
Total Application Denials				
Reason for Case Closures:				
Total Case Closures				

APPENDIX H.—CASELOAD REDUCTION REPORT

State _____ Fiscal Year_____

Part III—description of the methodology used to calculate the caseload reduction estimates (attach any supporting data to this form)

Appendix H—Caseload Reduction Report

State _____ Fiscal Year _____

Part IV—Certification

I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995.

_____

(signature)

_____

(name)

_____

(title)

Instructions for Completing Form ACF–202, Caseload Reduction Report

All States wishing to receive a caseload reduction credit must complete and submit this report on behalf of the State agency administering the TANF program in accordance with these instructions.

Due Date

This report must be submitted by December 31 of each year.

Submission

Submit the original to the ACF Regional Administrator. Submit a copy to: Administration for Children and Families, Office of Family Assistance, 5th Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447.

General Instructions

Form ACF–202 consists of a series of tables, a narrative description, and a certification page. If you are completing this report electronically, you may need to add rows to some of the tables to accommodate all the information you need to enter. If a section of a table is not applicable, specify ''none'' or ''not applicable,'' as appropriate in the first line.

Appendix H—Caseload Reduction Report

We have designed Form ACF–202 so that you can complete it electronically or manually, but we do not currently have the capacity to accept electronic submissions of the report.

Each State must submit a summary of all public comments on the State's estimates and methodology as part of its Caseload Reduction Report. Please be advised that there is nothing on form ACF–202 for the State to complete for this requirement, but the instructions for ''Attachments'' direct the State to include the summary of comments.

Please remember that the caseload reduction credit is based on changes both in the State's TANF caseload and in any separate State program caseloads; therefore you should be sure that the figures in this report reflect separate State program information as well as TANF information.

If you have opted to use separate reduction credits for your State's overall and two-parent participation rates, you must submit separate reports for the overall and two-parent caseloads. Please indicate at the top of each page and each attachment to which caseload the report pertains.

- Enter the name of the State and the current fiscal year in the space provided at the top of each page. If you are completing the report electronically, you will only need to enter this information once for each table and the once for the certification page.

Instructions for Completing Part I

- Enter each eligibility change the State has made since FY 1995 in the appropriate category (e.g., ''Changes related to Income and Resources''), numbering each change for easy reference. For convenience, we have separated Federal changes from State-implemented ones and listed some common State eligibility changes; however, you should be sure to include *each* change, whether Federal or State in origin, on a separate line. If you are completing this report electronically, you may need to add one or more rows to the table in order to list all of your State's eligibility changes in the various categories. If you are completing it manually, you may need to attach additional pages instead.

Please note that you need not list any changes the State has implemented since October 1 of the current fiscal year, since this report applies to caseload reductions in the prior fiscal year.

You should not consider the creation of a separate State program as an eligibility change, since separate State program caseloads must be included in calculating the caseload reduction credit, as we indicated above.

- For each eligibility change, enter the implementation date and your estimate of the impact the change has had on the caseload since its implementation. For example, if a particular eligibility change had the effect of reducing the caseload by 5,000 cases, you should enter, ''–5,000.'' It is important that your estimate account for the cumulative impact of each change on the caseload since 1995, not simply the impact in the year that the State implemented the change.

Please note that an eligibility change may have a positive or negative effect on the caseload. If the effect was negative, include a minus sign in front of the number. If the effect was positive, include a plus sign in front of the number.

- Enter the total estimated impact of all the eligibility changes you listed. In making this estimate, you should be sure that you have not counted case impacts more than once, even if they could be included under more than one eligibility change. Thus, the total impact may not equal the sum of all the individual impacts because of interaction among eligibility changes. In such cases, Part III of the report (the methodology section) should address any discrepancies.
- Enter the total caseload for the prior year, including separate State program cases. You may use the combined total number of families reported in the TANF Data Report and the SSP–MOE Data Report (in section three of each report) for the prior year. If the total prior-year caseload reflects adjustments you have made in accordance with § 261.40 to improve the comparability of FY 1995 and prior-year caseloads, please attach an explanation of your adjustments.
- Enter the State's estimated caseload reduction credit. In arriving at this number, you should subtract your estimated net reduction in caseload due to eligibility changes from the total caseload decline between FY 1995 and the prior year and divide the resulting number by the total prior-year caseload. For example, if the net result of the eligibility changes is that the State's caseload in the prior year decreased by 2,000 from the FY 1995 level, then you should subtract 2,000 from the total caseload decline between FY 1995 and the prior fiscal year. If there is a net increase in caseload due to eligibility changes, you should not subtract anything from the caseload decline between FY 1995 and the prior year.

Instructions for Completing Part II

- Enter the prior fiscal year in the heading of the column that follows ''Fiscal Year 1995.'' For example, if this is the State's FY 2000 report (due by December 31, 1999), then the column heading should read ''Fiscal Year 1999.''
- Enter each reason for application denial, the number of denials for each such reason for the applicable fiscal year, and the percentage that the number represents of total denials for the fiscal year.
- Enter the total number of application denials for the applicable fiscal year. The total percentages for each year should equal 100.
- Enter the same information for each case closure reason, i.e., the reason for case closures, the number of closures for that reason, and the percentage that the number represents of total case closures.
- Enter the total number of case closures for the applicable fiscal year. The total percentages for each year should equal 100.

Instructions for Completing Part III

- Describe in detail how you arrived at the estimated impacts on the caseload of the various eligibility changes and how you arrived at the estimated caseload reduction credit.
- If there were changes in the number or distribution of application denials or case closures since FY 1995 that do not appear to be consistent with the information listed in Part II of the report, include a discussion explaining the inconsistencies.
- Attach any information that documents the State's estimates.

Instructions for Completing Part IV

- Enter the name and title of the individual making the certification on behalf of the State.
- Sign the certification. Although you may complete the form electronically, you must submit this page with the original signature to the ACF Regional Administrator and a copy to the Office of Family Assistance, as indicated above.

Attachments

- Attach a summary of all public comments on the State's estimates and methodology.
- Be sure that all attachments include the name of the State and the current fiscal year and indicate that they are attachments to Form ACF–202.

Appendix I

Annual Report on State Maintenance-of-Effort Programs: ACF–204

State _____Fiscal Year ____Date Submitted _____

Complete this form for each program for which the State claims MOE expenditures.

1. Program Name:

2. Description of Major Program Activities:
3. Program Purpose(s):
4. Program Type. Program is: under the TANF program __ is a separate State/local program __
5. Description of Work Activities (Complete only if this is a separate State/local program):
6. Total State Expenditures for Program: _____
7. Total State MOE Expenditures: _____
8. Number of Families Served with MOE Funds: _____
This figure represents: the average monthly total ____ total for the year ____
9. Eligibility Criteria:
10. Prior Program Authorization:
Was this program authorized and allowable under prior law? Yes____ No ____
11. Total Program Expenditures in FY 1995. _____
This certifies that all families for which the State claims MOE expenditures for the fiscal year meet the State's criteria for ''eligible families.''

Signature: _____

Name: _____

Title: _____

Approved OMB No. xxxx-xxxx Form ACF–204

Instruction for Completion of Form ACF–204 Annual Report on State Maintenance-of-Effort Programs

All States must complete and submit this report in accordance with these instructions and the requirements at 45 CFR 265.9(c) on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted by November 14.

States must submit this report for each fiscal year. Also, each State must complete a form for each program for which the State has claimed MOE expenditures for the fiscal year.

Distribution: The original copy (with original signatures) should be submitted to: Administration for Children and Families, Office of Family Assistance, Aerospace Building, 5th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions

—Round all dollar amounts to the nearest dollar. Omit cents.
—Enter State Name.
—Enter the Fiscal Year for which this report is being submitted. Enter the date that the report is being submitted.

Line Item Instructions

Line 1. Program name. Enter the name of the program.

Line 2. Description of major activities. Describe the major activities and major types of benefits and services provided under the program.

Line 3. Program purpose. Provide the purpose(s) of the program and relate this purpose to the statutory and regulatory TANF purposes (at 45 CFR 260.20).

Line 4. Program type. Put an ''X'' on the appropriate line (indicating whether the MOE expenditures are being made under the TANF program or under a separate State program.

Line 5. Work program description. If the program is a separate State program, describe the work activities (if any) provided for eligible families and the extent to which eligible families are subject to work requirements. If the work activities are the same as the TANF activities, or a subset of the TANF activities, you may include a list of the activities and a cross-reference to the definitions provide in the annual report rather than representing them. (It is not necessary to describe work activities provided under TANF because that information is provided elsewhere.) Also include information explaining whether individuals served by the program must participate in work activities and describing the extent to which such requirements apply (e.g., to which categories of recipients).

Line 6. Total amount of State expenditures. Enter the total dollar amount of State expenditures in the program during the Federal fiscal year.

Line 7. Total State MOE expenditures. Enter the total dollar amount of expenditures reported in item ι6 that are reported as State MOE expenditures.

Line 8. Number of families served with MOE funds. Enter the number of eligible families that are receiving assistance and other forms of services and supports under the program. Also, put an ''X'' on the appropriate line to indicate whether the number being provided is a report on the average monthly number of families being served or on the total number served over the course of the fiscal year.

Line 9. Eligibility criteria. Provide the eligibility criteria for families served under this program. If the eligibility criteria differ for different kinds of program benefits or activities, specify the eligibility criteria for all the major benefits and activities.

Line 10. Prior authorization. Put an ''X'' on the appropriate line to indicate whether the program was authorized and allowable under prior law. Programs that were previously authorized and allowable under prior law (i.e., under an approved State IV–A plan in effect either on Sept. 30, 1995, or August 21, 1996, at State option) are not subject to the ''new spending'' test.

Line 11. Total program expenditures in 1995. If the program was not previously authorized and allowable (i.e., if the answer on item #10 is ''No''), enter the total expenditures for the program in 1995. Only qualified State expenditures above this level may count towards the State MOE total.

Certification. The certification must be signed by an authorized official. Under the signature line, type the title of the authorized official, together with the agency name.

[FR Doc. 99–8000 Filed 4–9–99; 8:45 am]
BILLING CODE 4184–01–P

Federal Register

Monday
April 12, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation of the Cincinnati/Northern Kentucky International Airport Class C Airspace Area; KY; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–5]

RIN 2120–AE97

Establishment of the Cincinnati/ Northern Kentucky International Airport Class B Airspace Area, and Revocation of the Cincinnati/Northern Kentucky International Airport Class C Airspace Area; KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: On December 14, 1998, the FAA issued a rule that delayed the effective date of a rule establishing the Cincinnati/Northern Kentucky International Airport Class B airspace area, and revoking the Cincinnati/ Northern Kentucky International Airport Class C airspace area. The establishment and revocation of these airspace areas was originally scheduled for implementation on December 31, 1998. However, the FAA delayed the effective date of the airspace action, to conduct an administrative airspace review of the Cincinnati/Northern Kentucky International Airport terminal area. The FAA completed the administrative review and this action confirms the effective date for establishment and revocation of these airspace areas.

EFFECTIVE DATES: The final rule published in the **Federal Register** on November 30, 1998 (63 FR 65972), and delayed on December 14, 1998 (63 FR 68675), is effective 0901 UTC, July 15, 1999.

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

SUPPLEMENTARY INFORMATION:

Regulatory History

Pre-Notice of Proposed Rulemaking Public Input

In 1992 the FAA began the public process of briefing those affected by proposed airspace changes for the Cincinnati/Northern Kentucky International Airport. As announced in the **Federal Register** (57 FR 32835; July 23, 1992) informal airspace meetings were held on September 3 and 4, 1992, in the Ohio and Kentucky area. Owners and managers of the local general aviation airports, members of the aviation industry, fixed-base operators, and concerned airspace users provided input. An Ad Hoc User Group Advisory Committee, established by the FAA and composed of local aviation users, submitted seven recommendations and a Class B airspace design proposal. All comments received during the informal airspace meetings and the subsequent comment period were considered and/ or incorporated in the notice of proposed rulemaking.

Notice of Proposed Rulemaking (NPRM)

On February 10, 1998, the FAA published a NPRM in the **Federal Register** (63 FR 6818) proposing to establish a Class B airspace area and revoke the existing Class C airspace area at CVG. The 60-day comment period for this proposed rulemaking action closed on April 13, 1998. However, the FAA received two petitions to extend the comment period and reopened the comment period on May 15, 1998, for an additional 60 days (63 FR 27160). The supplemental comment period closed on July 14, 1998. The FAA received 36 comments in response to this NPRM and they were addressed in the final rule.

Final Rule

On November 30, 1998, the FAA published a final rule in the **Federal Register** (63 FR 65972) establishing a Class B airspace area and revoking the Class C airspace area for CVG. The CVG Class B airspace area consists of an area encompassing a 25-mile radius of CVG from the surface or higher up to and including 8,000 feet above mean sea level. The FAA took this action to enhance safety, reduce the potential for midair collisions, and to improve the management of air traffic operations in the Cincinnati/Northern Kentucky area. The effective date of the rule was December 31, 1998.

Delay of Final Rule Implementation Date

On December 14, 1998, the FAA issued a rule (63 FR 68675) that delayed the effective date of the rule establishing the CVG Class B airspace area, and revoking the Class C airspace area.

After issuance of the final, but prior to the December 31, 1998, effective date, the FAA delayed the implementation date to evaluate whether this airspace action continued to be necessary to enhance the safety of air navigation, and whether there was new information that should have been considered prior to promulgating the final rule. The rule delaying the effective date was effective immediately to allow the FAA sufficient time to conduct an administrative airspace review.

Administrative Airspace Review

The FAA conducted a review of the rule that established the Cincinnati/ Northern Kentucky International Airport Class B Airspace Area, and revoked the Cincinnati/Northern Kentucky International Airport Class C Airspace Area; KY. The FAA revalidated the data and analysis used in formulating the airspace action. The FAA also reviewed the need for and configuration of the CVG Class B airspace area; the simulation modeling of the airspace area and analysis of air traffic in the Cincinnati terminal airspace area; and the analysis of comments received after the final rule establishing the Class B airspace area had been issued. It also considered whether there were any new issues not previously addressed in the NPRM or final rule.

The results of the administrative airspace review confirm the FAA findings in the final rule. Many of the post final rule comments repeated those previously received in response to the NPRM, and addressed by the FAA in the final rule.

Those commenting did not provide the FAA with any new information that would cause the FAA to change its determination concerning the need for the CVG Class B airspace area and its published configuration. The review also indicated that the level of current aircraft operations in the terminal area support establishment of the Cincinnati/ Northern Kentucky International Airport Class B airspace area, and revocation of the Class C airspace area as published. The review found that the published design is the minimum airspace required to protect enplaned passengers and manage aircraft operations into, out of, and through the Cincinnati terminal airspace area.

A copy of the Administrative Airspace Review has been placed in the official docket for this airspace effort. The official docket may be examined in the Office of the Chief Counsel, Room 915G, weekdays, between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a significant regulatory action under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Effective Date

The effective date of Airspace Docket 93–AWA–5, as published in the **Federal Register** on November 30, 1998 (63 FR 65972), is 0901 UTC, July 15, 1999. This effective date coincides with the scheduled publication date for the appropriate aeronautical chart for this area. Except for the change in the effective date, the preamble and final rule establishing the CVG Class B airspace area, and revoking the CVG Class C airspace area, as published in the **Federal Register** on November 30, 1998 (63 FR 65972), remains the same.

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

* * * * *

Issued in Washington, DC, on April 7, 1999.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–9019 Filed 4-7-99; 12:53 pm]

BILLING CODE 4910–13–P

Federal Register

Monday
April 12, 1999

Part IV

The President

Proclamation 7180—National D.A.R.E. Day, 1999

Federal Register
Vol. 64, No. 69
Monday, April 12, 1999

Presidential Documents

Title 3—

The President

Proclamation 7180 of April 8, 1999

National D.A.R.E. Day, 1999

By the President of the United States of America

A Proclamation

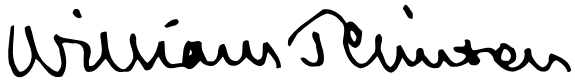
The Drug Abuse Resistance Education (D.A.R.E.) program, founded in 1983 by the Los Angeles Police Department and the Los Angeles Unified School District, helps children across our Nation develop into the bright, talented, and healthy individuals they have the potential to become. The D.A.R.E. curriculum is designed to give children in kindergarten through 12th grade the skills they need to avoid involvement in drugs, gangs, and violence. Taught by community police officers who have the special training and experience necessary to address the difficult issues facing young people, the D.A.R.E. program reaches more than 26 million students each day in nearly 75 percent of our Nation's school districts, encouraging young Americans to resist peer pressure and to lead lives free from the shadows of drugs and violence.

D.A.R.E.'s mission is a crucial one. Drug abuse costs our Nation more than 14,000 lives and billions of dollars each year. A recent study by the Department of Justice confirms that drug use continues to be a factor in crimes such as burglary, auto theft, assault, and murder, and that one in six offenders commits a crime just to get money for drugs. Because of alarming statistics like these, we must focus our efforts not just on those already addicted to drugs, but on all our young people, so that we can reach them before they are exposed to these illegal substances. Working in partnership with parents, teachers, and communities, the D.A.R.E. program conveys to children at an impressionable age a strong message about the dangers of substance abuse and strives to give them the tools and motivation they need to avoid those dangers.

Expanding on grassroots efforts like D.A.R.E., my Administration's 1999 National Drug Control Strategy provides a comprehensive approach to move us closer to a drug-free America. An important part of this long-term plan is our emphasis on educating children. We know that when children understand the dangers of drugs, their rates of drug use decline. Our National Youth Anti-Drug Media Campaign and the Safe and Drug-Free Schools program focus on helping young Americans reject illegal drugs and violence. In addition, in recent years, we have protected and increased the funding of the Safe and Drug-Free Schools program. Coupled with programs like D.A.R.E., these efforts offer us real hope for freeing America's communities from the tragedy of substance abuse and the crime and violence they spawn. By doing so, we will give our children the safe and healthy future they deserve.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 8, 1999, as National D.A.R.E. Day. I call upon our youth, parents, educators, and all the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.



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H.R. 171/P.L. 106–18

To authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes. (Apr. 8, 1999; 113 Stat. 28)

H.R. 705/P.L. 106–19

To make technical corrections with respect to the monthly reports submitted by the Postmaster General on official mail of the House of Representatives. (Apr. 8, 1999; 113 Stat. 29)

Last List April 8, 1999.

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24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.